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April 23, 2024

Federal Election Commission
Office of Complaints Examination and Legal Administration
Attention: Kathryn Ross, Paralegal
1050 First Street, NW
Washington, D.C. 20463

Re: Response in Matter Under Review 8236 (Californians to Reduce Homelessness, Drug Addiction, and Theft)

Dear Commissioners:

On April 9, 2024, the Federal Election Commission ("FEC" or "Commission") notified our clients, Californians to Reduce Homelessness, Drug Addiction, and Theft, sponsored by Golden State Communities and Thomas W. Hiltachk, in his official capacity as Treasurer (collectively "CRHDAT"), of a complaint filed by Ann M. Ravel. The complaint contains related allegations against Congressman Kevin Kiley and his congressional campaign, "suggest[ing]" they and CRHDAT violated the Federal Election Campaign Act of 1971, as amended ("FECA").

The complaint's factual representations are fundamentally flawed and its legal conclusions are wholly without merit. As this response makes clear, Ms. Ravel and her complaint are not credible. Furthermore, this matter appears to be an attempt by Ms. Ravel to co-opt the FEC by hypocritically wielding the complaint as a weapon to advance political goals. The Commission should see this complaint for the substantive and political farce it is and dismiss CRHDAT from this matter immediately.

The complaint erroneously alleges that CRHDAT – a California political committee – is established, financed, maintained, or controlled by Congressman Kiley. If that were true, the FECA would prohibit CRHDAT from accepting unlimited corporate and personal contributions like any other California ballot measure committee. However, Congressman Kiley has done none of the things the Commission has previously concluded would result in having established, financed, maintained, or controlled CRHDAT:

- **Established.** Neither Congressman Kiley nor his staff serve or have served as CRHDAT's chief executive officer, as a member of CRHDAT's governing body, or in any other relevant capacity.
- **Financed.** The Kiley campaign's support for CRHDAT was \$44,200.27, or approximately .53% of its receipts (as of April 11, 2024). That amount is far below the applicable threshold of 25+%.

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- **Maintained.** The Kiley campaign’s relatively modest contributions were not “regular” or “ongoing.”
- **Controlled.** CRHDAT personnel control CRHDAT, not Congressman Kiley. The Congressman has no authority to appoint CRHDAT’s governing body, nor to make decisions on behalf of CRHDAT.

In sum, the complaint fails to meet any of the elements to support its conclusion that CRHDAT was established, financed, maintained, or controlled by Congressman Kiley. Thus, on the merits, the Commission should expeditiously dismiss CRHDAT from this matter.

Furthermore, this is yet another complaint intended to do nothing but disrupt, distract, and drain the resources of political opponents. Though the complaint states that Ms. Ravel has been “dedicated to protecting the integrity of election law,” her actions suggest a base political motive. Shortly after filing the complaint, Ms. Ravel provided quotes to media outlets about it. Then, allied organizations opposed to CRHDAT wrote intimidating letters to its donors to misleadingly suggest they were in violation of the law and to request refunds of their contributions.

Ms. Ravel once criticized the practice of government agencies becoming “complicit in dirty politics,” where a political opponent files a complaint “in hope of eliciting a headline saying that the [committee] is being investigated.”¹ Now, with growing bipartisan support for CRHDAT’s ballot initiative,² Ms. Ravel and CRHDAT’s opponents are misusing the FEC to do precisely what she previously condemned.

The Commission should see through this baseless and contrived complaint, find no reason to believe that CRHDAT violated the FECA, and dismiss CRHDAT from this matter. Californians deserve a fair exchange of ideas, not an abusive political stunt.

FACTUAL BACKGROUND

I. CRHDAT and Its Efforts in California

CRHDAT is a California political committee³ whose mission is to enact “common sense, targeted reforms to Proposition 47,”⁴ a 2014 ballot measure that lowered “many drug possession and property crimes from felonies to misdemeanors.”⁵ To further these goals, Mr. Hiltachk submitted a proposed initiative to amend Proposition 47 – labelled Initiative 23-

¹ *The Fair Political Practices Commission: Online, Open and Ethical*, L.A. Times, Apr. 18, 2011, <https://www.latimes.com/opinion/la-xpm-2011-apr-18-la-ed-ethics-20110418-story.html>.

