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

Re: MUR 8091; Response of Beth Harwell

I write on behalf of Beth Harwell in response to the complaint filed by the Campaign Legal Center in Matter Under Review 8091. For the reasons set forth herein, the Commission should find no reason to believe that Respondents have violated the Federal Election Campaign Act, as amended (“FECA”), and accordingly should dismiss the complaint.

The Complaint alleges that Respondent Beth Harwell violated the “soft money” prohibition based on contributions made by state-level political committees to Government of the People (“GOTP”), an independent expenditure-only political committee registered with the FEC. She did not.

Background

Mrs. Harwell represented the 56th district in the Tennessee House of Representatives from January 10, 1989, until January 8, 2019, serving as Speaker of the House from 2011-2019. She also served as chair of the Tennessee Republican Party from 2001-2004. She sought the Republican nomination for Governor in 2018.

During her time as an officeholder and candidate for state office in Tennessee, and well before her candidacy for U.S. House, she established several state-level political committees. Two of these Committees are the subject of this complaint.

The Beth Harwell Committee at issue in this complaint was established as a Tennessee House single-candidate committee on January 11, 2017, for the 2018 election cycle. Mrs. Harwell’s previous Tennessee House campaign committee had transferred its remaining funds to her gubernatorial campaign committee. The current Beth Harwell Committee raised funds used

principally to support her political undertakings as the leader of her party's state house caucus. Mrs. Harwell was not a candidate for House in the 2018 election. At the end of 2018, the Beth Harwell Committee had a balance of \$38,677.29. In subsequent years, the committee's only receipts were from interest. The Committees only subsequent expenditures other than bank fees were eight contributions to candidates for state and local office. Its most recent contribution of \$35,000 to GOTP on July 22, 2022, is the subject of this complaint.

Mrs. Harwell established a state multi-candidate committee, or PAC, on September 2, 2006. The PAC's name is Tennesseans for Good State Government ("TGSG"). Complainant and GOTP both refer to it as Harwell PAC.¹ Although the electronic records of the Tennessee Registry of Election Finance ("TREF") shows Ann-Riley Caldwell as treasurer and lists no other officers,² the most recent paper filing shows Troy Brewer as treasurer and Beth Harwell as President.³ TGSG last received contributions in 2018. In 2019 and 2020, TGSG made contributions to state and local candidates. It did not make any other contributions after June 2020 until the \$12,000 contribution to Government of the People on July 22, 2022.

By the time Mrs. Hartwell became a candidate for U.S. House on February 24, 2022, she no longer exercised control over or maintained the Beth Harwell Committee and TGSG.⁴ Troy Brewer, the TSGS treasurer and the principal of Political Financial Management, a Nashville-based campaign finance compliance business, was responsible for the state-level committees.⁵

Mr. Brewer received a request from GOTP's treasurer, Debra Maggart, and GOTP's counsel at the law firm Frost Brown Todd LLP, to transfer funds from the committee accounts over which he had control. Mr. Brewer made the contributions without consultation with Mrs. Harwell.⁶

Complaint

Complainant asserts that based on Mrs. Harwell's past association with the Beth Harwell Committee and TGSG both are "established, financed, maintained, or controlled" by Mrs. Harwell and that she directed or transferred the contributions at issue to Government of the People.

The complaint is based on speculation and assumption, not facts or evidence. It makes no factual allegations. It simply says "Harwell appears to have directed" the state committees "to contribute ... to GOTP."⁷ And then goes on to declare that this "appearance" creates reason to believe that a violation has occurred.⁸ The Commission should not find "reason to believe" based on nothing but speculation.

Legal Analysis

¹ It can be found in the online system of the Tennessee Registry of Election Finance as "Harwell PAC," but it has always been registered as Tennesseans for Good State Government.

² Tennessee Online Campaign Finance, <https://apps.tn.gov/tncamp/> (visited March 30, 2023).

³ TREF SS-1112 for Tennesseans for Good State Government PAC, dated February 2, 2018 (obtained from TREF)

⁴ Decl. of Beth Harwell, attached as Exhibit A.

⁵ Decl. of Troy Brewer, attached as Exhibit B.

⁶ *Id.*

⁷ Complaint (November 15, 2022), MUR 8091 (Beth Harwell *et al.*) ¶¶ 16,17.

⁸ *Id.*, ¶ 18.

FECA provides, in relevant part, that

A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not—

(A) Solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act;
⁹

Mrs. Harwell was a “candidate” under FECA’s definition beginning on February 22, 2022. The question raised by the complaint is whether the state-level committees were entities that Mrs. Harwell “established, financed, maintained or controlled” (“EFMC’d”) and, if so, whether they directed or transferred any funds not subject to FECA’s amount limitations and source prohibitions.

