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June 17, 2022

VIA EMAIL: ccurran@fec.gov

Christopher S. Curran, Esq.
Enforcement Division
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: MUR 7853 - Stand For Truth, Inc.
Proposed Conciliation Agreement

Dear Mr. Curran:

We are writing this letter on behalf of Stand For Truth, Inc. ("SFT") in response to the RTB finding and the Commission's proposed conciliation agreement. SFT disagrees with the Commission's conclusion that there is "reason to believe" that SFT violated the Act. SFT agrees with the Commission that it is appropriate to resolve this matter through conciliation; however, it does not believe that its conduct merits anywhere near the level of penalty the Commission has proposed.

Stand For Truth is not and was not "established, financed, maintained or controlled" by Lance Harris or Lance Harris for Congress. It is likewise not EFMC'd by Lance Harris' State Committee - though that is relevant only if the State Committee was controlled by Harris or was his agent at the time of the contribution to SFT. SFT acted in good faith based on representations that Harris had no involvement with the decision to contribute to SFT, and to this day is aware of no evidence to the contrary. It was unaware of any involvement by Harris, just as it was unaware that the Commission would employ a novel interpretation of "financed" to conclude that a one-time contribution amounting to roughly one percent (1%) of its lifetime receipts equates to Harris controlling Stand For Truth or its expenditures. This interpretation, seemingly at odds with the sparse authority that does exist, should be formally adopted by the Commission prior to being applied to find a violation that would not, in absence of this novel interpretation, constitute a violation.

For the reasons explained below, SFT proposes a more modest penalty in light of the novel interpretation of the statutory language, the balancing of the factors to determine whether SFT was EFMC's by candidate Harris, and the representations made to it by Harris' State Committee.

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I. SFT Was Told That Harris Had Dissociated Himself from the State Committee

It was represented to SFT that Lance Harris had dissociated himself from the State Committee. The Treasurer of the Committee thereafter sought to wind down that Committee, and made the decision to contribute to SFT. An assumption that “an individual’s pre-candidacy association with an organization necessarily taints the independence of the organization’s later expenditures in support of that individual’s election is just that — an assumption.” *Statement of Reasons for Vice Chairman Matthew S. Petersen and Caroline C. Hunter, MURs 6789 and 6852 (Special Operations for America, et al) at 4 (May 28, 2019)*. In this case, however, SFT did not “assume” – it based its belief that the expenditure was appropriate on the State Committee’s representations that Harris had no involvement in the State Committee or its decision to contribute to SFT, and that the contribution was lawful. Indeed, Harris has likewise represented to the Commission in response to the Complaint, and there is no evidence to the contrary. Given that there was an express termination of any agency relationship between Mr. Harris and the State Campaign at the time the contribution was made, applying principles of agency law SFT was entitled to rely on the express disclaimer of agency. There was nothing to prohibit Stand for Truth from accepting the State Committee’s contribution consisting of funds permissible for SFT as an independent-expenditure-only committee. *See* AO 2018-17 (Nancy Mace), p. 4.

Contrast these circumstances with those in AO 2018-07 (Nancy Mace), wherein the Commission found that the recipient independent-expenditure-only committee would be considered an agent of State Representative Mace, who intended to use state campaign funds to contribute to the committee. The Commission reasoned that the committee would be an agent of Rep. Mace because she would “exercise *exclusive* decision-making authority over the Committee, including approving all Committee communications and determining which federal candidates to promote or support, and she will provide *all initial funding* for the Committee. Because Representative Mace will *exclusively direct* all of the Committee’s public communications, the Commission concludes that the Committee will have actual authority to spend funds for public communications on behalf of Representative Mace.” None of that is present here, where Harris had no involvement at the time with the State Committee, and no involvement whatsoever at any time with SFT. *See* AO 2018-17 (Nancy Mace), p. 4.

Harris’ termination of the agency relationship between him and the State Committee was effective when notice was given to the State Committee. Restatement 3d of Agency, § 3.10. The termination was likewise effective at that time as to SFT or any third party. SFT is entitled to rely on the express disclaimer of agency; therefore, it cannot be said that the State Committee was acting as Harris’ agent such that Harris EFMC’d Stand For Truth. The Commission reached a similar conclusion in MUR 5943 (Giuliani), finding no agency when the purported agent “was expressly informed that he was not authorized to act on behalf of the Giuliani campaign when he contributed his own funds to TIA.” *See* MUR 5943 (Giuliani), *Factual and Legal Analysis*, pp. 8-9.

