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Enforcement Division
Federal Election Commission
1050 First Street NE
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VIA E-MAIL: ccurran@fec.gov

Re: MUR 7853 Response from Lance Harris, Lance Harris for Congress and Campaign to Elect Lance Harris

We represent Lance Harris, Lance Harris for Congress, Campaign to Elect Lance Harris, and Blaine Hebert, in his official capacity as Treasurer (collectively "the Respondents") in the above-referenced matter. We have reviewed the Factual and Legal Analysis ("F&LA") that found reason-to-believe against the Respondents, asserting that Campaign to Elect Lance Harris ("the State Committee") was considered an entity established, financed, maintained, or controlled (EFMC'd) by Harris, and therefore, the transfer of funds to Stand for Truth was considered essentially a direction of soft money by a candidate. The Commission's legal analysis is problematic on both factual and enforcement consistency levels.

1. The Commission's Assertion that A State Committee Is, As a Matter of Law, EFMC'd by a Federal Campaign Committee Is Not Supported By Prior Precedent.

Harris ended his affiliation with the State Campaign on March 12, 2020, *over six months prior* to the State Committee making its first contribution to Stand for Truth, and all available evidence supports that he had zero role in the State Committee's decision to make a contribution to Stand for Truth. Despite lack of available evidence showing Mr. Harris' involvement and the Respondents' assurances stating that Mr. Harris had no involvement with the State Campaign at the time of the contribution to Stand for Truth, the Commission created a new "rule" out of whole cloth and found that the State Committee was controlled by Harris. This new rule claims that state campaigns of a federal candidate are "as a matter of law" EFMC'd by the federal candidate and are acting on that candidate's behalf. In fact, no law supports such a theory, nor does any of the sourced "precedent."

In support of their legal premise, the Commission cites two Advisory Opinions ("AOs"), AOs 2009-26 (Coulson) and 2007-06 (Schock), as well as one enforcement case, MUR 6601 (Oelrich for Congress). However, w*hen reviewing these matters in full*, it is clear that they do not support the Commission's conclusory statement in this matter that state campaign committees of federal committees are, as a matter of law, EFMC'd by federal candidates in perpetuity. Why? Because there was no dispute by any of the candidates in these matters as to whether they were exercising control over their respective state campaigns. In the Advisory Opinions, both federal candidates made the request to the Commission asking about how they, as federal candidates, could spend the money from their respective state campaigns without triggering a soft money violation. The question as to whether the federal candidate EFMC'd the state committee was not a question in these requests, as the answer to that question was self-explanatory. Likewise, in MUR 6601, there was, again, no dispute that Oelrich controlled the state committee, as the issue in that case revolved around him participating in the state campaign's advertising as a federal candidate.

Unlike in the above-referenced precedent, there is a genuine dispute of fact as to whether Mr. Harris EFMC'd the state campaign at the time the contribution to Stand for Truth was made. That makes this matter materially different from the cited materials. Most importantly, nowhere in the cited materials is there any sort of language that implies that, as a matter of law, federal candidates EFMC their state campaign committees. As such, making a legal presumption that federal candidates EFMC their state campaign committees in perpetuity based on the above-referenced precedent, *despite assurances from the federal candidate claiming otherwise*, is incorrect.

Bolstering our position is the fact that the Commission, in past precedent, has repeatedly dispelled the presumption that a federal candidate's previous involvement with a political committee makes that committee EFMC'd by that candidate in perpetuity.[1] For example, in MUR 7783 (Friends of Byron Donalds), the Commission dismissed a case where the a political committee formed by Representative Byron Donalds, Friends of Byron Donalds, made a contribution to an independent-expenditure-only political committee that independently supported Representative Donalds five months after he resigned as Chair of the political committee. As the three Republican Commissioners stated in their Statement of Reasons in that case, "the Act does not prohibit an entity from engaging in political speech merely because it was, at some point in the past, EFMC'd by an individual who later became a federal candidate or officeholder."[2] There is no reason why the rationale in MUR 7783 should not apply in this matter. Harris ceased involvement with State Committee in March of 2020. The contribution to Stand for Truth was then made *over six months* after Harris disaffiliated with the State Committee, and as previously stated, he had zero involvement in the decision regarding the State Committee's contribution to Stand for Truth.