The state-level committees were not EFMC’d by Mrs. Harwell.

As then-Commissioner Lee E. Goodman noted, “the plain language of the statute also provides that a candidate or officeholder must establish, finance, maintain, or control the entity *while the person is a federal candidate or federal officeholder.*”¹⁰ That Mrs. Harwell may have EFMC’d the state-level committees prior to becoming a candidate is irrelevant.

Mrs. Harwell established the state-level committee long before she became a federal candidate.

Mrs. Harwell did not finance the state-level committees as a federal candidate. Neither committee received any contributions from Mrs. Harwell or anyone else after 2018.

Mrs. Harwell did not maintain the state-level committees as a federal candidate. Mr. Brewer maintained the records of the state-level committees, kept their bank accounts, and filed their campaign finance reports with TREF.

Mrs. Harwell did not exercise control over the state-level committees as a federal candidate. She had not been involved in the state-level committees in any significant way since they were last active in 2018.

Several Commissioners have also made clear that “[a]n organization’s name tells us

⁹ 52 USC § 30125(e)(1).

¹⁰ Policy Statement of Commissioner Goodman on the “Established, Financed, Maintained or Controlled” Doctrine (February 26, 2018).

nothing about whether an individual has actual control of or influence over the organization.”¹¹ That the Beth Harwell Committee bears Mrs. Harwell’s name does not indicate that she controls it. And, as noted above, TGSG does not bear her name.

In addition to the plain language of the statute, Commission regulations set out a non-exhaustive list of ten factors to determine whether a candidate EFMC’d an entity. These factors “must be examined in the context of the overall relationship between [the candidate] and the entity.”¹² Eight of the ten factors are entirely absent from the relationship between Mrs. Harwell and the state-level committees. The two factors that are present are not a sufficient basis for the Commission to determine that Mrs. Harwell EFMC’d either entity.

Mrs. Harwell “has the authority or ability to direct or participate in the governance of” the state-level committees.¹³ She is the candidate who authorized the Beth Harwell Committee and she is the President of TGSG. This factor alone is insufficient to establish that she EFMC’d either committee as she did not exercise her authority in any meaningful way in the three years prior to her federal candidacy.

Mrs. Harwell “has the authority to hire, appoint, demote, or otherwise control the officers” of the state-level committees.¹⁴ The policy rationale supporting this factor is that the committee treasurer might fear being replaced because of some substantial interest in continuing in that role, such as compensation. Neither of the state level committees have provided compensation to treasurers in several years and neither has a sufficient remaining balance to provide any additional compensation in the future, so this factor does not weigh heavily in the EFMC determination.

That GOTP used the funds contributed by the state-level committees to support Mrs. Harwell’s candidacy does not create an inference that Mrs. Harwell EFMC’d them. Several Commissioners, as well as the Office of General Counsel have rejected this type of *post hoc* reasoning.¹⁵

The state-level committees had funds subject to FECA’s restrictions.

The state-level committees used funds raised subject to FECA’s amount limitations and source prohibitions in making their contributions to GOTP. Using a reasonable accounting method, the state-level committees can show funds included in the transfer came from federally permissible contributions.

TGSG’s contribution to GOTP consisted primarily of funds subject to FECA’s amount limitations and source prohibitions. Using the last in, first transferred method,¹⁶ the last \$12,000

¹¹ Statement of Reasons of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III. (May 31, 2022), MUR 7783 (Byron Donald for Congress, *et al.*).

¹² 11 CFR § 300.2(c)(2).

¹³ 11 CFR § 300.2(c)(2)(ii).

¹⁴ 11 CFR § 300.2(c)(2)(iii).

¹⁵ Statement of Reasons of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III. (May 31, 2022), MUR 7783 (Byron Donald for Congress, *et al.*), citing First General Counsel’s Report at 14 (July 8, 2021), MUR 7683 (Our Revolution, *et al.*).

¹⁶ The Commission has held that the “last in, first transferred” method described in 11 CFR 110.3(c)(4) is a reasonable accounting method. *See, e.g.*, Advisory Opinions 2007-26 (Schock), 2006-38 (Casey State Committee), 2006-25 (Kyl), 2006-21 (Cantwell 2006), and 2006-06 (Busby).

in came from individual donors, not corporations. Of that amount, only \$2,500 exceeded the Federal contribution limit. So, \$9,500, in excess of seventy percent of the transfer, were subject to FECA's restrictions.

The Beth Harwell Committee's contribution included some funds subject to FECA's amount limitations and source prohibitions. Using the last in, first transferred method, the last \$35,000 in came from a combination of individual donors, state multi-candidate committees, and PACs registered with the Commission. Contributions from individual donors and PACs registered with the Commission comply with FECA. Some state multi-candidate committees appear to have accepted contributions only from individuals within the amount limitations. Less than the \$35,000 at issue was raised outside of FECA limitations.