² See, e.g., Veronica Miracle and Jeffrey Kopp, *Liberal California Mayors Are Backing This Ballot Measure That Could Lock Up Repeat Retail Thieves*, CNN.com, Mar. 7, 2024, <https://www.cnn.com/2024/03/07/business/prop-47-california-crime/index.html>.

³ See Cal. Sec’y of State, *Californians to Reduce Homelessness, Drug Addiction, and Theft, Sponsored by Golden State Communities*, <https://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1462938&session=2023>.

⁴ Californians for Safer Communities, <https://casafecommunities.com/>.

⁵ Marisa Lagos, *Proposition 47’s Impact on California’s Criminal Justice System*, KQED.com, Feb. 14, 2024, <https://www.kqed.org/news/11975692/prop-47s-impact-on-californias-criminal-justice-system>.

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0017 – to the state for review on September 22, 2023.⁶ On October 26, 2023, the Attorney General's Office completed its analysis of the proposal and issued a title and summary.⁷ CRHDAT is now working to obtain a sufficient number of signatures to place the initiative on the November 2024 ballot.⁸

CRHDAT was founded by the Executive Committee of Golden State Communities, which consists of eleven individuals; Congressman Kiley has never served on the Executive Committee nor have his agents.⁹ The Executive Committee is CRHDAT's governing body. The Executive Committee has vested principal oversight and strategy for CRHDAT in two directors: Greg Totten and Anne Marie Schubert, not Congressman Kiley or his agents.¹⁰ In fact, neither Congressman Kiley nor his agents have served in any position – formal or informal – with CRHDAT and exercise no authority over CRHDAT.¹¹

California law requires a committee to inform the public if it is “primarily funded or controlled by a person, or small group of persons, to pursue the person's or group's interests.”¹² Pursuant to this requirement, CRHDAT identified Golden State Communities as its sponsor, not Congressman Kiley or his campaign.¹³

CRHDAT has raised \$8,318.013.47 (as of April 11, 2024) from 282 unique donors.¹⁴ Some of these donors are corporations acutely affected by retail theft.¹⁵ Many other donors, however, are concerned citizens.¹⁶

One of CRHDAT's donors is Congressman Kiley's congressional campaign. The campaign has made the following in-kind contributions to CRHDAT, totaling \$ 44,200.27:¹⁷

⁶ Letter of Thomas W. Hiltachk to Initiative Coordinator Anabel Renteria, Sept. 22, 2023, <https://oag.ca.gov/system/files/initiatives/pdfs/23-0017A1%20%28Drug%20Addiction%20%26amp%3B%20Theft%20Reform%29.pdf>. This version is the amended, operative version of a petition initially submitted on August 22, 2023. Declaration of Greg Totten, ¶ 5 (enclosed here as Attachment A).

⁷ See Cal. Office of the Att'y Gen, Initiative 23-0017, Oct. 26, 2023, at <https://oag.ca.gov/system/files/initiatives/pdfs/Title%20and%20Summary%20%2823-0017A1%29.pdf>.

⁸ Christelle Koumoué, *San Diego County DA, 14 Mayors Work to Put Initiative on November Ballot*, Fox5 San Diego, Feb. 18, 2024, <https://fox5sandiego.com/news/local-news/san-diego-county-da-14-mayors-work-to-put-initiative-on-november-ballot/>.

⁹ Declaration of Greg Totten, ¶ 7.

¹⁰ *Id.* ¶ 8.

¹¹ *Id.* ¶ 9.

¹² Cal. Fair Pol. Practices Comm'n, *Sponsored Committee Qualification and Naming Requirements*, <https://fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Documents/Sponsored%20Committee%20Fact%20Sheet.pdf>.

¹³ Declaration of Greg Totten, ¶ 10.

¹⁴ *Id.* ¶ 11.

¹⁵ *Id.* ¶ 12.

¹⁶ *Id.*

¹⁷ *Id.* ¶ 13.