II. The Commission Failed to Weigh All Factors for Determining EFMC

The Commission here did not weigh the factors to determine whether, in the context of the total relationship between the State Committee and SFT – it simply noted the presence of ONE of the ten factors as sufficient to find that Lance Harris through the State Committee “financed” Stand for Truth. In determining whether an entity is “financed” by a federal candidate (or an agent of the candidate), the Commission will consider the ten factors identified in 11 C.F.R. § 300.2(c)(2)(i) through (x), as well as

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any other relevant factors, regarding the context of the overall relationship between the Federal candidate and the entity. "Whether an officeholder or candidate 'controls' an independent expenditure-only committee" will depend on "the overall relationship between the [candidate or officeholder] and the entity" by applying the ten-factor test found in 11 C.F.R. § 300.2(c)(2). *See* MUR 5952 (Clinton Committee), Factual & Legal Analysis at 12.

The Commission weighs all of the factors, including the absence of one or more of those factors. *See* MUR 5943 (Take Initiative America LLC), Factual and Legal Analysis at 8-9 (dismissing "establish, finance, maintain, or control" allegation where the complaint's cited facts drew only "tenuous connections" to a violation and other components of the ten-factor test were inapplicable); MUR 5943 (Giuliani), *Factual and Legal Analysis*, pp. 10-11 (noting that a majority of the factors were not satisfied in concluding that Giuliani did not EFMC a committee); AO 2021-06 (Robin Kelly) (weighing each relevant factor whether it weighs in favor or against a finding of EFMC, in concluding "that if the non-federal account is administered by a special committee" firewalled from the Congresswoman "then the non-federal account is not an entity directly or indirectly established, financed, maintained or controlled by, or acting on behalf of, Congresswoman Kelly").

The RTB letter contains no analysis of nine of the ten factors, seemingly conceding that none of those nine factors weigh in favor of finding that Lance Harris or the State Committee EFMC'd SFT. The Complaint does not argue that the other nine factors support a finding of impermissible control; in fact, Complainant goes to great lengths to show that SFT in its entire existence had no previous relationship with Lance Harris. Complaint, ¶36 ("Stand for Truth had never reported any disbursements to Go BIG Media, and had never reported independent expenditures in a congressional race (much less in Louisiana's 5th district).") There is neither evidence nor allegation that either Lance Harris or any of the candidate committees:

- (i) owns controlling interest in the voting stock of SFT;
- (ii) has the authority or ability to participate in the governance of SFT;
- (iii) has the authority to control the decision-makers of SFT;
- (iv) has a common membership with SFT that indicates a formal or ongoing relationship;
- (v) has common officers or employees with SFT that indicates a formal or ongoing relationship;
- (vi) has any persons who were employees of SFT that indicates a formal or ongoing relationship or the creation of a successor entity;
- (viii) causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity;...
- (ix) had an active or significant role in the formation of the entity; [or]
- (x) have similar patterns of activity that indicate a formal or ongoing relationship between them.

The sole factor even considered by the Commission is whether Harris through the State Committee (viii) "provides funds or goods in a significant amount or on an ongoing basis to the entity...." Even that factor, however, can only be implicated if the Commission applies an interpretation not previously applied in any guidance of which SFT is aware. Because nine of the ten factors are completely absent and the tenth is based on an informal and novel interpretation, it cannot be said that Harris or his federal committee controlled or financed SFT.

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III. Stand For Truth Was Not “Financed” By Lance Harris or His Federal Committee

It has not been shown that Lance Harris controlled the State Committee, but even if it could be shown, it cannot be said that Lance Harris has “financed” or “controls” Stand For Truth. There is no evidence that Lance Harris arranged for the funds to be contributed to SFT, much less that SFT knew of any such arrangement. The state committee’s one-time donation does not establish that the committee – much less Harris himself – controls SFT. Were that the case, there are over twenty individual contributors who have a far greater claim to exercising such control, and another twenty or more six-figure contributors who would argue the point. Only by interpreting the statute, for the first time, to consider an entity “financed” as a result of activity over a lesser time period than the life of the entity can even that one factor be satisfied.

Financing, particularly in the context with the words “establish,” “maintain,” and “control,” indicates a continuity of involvement and a far greater level of involvement than connection to one contribution. Lance Harris, to the extent he is an alter ego of the State Committee from which he had dissociated, did not “finance” Stand For Truth; rather, at most the State Committee “financed” activity in one election cycle – not the “entity.” It would be unfair to penalize SFT when previous precedent has focused on the total contributions received by the entity.

