

**RECEIVED**

By OGC-CELA at 12:38 pm, Nov 18, 2022



INTERNATIONAL SQUARE  
1825 EYE STREET, NW, SUITE 900  
WASHINGTON, DC 20006  
TELEPHONE: 202-457-0160  
FACSIMILE: 844-670-6009  
<http://www.dickinsonwright.com>

CHARLIE SPIES  
[CSpies@dickinsonwright.com](mailto:CSpies@dickinsonwright.com)  
202.466.5964

November 17, 2022

Roy Luckett, Esq.  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street NE  
Washington, DC 20463

**VIA E-MAIL:** [cela@fec.gov](mailto:cela@fec.gov)

**Re: MUR 8072 Response from Tom Barrett, Tom Barrett for Congress, and Friends of Tom Barrett**

We represent Tom Barrett, Tom Barrett for Congress (“the Federal Campaign”), Friends of Tom Barrett (“the State Campaign”) and Daniel Wholihan, in his official capacity as Treasurer for both the Federal and State Campaign, (collectively “the Respondents”) in response to a complaint alleging that the Respondents violated the Federal Election Campaign Act of 1971, as amended (“the Act”) and Commission regulations. Specifically, the Complaint alleges that the State Campaign’s resources were used for federal activity, solely based on the State Campaign and the Federal Campaign paying for services from the same consultant, Jason Cabel Roe. As explained below, the Complaint is without merit, as Mr. Roe was hired by the State Campaign and the Federal Campaign to engage in specific consulting services that were separate and directly related to their respective activities. As such, we ask that the Commission find no-reason-to-believe and promptly close the file.

**I. Factual Background**

Tom Barrett was a candidate for Michigan’s 7th Congressional District. His official campaign committee was Tom Barrett for Congress (“the Federal Campaign”). Mr. Barrett is also a Michigan State Senator. His official Senate campaign committee was Friends of Tom Barrett (“the State Campaign”). Mr. Roe is a political consultant who has advised candidates at all levels of office, as well as other political committees. He was retained by the State Campaign from October 2021 until December 2021 to provide redistricting consulting and by the Federal Campaign for political consulting starting December 2021.

As the Complainant admits, the timeline of Michigan’s redistricting process is critical to understanding the merits of the State Campaign’s expenditures to Mr. Roe. During the 2018

election, Michigan voters passed a ballot proposal that created the Michigan Independent Citizens Redistricting Commission (“the Redistricting Commission”) to draw district lines for Michigan’s members of the State Legislature and Congress.<sup>1</sup> Between August and December of 2021, the Redistricting Commission drafted initial maps for state House and Senate seats, as well as congressional districts. The Redistricting Commission submitted the maps for public feedback and approved the final maps on December 28, 2021.<sup>2</sup>

As the process evolved, there were increased concerns from both sides about how proposed lines would impact incumbents on the State and Federal level,<sup>3</sup> as well as concerns regarding whether proposed maps would adequately represent the interests of the community.<sup>4</sup> Due to these concerns, both the Democrat and Republican Party encouraged voters to engage in the redistricting process by participating in hearings held by the Redistricting Commission and submitting public comments.<sup>5</sup> Even after the district lines were announced, the Redistricting Commission faced several legal challenges to their final maps,<sup>6</sup> with some cases still ongoing.<sup>7</sup>

Given the newness of the Redistricting Committee, coupled with the increased concern among elected officials, candidates, and the general public regarding the redistricting process, Senator Barrett sought guidance from Mr. Roe on how the redistricting process would impact his State Senate district as well as the composition of the Michigan House of Representatives and Senate.<sup>8</sup> The reason why Senator Barrett consulted with Mr. Roe is because he had prior experience dealing with independent commissions when he handled the issue in California in 2010.<sup>9</sup> Mr. Roe was also the prior Executive Director of the Michigan Republican Party.<sup>10</sup> These experiences made him uniquely qualified to assist Senator Barrett in this process.

While working for the State Campaign as their redistricting consultant, Mr. Roe attended hearings, communicated with legislators in the Michigan House and Senate on the redistricting process, and met with political operatives in the State on how Republicans could receive a favorable map.<sup>11</sup> Mr. Roe’s contract with the State Campaign ended in December 2021 when the final maps were released, and Mr. Roe received his final payment at that time.

As everyone was waiting for the final district lines, Tom Barrett announced that he was running for Michigan’s 7th Congressional District. He filed a Statement of Candidacy and a

---

<sup>1</sup> MAP Michigan’s Future for Fair Elections, Timeline: Michigan Independent Citizens Redistricting Commission for Fair Elections, <https://www.michigan.gov/-/media/Project/Websites/MiCRC/MISC1/Redistricting-Commission-Selection-Timeline.pdf?rev=e0806b4a84ba47ba971ec48ae6275d39>

<sup>2</sup> *Id.*; *see also* Compl. at 2-3.