The Commission has dismissed EFMC matters involving similar amounts.

Even after finding that a candidate appeared to have maintained or controlled a state committee, the Commission voted to dismiss a complaint under its prosecutorial discretion.¹⁷ Although the Commission was unable to approve the Factual and Legal Analysis recommend by the General Counsel in that case, several Commissioners provided a helpful explanation that the modest amount at issue—\$10,000, an amount similar in size to the contribution by TSGS—warranted the exercise of prosecutorial discretion to dismiss the allegation.¹⁸ The Commission, after a reason to believe finding in an EFMC case involving a larger amount--\$50,000, an amount in excess of the combined contributions here—closed the file without taking action against the candidate.¹⁹ To reach a different conclusion in this case, where substantial reason to doubt that Mrs. Harwell EFMC'd the state-level committees, would be unfair.

Constitutional Issues

For the reasons already enumerated, the complaint should be dismissed based on FECA and the facts. However, even if a case could be made that the complaint is sufficient for a reason to believe finding—which it is not—the Commission should use its prosecutorial discretion “to avoid serious constitutional doubt.”²⁰ The Supreme Court “has identified only one legitimate governmental interest in restricting campaign finances: preventing corruption or the appearance of corruption.”²¹ As the complaint notes, the prohibition on candidates and entities they EFMC using soft money in connection with federal elections has been established.²² However, the lack of any possibility of corruption or the appearance of corruption would make applying the rule to this case constitutionally suspect.

It is implausible that Respondents could actually or apparently corrupt themselves. The funds at issue were received by the state-level committees three years prior to Mrs. Harwell becoming a candidate. Once they were received, they were no longer under the control of the

¹⁷ MUR 7114 (Casperson for Congress *et al.*).

¹⁸ Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Lee E. Goodman and Matthew S. Petersen (November 16, 2017), MUR 7114 (Casperson for Congress *et al.*).

¹⁹ MUR 7337 (Debbie Lesko *et al.*)

²⁰ *Arizona v Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 19 (2013).

²¹ *McCutcheon v Fed. Election Comm'n*, 134 S. Ct. 1434, 1450 (2014).

²² Complaint (November 15, 2022), MUR 8091 (Beth Harwell *et al.*) ¶¶ 11, 12, citing *McConnell v. FEC*, 540 U.S. 93, 181-184 (2003).

original donors, but of Respondent. If as complainant alleges, Mrs. Harwell EFMC'd the state-level committees, then she would have been contributing the funds in support of her own election to Federal office, effectively making her both donor and recipient. How could Mrs. Harwell engage in a *quid pro quo* arrangement with herself?

Conclusion

Mrs. Harwell did not EFMC the state-level committees, some of the funds at issue are within FECA's limitations, to the extent the funds were outside those limitations, the Commission has dismissed complaints involving similar amounts in EFMC cases, and there is no possibility of *quid pro quo* corruption with the transactions at issue. For these reasons, the Commission should find no reason to believe that Respondents' have violated the Act and should dismiss the complaint.

Respectfully,



Christopher M. Marston

Exhibit A
Declaration of Beth Harwell

DECLARATION

I, Beth Harwell, do upon oath declare:

1. I have personal knowledge of the facts set forth herein. I am over the age of 18, and I am otherwise competent to provide this affidavit.
2. I am aware that Government for the People reported receiving contributions from the Beth Harwell Committee and Tennesseans for Good State Government PAC on July 22, 2022.
3. I did not exercise control over the Beth Harwell Committee or the Tennesseans for Good State Government PAC at the time of the contributions.
4. I did not direct, transfer, or otherwise cause the contributions to be made.
5. No one consulted with me prior to making or sought my permission to make the contributions.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script that reads "Beth Harwell". The signature is written in black ink and is positioned above a horizontal line that extends to the right.

Beth Harwell

Exhibit B
Declaration of Troy Brewer

DECLARATION

I, Troy Brewer, do upon oath declare as follows:

1. I have personal knowledge of the facts set forth herein. I am over the age of 18, and I am otherwise competent to provide this affidavit.
2. The Beth Hartwell Committee contributed \$35,000 to Government of the People on July 22, 2022.
3. Tennesseans for Good State Government PAC contributed \$12,000 to Government of the People on July 22, 2022.
4. Debra Maggart, treasurer of Government of the People, an Independent Expenditure-Only Committee, directed me to send these funds.
5. I made the contributions without consulting or seeking permission from Beth Harwell.

I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:

Troy Brewer

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Troy Brewer

3/31/2023