A. FEC’s Novel Interpretation of “Financed” Should Not Render SFT’s Conduct Violative of the Act

SFT acted in good faith following solid interpretations of the statute and regulations, with the belief that Harris had dissociated from the State Committee, and that the funds were permissible funds. It confirmed that the vendor had implemented and was following a firewall policy, and that the expenditure was made appropriately. To the extent that the State Committee’s representations were untrue, and SFT has no reason to believe that they are, SFT should not be held culpable for that potential misrepresentation. Likewise, SFT’s failure to anticipate the novel interpretation of the statute that one contribution results in SFT (an entity theretofore entirely unrelated to Harris) having been “established maintained, financed or controlled” by Harris himself do not merit the significant penalty suggested.

The only applicable factor among those specified by Commission regulations is whether the State Committee provided funds “in a significant amount” to Stand for Truth. The only relevant precedent at the time demonstrated that the Commission would make this determination by examining the percentage of the State Campaign’s donation compared to the total donations received by Stand for Truth. See AO 2006-04 (Tancredo) (“The Commission will examine the percentage of [candidate committee’s] donation compared to the total donations received by [ballot issue committee] ...in the context of the overall relationship between [the two committees] to determine whether [the] proposed donation ... is “in a significant amount” under 11 CFR 300.2(c)(2)(vii).” The Commission also found it significant in *Tancredo* that the amount of the contribution “would represent substantial “seed money” for [ballot issue committee] and would result in [ballot issue committee depending in large part on [candidate committee’s] for its initial existence.”) (emphasis added).

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Stand for Truth is a Super PAC that was active in multiple races, including in the 2016 election cycle when it spent over \$11 million to independently support Senator Ted Cruz's presidential primary campaign. Compared to SFT's *total donations* received, the State Campaign's contribution of \$120,000 – not at all related to SFT's *initial existence* – equates to a mere 1% of the total funds received. The Commission stated in AO 2021-06 (Robin Kelly) that because the non-federal account “long predates” Congresswoman Kelly's election as chair, the factor of whether the candidate “had an active or significant role in the formation of the entity” weighs against finding that the candidate EFMC'd the entity. The Commission should not, other than by formal guidance, avoid this analysis by interpreting it out of the statute through the backdoor of limiting the timeframe it considers for providing significant funds.

IV. SFT Should Not Be Penalized for Reliance on the State Committee's Representations or Failing to Anticipate FEC's Interpretation

As previously discussed, SFT was told that Lance had disassociated from the State Committee, that the Treasurer was making the contribution, and that the transfer was lawful. SFT should not be forced to presume (because it could never know), contrary to established agency law, that an agency exists despite that express repudiation. Likewise, it should not be penalized for a statutory interpretation that had never been expressed and is contrary to the ten-factor test and agency precedent.

Stand for Truth is, as an independent-expenditure-only committee, of course permitted to raise and spend funds outside the Act's source and amount limits. SFT received what it believed (and continues to believe) to be permissible funds, and expended them in an appropriate manner. SFT of course knew that Harris had not *established*, had not *maintained*, and did not *control* SFT; likewise, it had no reason to anticipate that Harris “*financed*” SFT – it having raised and spent in the neighborhood of \$11,000,000 over its lifetime. The expenditure by SFT could only be considered impermissible by an after-the-fact interpretation of the statute and regulation that results in *one* factor out of a ten-factor test being *arguably* met. Because there had been no guidance from the Commission suggesting this interpretation, SFT had no reason to believe that its expenditure would violate the Act.

SFT believes that the finding of RTB, and the amount of the proposed penalty, do not reflect SFT's actions. SFT acted in good faith based on its understanding of the facts and the law at the time. That understanding has not changed, other than with FEC's interpretation of when a candidate has “financed” an entity. Because it acted in good faith, and relied on representations given it,

V. Conclusion

Stand For Truth is not and was not “established, financed, maintained or controlled by Lance Harris or Lance Harris for Congress. It is likewise not EFMC'd by Lance Harris' State Committee, though that is relevant only if the State Committee was controlled by Harris or was his agent at the time of the contribution to SFT. SFT acted in good faith based on representations that Harris had no involvement with the decision to contribute to SFT, and to this day is aware of no evidence to the contrary. It was unaware of any involvement by Harris, just as it was unaware that the Commission would employ a novel interpretation of “financed” to conclude that a one-

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time contribution amounting to roughly one percent (1%) of its lifetime receipts equates to Lance Harris controlling Stand For Truth or its expenditures. This interpretation, seemingly at odds with what sparse authority does exist, should be formally adopted by the Commission prior to being applied to find a violation that would not, in absence of this novel interpretation, constitute a violation.

Agreeing that conciliation is the most prudent and efficient resolution of this matter, but maintaining that it acted appropriately and in good faith reliance on representations by the State Committee and Commission guidance,

Thank you for your prompt consideration of this matter, and I look forward to your further communications.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Lycan".

D. Eric Lycan
Counsel for Stand For Truth, Inc.