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December 4, 2019

Via E-MailJeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463**Re: AR 19-12**

Dear Mr. Jordan:

The undersigned serves as counsel to the Tennessee Democratic Party (“TDP”) and Dr. Geeta McMillan, in her official capacity as Treasurer. I am writing in response to the Commission’s letter of October 9, 2019 in connection with the above-referenced referral.

As you know, this matter is a referral of issues raised during an Audit of the TDP during the 2015 and 2016 election cycle. The Commission’s letter merely forwards, without comment, a copy of the Final Audit Report of the Commission in the audit. Therefore, other than the comments below, the TDP has no additional comments related to the Audit other than to reiterate that the TDP has worked diligently with the Commission to resolve the issues raised during the Audit and has spent considerable resources to address the Commission’s concerns and to enhance its compliance processes to ensure that the issues raised during the Audit are not repeated.

Notwithstanding the above, the TDP disagrees with the legal conclusions presented by the Final Audit Report in connection with Finding 2. Specifically, the Final Audit Report concludes that the TDP has accepted \$151,200 in contributions in excess of the contribution limits for the sole reason that the TDP did not provide donors the option of a refund of the excessive portion of their contribution. Although the TDP did provide letters from contributors who indicated that it was acceptable for the TDP to retain these funds, the Final Audit Report has concluded that these letters were not provided in a timely fashion and, therefore, the contributions are considered excessive. The final audit report cites 11 C.F.R. § 103.3(b) and 110.1(k) for this proposition. Upon a careful reading of the regulations cited by the Audit Report, it is clear that neither of the cited regulations provide for the requirement being placed upon the TDP. Specifically, there is simply no regulatory requirement that donors be offered a

refund of any facially excessive contribution that is timely split between the TDP's federal and non-federal accounts, nor are there any regulations that provide any modicum of guidance on what procedures a state party committee must follow when splitting a contribution between its federal and non-federal accounts. To be sure, donors are generally aware of a state party's \$10,000 federal contribution limit and provide contributions in excess of that amount with the understanding that it is intended to be split between the party committee's federal and non-federal accounts. The Commission's auditors did not question whether the TDP had initially provided these donors with notice that contributions were subject to federal law and the TDP, as a general matter, provides its donors with required notices during solicitation of contributions as required by 11 C.F.R. § 102.5(a)(2) whereby it informs donors that contributions to the TDP are subject to the prohibitions and limitations of federal law. This is a standard requirement of committees who maintain both federal and non-federal accounts, and compliance with this requirement obviates any need to offer a donor a refund of any facially excessive contribution as it is assumed that the excess is intended for the committee's non-federal account.

Requiring the party committee to offer an option of a refund is excessive, unnecessary, and not supported by the Commission's regulations. The Final Audit Report cites 11 C.F.R. § 110.1(k)(3) for the proposition that a refund request is required. However, this regulation applies only to joint contributions that the committee seeks to reattribute to a spouse or joint signer on the account from which a contribution is made. None of the contributions in question during the Audit were reattributions. If the Commission seeks to create a requirement that party committees that seek to split contributions between federal and non-federal accounts notify donors of the option of a refund, it must do so by regulation, not by post hoc extrapolation of regulations that are simply not applicable to the issues raised in the Audit.

Based upon the above, the Commission must exclude Finding 2 from any Conciliation Agreement or other settlement entered into between the TDP and the Commission.

If you have any questions regarding this Response, my daytime number is (202) 479-1111. My email address is reiff@sandlerreiff.com.

Sincerely,



Neil P. Reiff
Counsel
Tennessee Democratic Party