The only material difference we have found between MUR 7783 and this case is this self-created legal presumption that state campaign committees of a federal candidate are automatically considered EFMC'd by federal candidate. However, all of the above information shows that there is no legal support for that presumption. As such, when there is a genuine dispute regarding a federal

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[1] 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). See also Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter at 8, MUR 6928 (Santorum) ("Thus, an individual's mere association with an organization prior to becoming a candidate does not give rise to a violation of the Act or Commission regulations[.]").

[2] Statement of Reasons of Chairman Allen Dickerson and Commissioners Sean Cooksey and James E. "Trey" Trainor, MUR 7783 at 4 (citing Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 9 (Aug. 3, 2021), MUR 7354 (Friends of Chris McDaniel, et al.)).

candidate's role in their state campaign committee's actions, the Commission should weigh the facts and circumstances in making a legal determination on whether a state campaign committee is acting at the direction of a federal candidate. We ask that the Commission re-review its analysis in this case in light of the information presented in this Response.

2. Respondents Should Be Provided Fair Notice if the Commission Creates New Precedent.

The Commission's position is this matter is the polar opposite from past precedent. Anyone reading this F&LA here and the Statement of Reasons in MUR 7783 would be completely baffled. In situations where the Commission is creating a new guidepost for compliance, it is crucial that the Commission provide fair notice of such change, rather than enforcing that change on Respondents in an enforcement context who relied on past precedent (and common sense). Creating new rules in enforcement signals to campaigns, political organizations, or any other individual or entity that could be regulated by the Commission that they could be in violation of the law based on a future interpretation of that law. This will inevitably chill an organization's political speech, as no organization will want to participate in an activity that could put them on the hook for a violation that they do not know even exists.[3]

Making matters worse, the Commission's seemingly inconsistent treatment regarding EFMC issues only creates more confusion on an already confusing issue. There is already limited guidance on the Commission's EFMC regulations, which makes it difficult for the regulatory community to provide guidance on such a significant violation. Three Commissioners recently said it best—"[i]t violates principles of fundamental fairness to hold respondents liable for violating legal rules that have not been previously announced, and any attempts by the Commission to enforce vague and confusing guidance risks waste, inefficiency, and significant litigation."[4]

There are other ways for the Commission to signal an enforcement change without penalizing Respondents who had no reason to know they were in violation of FECA or Commission regulations. In fact, the Commission just used one of those methods in a recent enforcement case. For example, in MUR 7454 (Blue Magnolia, *et al.*), the Commission found no reason to believe the Respondents violated FECA or Commission regulations when the Respondent Super PAC did not obtain and report the required information for reporting LLC contributions. However, four Commissioners released a Statement of Reasons on that matter, explaining that their position was based on the Commission not finding reason to believe in other cases related to this specific enforcement matter, and moving forward, the Commission would find reason to believe and seek civil penalties in future enforcement cases.[5] While we believe the best way to enact policy changes is through the rulemaking process, using Statements of Reason to signal to the regulatory community new

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[3] We have expressed concern about this precedent in other responses to the Commission. MUR 7577 (Ander PAC), Response to Reason to Believe Finding and Conciliation Agreement (Apr. 19, 2021).

[4] Policy Statement of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III Concerning the Application of 52 U.S.C. § 30104(c).

[5] Statement of Reasons of Chair Allen Dickerson, Vice Chair Steven T. Walther, Commissioner Shana Broussard and Commissioner Ellen Weintraub, MUR 7454 ("Nevertheless, as the Commission has not previously found reason to believe under these circumstances, we did not seek a civil penalty in this case. As the Factual & Legal Analysis approved in this Matter explains, contributions from LLCs to committees must be attributed pursuant to Commission regulations, and those regulations apply to all committees, including IEOPCs. The Commission will apply that understanding going forward, and may seek civil penalties in appropriate future cases.").

enforcement policies is certainly better than retroactively penalizing respondents who had no knowledge of such change.

3. Conclusion.

We appreciate your consideration of this letter. While we have significant concerns regarding the Commission's conclusion in this matter, the Respondents are defunct organizations, which prohibits the Respondents' ability to incur additional legal costs associated with further investigation. Therefore, we have attached proposed edits to the conciliation agreement. Should you, or any Commissioner, have any questions or concerns regarding our letter, please let us know at cspies@dickinson-wright.com or kreynolds@dickinson-wright.com.

Respectfully submitted,

Charlie Spies
Katie Reynolds
Counsel to Respondents