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<u>Date</u>	<u>Amount</u>	<u>Purpose</u>
2/20/24	\$14,216.00	Volunteer Petition Signatures ¹⁸
2/27/24	\$10,905.77	Printing and Mailing Costs ¹⁹
2/27/24	\$3,389.05	Mass Mailing
3/18/24	\$3,529.46	Mass Mailing
3/28/24	\$1,687.22	Mass Mailing
4/1/24	\$10,472.77	Mass Mailing ²⁰

CRHDAT had already raised \$3,214,464.84 prior to receiving any contributions from Congressman Kiley's campaign.²¹ Neither Congressman Kiley nor his campaign have contributed to CRHDAT since April 1, 2024,²² and neither has made monetary contributions to CRHDAT.²³

Many other elected officials share Congressman Kiley's ideological support for CRHDAT's efforts and have encouraged voters to do the same.²⁴ For example:

Mayor London Breed, San Francisco: "[CRHDAT's proposal] will make targeted but impactful changes to our laws around fentanyl and help us tackle the chronic retail theft that hurts our retailers, our workers, and our cities. I fully support this measure and know it will make a meaningful difference for cities across California."

Assemblymember James Ramos: "I am proud to lend my support to this public safety initiative that would make changes to Prop 47, which would address serious spikes to drug and theft crimes since the pandemic."

Mayor Matt Mahan, San Jose: "We cannot be afraid to challenge the status quo when it is clearly not working for our residents. Prop 47 was well-intended but what really matters is its impact — and unfortunately, it's hurting far too many families and small businesses across the state. We need reform that doesn't take us back to the era of mass incarceration but allows judges to mandate treatment for those struggling with

¹⁸ CRHDAT, *Form 497: Late Contribution Report*, Feb. 27, 2024, <https://cal-access.sos.ca.gov/PDFGen/pdfgen.prq?filingid=2897425&amendid=0>.

¹⁹ CRHDAT, *Form 497: Late Contribution Report*, Mar. 6, 2024, <https://cal-access.sos.ca.gov/PDFGen/pdfgen.prq?filingid=2902006&amendid=0>.

²⁰ Declaration of Greg Totten, ¶ 13.

²¹ *Id.* ¶ 14.

²² *Id.* ¶ 15.

²³ *Id.* ¶ 16.

²⁴ Christelle Koumoué, *San Diego County DA, 14 Mayors Work to Put Initiative on November Ballot* (observing that "San Diego County District Attorney Summer Stephan was joined by mayors from cities across the county Sunday in an effort to encourage the public and boost signature gathering to place the Homelessness, Drug Addiction, and Theft Reduction Act on the November ballot").

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severe addiction, hold repeat offenders accountable, and treat fentanyl like the killer it is.”²⁵

And like Congressman Kiley’s campaign, a number of other political figures have contributed to CRHDAT from their campaigns.²⁶

CRHDAT has not expended any funds for advertising that mentions or features Congressman Kiley.²⁷ Congressman Kiley also does not appear on CRHDAT’s website.²⁸ The complaint alleges that Congressman Kiley or his campaign may have disseminated public communications in support CRHDAT’s efforts. CRHDAT certainly appreciates public support from officials like Congressman Kiley and those quoted above. However, CRHDAT did not consult with Congressman Kiley regarding any of his public communications and, to the best of CRHDAT’s knowledge, the Kiley campaign’s communications solicited contributions solely for Kiley’s campaign rather than CRHDAT directly.²⁹

CRHDAT has employed a number of vendors to help with its efforts, some of which appear to have performed work for the Kiley campaign.³⁰ CRHDAT did not authorize any of these vendors to work with Congressman Kiley or his campaign on CRHDAT’s behalf.³¹ To CRHDAT’s knowledge, Congressman Kiley and his campaign likewise did not authorize the vendors to work on CRHDAT’s matters.³²

II. The Complainant: Former FEC Commissioner and Chair Ravel

The complainant is former FEC Commissioner and Chair Ann Ravel, who “left the [FEC] under a cloud, as she frequently went off on tangents and personal vendettas” and misused “her position [in failed attempts to] slay high profile dragons.”³³ As the *Wall Street Journal* editorial board observed, then-Commissioner Ravel had a penchant for “weaponizing... campaign-finance law” and “turn[ing] conservative donors into public political targets.”³⁴

²⁵ CRHDAT, *Smash-and-Grab Thefts. Skyrocketing Drug Addiction. More Dangerous Communities*, <https://casafecomunities.com/wp-content/uploads/2024/03/CA-Safe-Communities-Fact-Sheet-March-2024.pdf>.

²⁶ See, e.g., *Californians to Reduce Homelessness, Drug Addiction, and Theft, Sponsored by Golden State Communities*, <https://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1462938&session=2023&view=received> (listing contributions from, *inter alia*, the Patterson for Assembly 2020 committee and the Re-elect James Perry for Riverside City Council Ward 6 2021 committee).