<sup>3</sup> Sergio Martínez-Beltrán and Mike Wilkinson, *Redistricting May Oust Half of Incumbents in Michigan, Analysis Finds*, BRIDGEMI (Nov. 23, 2021).

<sup>4</sup> *Id.*; *see also* Larry Spruill, *Detroit Leaders to Voice Concerns Before Michigan Redistricting Commission Meeting*, CLICKONDETROIT (Dec. 27, 2021).

<sup>5</sup> Jane C. Timm, *How Michigan Republicans Are Trying to Sway State’s Independent Redistricting Process*, NBC NEWS (Nov. 4, 2021) (referencing both parties encouraging voters to engage in the redistricting process).

<sup>6</sup> Colin Jackson, *One Michigan Redistricting Lawsuit Down, Two Remain*, NPR (Feb. 4, 2022).

<sup>7</sup> *See, e.g., Agee v. Benson*, No. 1:22-cv-272 (W. D. Mi. 2022) (litigation ongoing).

<sup>8</sup> Affidavit of Jason Roe, Attached to this Response.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

Statement of Organization. However, despite announcing his intent to run for federal office, Barrett did not abandon the possibility of running for State Senate.<sup>12</sup> Barrett did not decide to abandon any potential Senate seat until it was clear that the Redistricting Committee's final maps would make it impossible for Senator Barrett to win a seat.<sup>13</sup> When that decision was made, around December of 2021, the Federal Campaign retained Mr. Roe as a political consultant, and the State Campaign made its final payment to Mr. Roe for his redistricting services.

## II. Legal Analysis

The Act and Commission regulations prohibit federal candidates from soliciting, receiving, directing, transferring or spending funds in connection with a federal campaign unless the funds are in amounts and from sources permitted by the Act.<sup>14</sup> Additionally, federal candidates are prohibited from transferring funds or assets from the candidate's nonfederal campaign committee to their federal campaign committee.<sup>15</sup> Commission regulations provide that individuals simultaneously running for federal and state offices "must raise, accept, and spend only Federal funds for the Federal election."<sup>16</sup>

The Complaint claims that the Respondents violated the Act and Commission regulations because the State Campaign and the Federal Campaign paid the same consultant, Jason Cabel Roe. As we have explained, Mr. Roe was provided different services for the respective campaigns. Roe, in his capacity as redistricting consultant for the State Campaign, attended hearings, met with legislators, and strategized with political operatives on redistricting. In his capacity as a political consultant, he advised the Federal Campaign on how to win Michigan's 7th Congressional District, which was one of the most competitive and expensive races in the country. As Mr. Roe stated in his Declaration, attached to this Response, the State Campaign did not pay for any services on behalf of the Federal Campaign.

Notably, the Complainant provides nothing beyond speculation and suspicious timelines to show that the State Campaign paid for federal campaign activity.<sup>17</sup> Their web of conjecture, while well-crafted, fails to provide the Commission with any substantive information that supports its claims that the Respondents violated the law. Importantly, the information presented in this Complaint does not outweigh the direct refutations made in this Response. Therefore, when reviewing allegations made in the Complaint against this Response, it is clear that the Commission should not waste its resources investigating the Complainant's meritless theories.<sup>18</sup>

---

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.61

<sup>15</sup> 11 C.F.R. § 100.3(d).

<sup>16</sup> 11 C.F.R. § 300.63

<sup>17</sup> The Commission has made clear that "weak circumstantial evidence" such as "suspicious timing standing alone" is insufficient to justify a reason to believe finding. See MUR 5732 (Matt Brown for U.S. Senate), Statement of Reasons of Vice Chairman David G. Mason (May 10, 2007) (noting that "[t]he Commission has rejected investigating allegations of earmarking unsupported by evidence or where only weak circumstantial evidence existed...suspicious timing alone, without any indication in the record that contributors directed, controlled, or took action to earmark their contributions, was insufficient to find reason to believe a violation occurred...").

<sup>18</sup> Statement of Reasons of Comm'r's Mason, Sandstrom, Smith, and Thomas at 1, MUR 4960 (Clinton) at 1-2, (Dec. 21, 2000) ("The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of [the Federal Election Campaign Act ("FECA" or "Act"),

### III. Conclusion

The Complainant has a history of filing speculative and meritless complaints with the Commission with the hope that its Members will ignore the complaints' missing material information and pursue an investigation. However, reason-to-believe is not a rubber stamp<sup>19</sup>—allegations must be supported with facts, not hyperbole. Moreover, those allegations must outweigh the sworn denials of the Respondent.<sup>20</sup> The Complainant fails to meet even a minimal burden of proof, and as such, the Commission should find no reason to believe and close the file.

