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The logo for Wiley, featuring the word "wiley" in a bold, lowercase, sans-serif font. The "w" and "i" are red, while the "l", "e", "y", and "l" are black.

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July 21, 2021

Mr. Charles Kitcher  
Associate General Counsel - Enforcement  
Federal Election Commission  
1050 First Street NE  
Washington, DC 20463

**Re: RR 21L-35 (Hawaii Republican Party)**

Dear Mr. Kitcher:

We represent the Hawaii Republican Party (the "Hawaii GOP") and Stephen C. Holck, in his official capacity as treasurer of the Hawaii GOP, in the above-captioned matter.

We are writing in response to your June 2, 2021 letter enclosing a copy of the Reports Analysis Division's ("RAD") referral of the Hawaii GOP to the Federal Election Commission ("FEC" or "Commission") Office of General Counsel for failing to disclose all financial activity on its original 2020 30-Day Post-General Report and 2020 Year-End Report. Because this matter involves the inadvertent omission of several transfers, which were immediately and proactively corrected by the Hawaii GOP upon discovery of the omission, the Commission should exercise its prosecutorial discretion and dismiss this matter. If the Commission concludes that additional action is warranted, it should transfer this matter to the Alternative Dispute Resolution ("ADR") Program for appropriate disposition. In any event, the Commission should take into full consideration the mitigating factors that exist in this matter as well as the proactive, remedial steps that the Hawaii GOP has and is taking to prevent a recurrence of these reporting issues.

### **FACTS**

The Hawaii GOP is a state political party committee that files monthly disclosure reports in accordance with Commission regulations. See 11 C.F.R. §§ 104.5(c)(3), 300.36(c). The Hawaii GOP was a participant in Trump Victory, a joint fundraising committee comprised of Donald J. Trump for President, the Republican National Committee ("RNC"), and numerous other state political party committees. As a participant in Trump Victory, the Hawaii GOP received a total of five transfers from the joint fundraising committee. The Hawaii GOP then transferred these funds to the RNC. Due to a misunderstanding of joint fundraising reporting requirements, these transfers inadvertently were not disclosed on the Hawaii GOP's original reports.

Like many state political parties throughout the country, the Hawaii GOP is a grassroots organization that relies extensively on volunteers. When Hawaii GOP officials agreed to participate in Trump Victory, they were not aware that the party was required to report the activity. As such, they did not inform their compliance vendor—who prepares the party's FEC reports—of their participation in Trump Victory. In February 2021, the Hawaii GOP learned of the inadvertent reporting errors and immediately amended the party's 30-Day Post-General and Year-End Reports to disclose the transfers at issue.

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Since that time, the Hawaii GOP has taken several proactive steps to ensure that reporting errors such as this do not occur in the future. Hawaii GOP officials are currently working with their compliance vendor to develop a comprehensive compliance manual, which will include written policies and procedures as well as basic explanations about campaign finance compliance. The compliance manual will collect institutional knowledge so future Hawaii GOP volunteers, who may not be familiar with the FEC's technical and complex joint fundraising rules, understand the associated reporting requirements. In addition, the Hawaii GOP is implementing a transition protocol for its officers. One challenge volunteer-driven organizations such as state parties face is frequent turnover in leadership and the fact that volunteers do not always have the time and resources to become campaign finance experts on their own. Along with the compliance manual, a transition protocol will better prepare incoming Hawaii GOP leadership. Finally, the Hawaii GOP plans to have a representative participate in one of the FEC's upcoming conferences or webinars for political party committees.

## **DISCUSSION**

### **I. The Commission should exercise its prosecutorial discretion and dismiss this matter.**

This reporting referral presents unique mitigating factors, and there are several reasons why dismissal based upon prosecutorial discretion is warranted.

*First*, the RAD referral is based on the inadvertent omission of a handful of transfers. The omissions at issue consisted of merely five pairs of transfers made over a six-week period. The Hawaii GOP immediately amended its reports upon discovery of the omissions. Unlike some RAD referrals for increases in financial activity, this matter is not based on many unreported transactions and does not stem from a systemic compliance problem.

*Second*, the Hawaii GOP proactively amended its reports as soon as it learned of the inadvertent omissions. Unlike other respondents in similar types of reporting matters, the Hawaii GOP did not wait to amend its reports until after it received an RFAI from RAD questioning the omission of the transfers. Because Trump Victory and the RNC duly reported the transfers on their reports, RAD would have inevitably sent the Hawaii GOP an RFAI if the Hawaii GOP had not proactively amended its report. Instead, RAD sent an RFAI upon its review of the Hawaii GOP's amended reports disclosing the transfers.

*Third*, the Hawaii GOP's inadvertent omission did not harm the informational interest of the public given the circumstances of this reporting referral. Because the omitted financial activity consisted of transfers, information about these transactions was readily available to the public on the RNC's and Trump Victory's FEC reports in a timely fashion. The harm to public disclosure caused by the Hawaii GOP's inadvertent omission of the transfers on its original reports is significantly less than the harm to public disclosure caused by failing to file entire reports or failing to report financial activity that is not publicly available on reports filed by high-profile political committees such as the RNC and Trump Victory.

*Finally*, finding reason to believe, opening a Matter Under Review, and mechanically calculating a civil penalty in accordance with the Commission's standard formulas would result in a harsh, disproportionate penalty for an inadvertent reporting omission that was immediately self-corrected by the Hawaii GOP as soon as it was discovered. This is especially true

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considering that the Hawaii GOP is a volunteer-led organization and is already taking remedial measures to ensure such omissions do not occur in the future.

**II. Alternatively, if the Commission decides that further action is warranted, it should refer this matter to ADR.**

If the Commission decides that further action is warranted, it should refer this matter to ADR for appropriate disposition in light of the mitigating factors outlined above. The Hawaii GOP takes its compliance obligations seriously. Since the reporting omission, the Hawaii GOP has begun working with its compliance vendor to develop a compliance manual with detailed policies and procedures to ensure that reporting issues such as this do not occur in the future. In addition, Hawaii GOP officials have begun identifying ways they can improve their transition processes so future volunteers have the knowledge and resources they need to meet their compliance responsibilities. Finally, a representative of the Hawaii GOP plans to attend the one of the FEC's upcoming conferences or webinars for political party committees. As a volunteer-led, grassroots organization, the Hawaii GOP would welcome the opportunity to work with ADR to further strengthen the party's compliance procedures and ensure that the party's inadvertent reporting omissions remain an isolated incident.

**CONCLUSION**

For all of the foregoing reasons, the Commission should exercise its prosecutorial discretion and dismiss this matter. In the event the Commission decides that further action is warranted, the Commission should assign this matter to ADR for appropriate disposition in light of the mitigating factors identified above as well as the remedial measures the Hawaii GOP is implementing to avoid future reporting issues.

Respectfully Submitted,

*/s/ Michael E. Toner*

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