²⁷ Declaration of Greg Totten, ¶ 17.

²⁸ See CRHDAT, *Californians for Safer Communities*, <https://casafecomunities.com/>.

²⁹ Declaration of Greg Totten, ¶¶ 18-19.

³⁰ See *id.* ¶ 20.

³¹ See *id.*

³² See *id.* ¶ 21.

³³ James Rowen, *Letter to the Silicon Valley Voice*, Nov. 28, 2018. Indeed, *The Atlantic* dubbed Ravel as “The Chairwoman Who’s at War with Her Own Agency.” Andy Kroll, *The Atlantic*, Oct. 13, 2015, <https://www.theatlantic.com/politics/archive/2015/10/the-chairwoman-whos-at-war-with-her-own-agency/440031/>.

³⁴ *Ann Ravel’s Loud Departure*, *Wall Street Journal*, Feb. 26, 2017, <https://www.wsj.com/articles/ann-ravels-loud-departure-1488145627/>.

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Furthermore, Ms. Ravel came to the Commission with a reported reputation for “falsely”³⁵ accusing persons of illicit involvement in California ballot initiative campaigns with absolutely “no proof.”³⁶ Only later, under intense media scrutiny, did Ms. Ravel “walk[] back her comments”³⁷ and admit that “she had no evidence” of the allegations she made.³⁸ Unfortunately, this was not the only time “she got facts wrong,”³⁹ or would be “discredited,” even by those she might consider allies.⁴⁰

Since leaving the Commission in 2017, Ms. Ravel has become something of a serial complainant,⁴¹ but with little improvement to her credibility. In one case, Ms. Ravel served as an expert witness until multiple courts chastised her for offering conclusive testimony without “any ‘specific facts’” and making pronouncements based on “assumptions.”⁴² Ironically, Ms. Ravel made these errors in a case that essentially turned on the same question posed here – i.e., whether a candidate “controlled” a committee – but under California law.

III. The Complaint

The complaint in this matter further erodes Ms. Ravel’s credibility. First, even though she states that she filed the complaint “[b]ased on my experience and long career at the FEC,” the complaint is almost completely devoid of legal citations. Second, she couches many of her key allegations in equivocal or assumptive language the Commission routinely pans, such as “it appears that...,” “it is likely” that, or – more than once – the “facts suggest that.” Such speculative language does not instill confidence that the allegations are, in fact, true.

Nonetheless, the complaint alleges that CRHDAT was established, financed, maintained, or controlled (“EFMCed”) by Congressman Kiley – or his agents – and, therefore, the FECA prohibited CRHDAT from accepting unlimited corporate and personal contributions. To reach

³⁵ Daniel Wiser, *Anti-Koch FEC Official to Testify Before Congress*, FreeBeacon.com, Apr. 30, 2014, <https://freebeacon.com/issues/anti-koch-fec-official-to-testify-before-congress/>.

³⁶ Alec Torres, *New FEC Commissioner Accuses Koch Brothers without Evidence*, National Review, Oct. 28, 2013, <https://www.nationalreview.com/corner/new-fec-commissioner-accuses-koch-brothers-without-evidence-alec-torres/>.

³⁷ Daniel Wiser, *Anti-Koch FEC Official to Testify Before Congress*.

³⁸ Elizabeth Harrington, *No Evidence Koch Brothers Were Involved in California Campaign Finance Violations*, FreeBeacon.com, Oct. 25, 2013, <https://freebeacon.com/politics/no-evidence-koch-brothers-were-involved-in-california-campaign-finance-violations/>.

³⁹ Paul Jossey, *Former FEC Commissioner Ann Ravel’s Ugly Exit*, The Hill, Mar. 2, 2017, <https://thehill.com/blogs/pundits-blog/the-administration/321961-former-fec-commissioner-ann-ravels-ugly-exit/>.

⁴⁰ Fred Wertheimer, *Democratic FEC Commissioner Joins with Three Republican Commissioners to Gut Political Party Contribution Limits*, Oct. 9, 2014, <https://democracy21.org/news/archive/democratic-fec-commissioner-joins-with-three-republican-commissioners-to-gut-political-party-contribution-limits>; see also Rudy Takala, *Hacked: Clinton Team Ripped Star Obama Appointee*, Wash. Examiner, Oct. 18, 2016, <https://www.washingtonexaminer.com/news/2301799/hacked-clinton-team-ripped-star-obama-appointee/>.