Respectfully submitted,



Charlie Spies  
Katie Reynolds  
*Counsel to Respondents*

---

as subsequently amended]."); First General Counsel's Report at 5, MUR 5467 (Michael Moore) ("[p]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe that a violation of the FECA has occurred.").

<sup>19</sup> Statement of Reasons by Vice Chairman Allen Dickerson and Commission James "Trey" Trainor III at 3, MURs 7427, 7497, 7524, 7553, 7560, 7621, 7654, 7660 and 7558 (NRA, *et. al.*)

<sup>20</sup> Statement of Reasons of Comm'r Mason, Sandstrom, Smith, and Thomas at 1, MUR 4960 (Clinton) at 1-2, (Dec. 21, 2000)

## **BEFORE THE FEDERAL ELECTION COMMISSION**

## DECLARATION OF JASON CABEL ROE

I, Jason Cabel Roe, of lawful age and a resident of the State of Michigan, do hereby affirm and state:

1. I am the Principal of Roe Strategic, a political strategy firm.
2. I have been a political and communications strategist for nearly thirty years, and have advised candidates for President, Congress, Governor, and state and local office.
3. I have previously served as Executive Director of the Michigan Republican Party (MRP). In that role, I spent significant time consulting with national party committees, such as the NRCC, and other on how to handle Michigan’s newly established Michigan Independent Citizens Redistricting Committee (“the Redistricting Committee”).
4. Specifically, I developed the Michigan Republican’s strategy for redistricting, and also hired and managed the staff that implemented it. I also sat on the board of Fair Maps, a separate redistricting-focused organization, which is arguably one of the state’s leading authorities on the redistricting process.
5. I also have played a role in other States’ independent restricting committees. For example, in 2012, I was involved in the redistricting process in California, which also uses an independent commission to draw district lines.
6. From October 2021 until December 2021, I provided redistricting consulting for Friends of Tom Barrett and other center-right stakeholders.
7. As the redistricting consultant, I used my prior experience overseeing California’s redistricting process and being Executive Director of the MRP to consult Tom Barrett on how the redistricting process would work in Michigan. I also attended Committee hearings, consulted with legislators in the Michigan House of Representatives and Senate, and strategized with political operatives on the redistricting process.
8. There was a lot of uncertainty regarding the redistricting process, and at the time I was hired as redistricting consultant, Tom Barrett was unsure whether he wanted to run for re-election for State Senate or run for federal office.
9. In November 2021, Tom Barrett announced he was running for federal office and filed campaign paperwork. However, he was still contemplating running for re-election for the State Senate.

10. Once the final maps were released by the Redistricting Commission, which occurred in December 2021, Tom Barrett ruled out re-election for the State Senate, as there was no winnable seat for him.
11. Once Tom Barrett made the decision to pursue federal office, I no longer worked for Friends for Tom Barrett, and began working for Tom Barrett for Congress as a political consultant.
12. As redistricting consultant for Friends of Tom Barrett, I was never paid by Friends of Tom Barrett to perform any services on behalf of Tom Barrett for Congress.



Jason Cabel Roe  
Date: November 18, 2022



**FEDERAL ELECTION COMMISSION**  
**1050 First Street, NE**  
**Washington, DC 20463**

**STATEMENT OF DESIGNATION OF COUNSEL**

Provide one form for each Respondent/Witness

EMAIL [cela@fec.gov](mailto:cela@fec.gov)

AR/MUR/RR/P-MUR# 8072

Name of Counsel: Charles Spies, Elizabeth Lilienthal

Firm: Dickinson Wright PLLC

Address: 1825 Eye Street NW, Suite 900

Washington, DC 20006

Office#: 202-466-5694

Fax#: \_\_\_\_\_

Mobile#: \_\_\_\_\_

E-mail: [cspies@dickinson-wright.com](mailto:cspies@dickinson-wright.com)

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11/13/2023

Date

A handwritten signature of "Thomas Barrett" in black ink.

(Signature - Respondent/Agent/Treasurer)

Respondent

Title

Thomas Barrett

(Name – Please Print)

Thomas Barrett

**RESPONDENT:**

**(Please print Committee Name/ Company Name/Individual Named in Notification Letter)**

Mailing Address: \_\_\_\_\_

(Please Print)

Charlotte, MI 48813

Home#: \_\_\_\_\_ Mobile#: \_\_\_\_\_

Office#: \_\_\_\_\_ Fax#: \_\_\_\_\_

E-mail: \_\_\_\_\_

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.