⁴¹ See, e.g., Judy Abel, *Law Professor, Former FPPC Chair Files Complaint Against Planning Commission*, Oct. 12, 2023, <https://malibutimes.com/law-professor-former-fppc-chair-files-complaint-against-planning-commission>; Jeremy White, *Former FPPC Chair Seeks Probe of Mystery Newsom Recall Funder*, Jan. 4, 2021, <https://www.politico.com/states/california/story/2021/01/04/former-fppc-chair-seeks-probe-of-mystery-newsom-recall-funder-9425026>.

⁴² *Travis v. Brand*, 62 Cal. App. 5th 240, 250 (Cal. Ct. App. 2021); *Travis v. Brand*, Case No. BC 665330, Statement of Decision (L.A. Cnty. Sup. Ct. Apr. 3, 2019).

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this conclusion, the complaint relies upon some facts, but mostly assumptions and other details irrelevant to the Commission's legal analysis. Among these are:

- When Congressman Kiley ran for the California State Assembly almost a decade ago, his "stated top priority was 'changing Proposition 47;'"⁴³
- "[T]o date, Kevin Kiley for Congress had reported providing a total of \$28,511.84 in nonmonetary contributions to CRHDAT," plus other unquantified amounts of "crucial public awareness ... through his blog, blast emails, and social media accounts;"⁴⁴
- One individual and one other donor to Congressman Kiley's campaign have also contributed to CRHDAT;⁴⁵ and
- Kiley's campaign and CRHDAT both use Bell, McAndrews & Hiltachk LLP, a California-based law firm that represents hundreds of clients for compliance.⁴⁶

Predictably, the complaint omits nearly all relevant facts that undercut the complaint's allegations.

In the cover letter to her complaint, Ms. Ravel separately asserts that "Rep. Kiley opened [CRHDAT in 2023] with an initial \$50,000 donation from his federal campaign committee 'Kevin Kiley for Congress,' effectively making CHRDAT a federal committee."⁴⁷ But CHRDAT has no record of such a contribution by the Kiley campaign.⁴⁸ Ms. Ravel appears to have recognized that her allegation was false: the claim is nowhere to be found in a subsequent version of the cover letter reported by the media.⁴⁹

IV. The Complaint's Political Purpose

Ms. Ravel once earned praise for calling attention to how campaign finance complaints are "often ... filed for political reasons."⁵⁰ In fact, when she chaired California's Fair Political Practices Commission, she advocated against the agency publishing information about its investigations online. As the *L.A. Times* recounted:

[Ms. Ravel is] particularly concerned because the system is being cynically manipulated. In campaign season, a candidate's opponent will contact the agency with an ethics complaint — often a very minor one, or one that doesn't have any basis in fact. Then, when the case is formally opened (as it usually is) and posted online, the opponent will

⁴³ Compl. at 2.

⁴⁴ *Id.* at 4.

⁴⁵ *Id.*

⁴⁶ *Id.* at 3.

⁴⁷ Compl. Cover Letter.

⁴⁸ Declaration of Greg Totten, ¶ 22.

⁴⁹ See Marisa Lagos, *Campaign to Roll Back Proposition 47 Criminal Justice Reforms Could Head to Voters*, KQED, Apr. 8, 2014, <https://www.kqed.org/news/11982070/campaign-to-roll-back-prop-47-criminal-justice-reforms-could-head-to-voters>.

⁵⁰ Comment by Ann Ravel, Carolyn Schuk, *FPPC Complaints Are Complaints, Not Investigations*, The Silicon Vally Voice, Oct. 11, 2022, <https://www.svvoice.com/fppc-complaints-are-complaints-not-investigations/>.

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alert the media in hope of eliciting a headline saying that the [committee] is being investigated for ethics violations.

In Ravel's view, that's unfair, a denial of due process and, worse, it makes the agency complicit in dirty politics.⁵¹

With full awareness of this political playbook, Ms. Ravel filed her complaint with the FEC and, shortly thereafter, provided quotes about it to various media outlets that publicized the allegations.⁵² In addition, several allied organizations wrote to CRHDAT's donors, claiming that the facts and allegations represent "serious violations of both civil and criminal federal statutes."⁵³ The letters then misleadingly suggest that donors could be held liable for the alleged violations: "We are writing to provide notice that your contribution to the ballot measure committee likely violates federal contribution limits set forth by the FEC. We ask you take immediate corrective actions to ensure compliance with all FEC rules and regulations...."⁵⁴ Rather than simply prosecute the complaint through the appropriate government channels, Ms. Ravel generated publicity for the complaint and others used it to intimidate donors of a political opponent.

THE LAW

The FECA prohibits federal officeholders from soliciting, receiving, directing, transferring, spending, or disbursing funds in connection with an election unless the funds comply with the FECA's monetary limits, source prohibitions, and reporting requirements.⁵⁵ These restrictions also apply to "[e]ntities that are directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, one or more Federal candidates or individuals holding Federal office."⁵⁶

⁵¹ *The Fair Political Practices Commission: Online, Open and Ethical*, L.A. Times, Apr. 18, 2011, <https://www.latimes.com/opinion/la-xpm-2011-apr-18-la-ed-ethics-20110418-story.html>.

⁵² See, e.g., Anabel Sosa, *Congressman in Prop. 47 Overhaul Initiative Violated Campaign Finance Law, Former FEC Chair Says*, L.A. Times, Mar. 23, 2024, <https://www.latimes.com/california/story/2024-03-23/congressman-involved-in-attempted-prop-47-overhaul-violated-campaign-finance-law>.

⁵³ Attachment B (Mar. 27, 2024 letter from Californians for Safety and Justice, Young Women's Freedom Center, and PICO California).

⁵⁴ *Id.* We are aware of no authority that would impose liability on a donor to an entity that is established, financed, maintained, or controlled by a federal officeholder.

⁵⁵ 52 U.S.C. § 30125(e).

⁵⁶ *Id.* To help it determine whether a federal officeholder has "established, financed, maintained, or controlled" an entity, the FEC has promulgated regulations at 11 C.F.R. § 300.2(c)(2) with ten factors to consider:

- (i) Whether a [candidate/officeholder], directly or through its agent, owns controlling interest in the voting stock or securities of the entity;
- (ii) Whether a [candidate/officeholder], directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;
- (iii) Whether a [candidate/officeholder], directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity;
- (iv) Whether a [candidate/officeholder] has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;

DISCUSSION

CRHDAT is not established, financed, maintained, or controlled by Congressman Kiley, his campaign, or his agents. Accordingly, CRHDAT is not subject to the FECA's amount and source restrictions and can raise and spend unlimited corporate and individual contributions like any other California ballot measure committee.

A. CRHDAT was established by persons other than Congressman Kiley.

Determining whether a federal officeholder directly or indirectly “established” an entity is a relatively straightforward analysis. The Commission looks to “whether [the officeholder], directly or through its agent, had an active or significant role in the formation of the entity” and, in particular, whether either had a formal role.⁵⁷ For example, the Commission found that a person “established” an entity by serving as the incorporator, the initial chief executive officer, a member of the initial board of directors, or provided “seed money.”⁵⁸ Congressman Kiley did none of these things. He did not have a role in CRHDAT’s formation.⁵⁹ Nor did he serve as an initial officer or director of CRHDAT.⁶⁰ None of his agents did either.⁶¹ Congressman Kiley likewise did not make any “seed money” contributions such that CRHDAT was “depend[ent] in large part on [Congressman Kiley] for its initial existence.”⁶² Indeed, by the time of the campaign’s small, in-kind contributions in late-February 2024, CRHDAT had already raised \$3,214,464.84 to finance its activities.⁶³ In short, CRHDAT was established by persons other than Congressman Kiley. Accordingly, the complaint’s allegation to the contrary is wrong.

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- (v) Whether a [candidate/officeholder] has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the sponsor and the entity;
 - (vi) Whether a [candidate/officeholder] has any members, officers, or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship between the sponsor and the entity, or that indicates the creation of a successor entity;
 - (vii) Whether a [candidate/officeholder], directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully;
 - (viii) Whether a [candidate/officeholder], directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, but not including the transfer to a committee of its allocated share of proceeds jointly raised ..., and otherwise lawfully;
 - (ix) Whether a [candidate/officeholder], directly or through its agent, had an active or significant role in the formation of the entity; and
 - (x) Whether the [candidate] and the entity have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the sponsor and the entity.

⁵⁷ 11 C.F.R. § 300.2(c)(2)(ix).

⁵⁸ See, e.g., FEC Adv. Op. 2003-12 (Flake); Factual & Legal Analysis in MUR 5367 (Issa), at 4, Feb. 20, 2004, <https://www.fec.gov/files/legal/murs/5367/00004CB0.pdf>.

⁵⁹ See *supra* at 3.

⁶⁰ See *id.*

⁶¹ See *id.*

⁶² FEC Adv. Op. 2006-04 (Tancredo).

⁶³ See *supra* at 4.

B. Congressman Kiley's campaign contributions to CRHDAT were not significant enough to finance it.

The Commission has explained that an officeholder finances another entity if the officeholder provides funds “in a significant amount.”⁶⁴ The Commission has further observed that “what constitutes a ‘significant amount’ [is decided] on a case-by-case basis in ‘view of all the relevant circumstances,’ with “[a]mounts that are so large or ... that comprise such a substantial percentage of the organization’s receipts ... considered [to be] ‘financing’ a committee.”⁶⁵ Under this standard, the Commission has concluded that an entity that provides 50% of another organization’s funding may have financed the organization, and a 25% funder could – depending upon other factors – have financed the organization too.⁶⁶ When the funding drops to around 10%, however, the Commission has generally concluded that the organization is not financed in a significant amount, assuming the absence of other factors.⁶⁷

Here, the amount of financial support does not even come close to these percentages. Instead, Congressman Kiley’s campaign support is approximately .53% of CRHDAT’s receipts, which is an order of magnitude below the Commission’s thresholds. Thus, there is simply no basis to find that Congressman Kiley financed CRHDAT for these purposes. Accordingly, the complaint’s allegation that CRHDAT received “\$28,512” in in-kind contributions from Congressman Kiley’s campaign is of no legal consequence.

Nonetheless, the complaint also observes that Congressman Kiley’s campaign has actively solicited contributions to CRHDAT and two of the campaign’s donors have also contributed to CRHDAT. The first of these assertions is both legally irrelevant and false, and the second falls woefully short of what the Commission considers material.

First, the Commission has explicitly stated that a person’s lawful fundraising activities do not establish that the person has financed an organization. The Office of the General Counsel has explained, for example, that “because members of the Senate Democratic leadership can legally attend, speak, or be featured at [the entity]’s fundraisers, this Office cannot conclude that such activity, by itself, demonstrates that the Senate Democratic leadership established, finances, maintains, or controls” the entity.⁶⁸ Moreover, so far as CRHDAT is aware,

⁶⁴ FEC Adv. Op. 2022-06 (Hispanic Leadership Trust). The Commission has held that making in-kind contributions to a state ballot measure committee, such as by paying the bills of signature vendors directly, are subject to the same analysis. FEC Adv. Op. 2006-04 at 5.

⁶⁵ FEC Adv. Op. 2022-06.

⁶⁶ FEC Adv. Op. 2006-04; *see also* Dissenting Opinion in Advisory Opinion 2006-04 of Chairman Michael E. Toner and Commissioner Hans A. Von Spakovsky, <https://www.fec.gov/files/legal/aos/2006-04/468044.pdf> (explaining that the two commissioners did “not read [their] colleagues’ opinion to stand for the proposition that a donation of 25% of total receipts must always lead to a finding that one entity is financed by another. Rather, ‘the context of the overall relationship between [the two entities]’ appears to be the crucial predicate for their conclusion”).

⁶⁷ FEC Adv. Op. 2022-06; *see also* Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter, MUR 6798 (David Vitter for U.S. Senate), Aug. 30, 2019, https://www.fec.gov/files/legal/murs/6798/6798_2.pdf (finding that contributions amounting to “12% of [another committee’s] total receipts, broken up over several transactions and beginning a year after the super PAC first formed, was insufficient to find [the candidate] Vitter ‘financed’ the [other committee]”).

⁶⁸ First General Counsel’s Report in MUR 5343 (Democratic Senate Majority Fund), at 13 (Jan. 16, 2004), <https://www.fec.gov/files/legal/murs/5343/000012B4.pdf> (adopted by the Commission); *see also* FEC AO 2011-12 (Majority PAC) (holding that federal candidates may appear and solicit FECA-permissible funds at events for independent expenditure-only committees).

Congressman Kiley solicited contributions only for his own campaign – to be used to support CRHDAT – rather than soliciting contributions for CRHDAT directly.⁶⁹

Second, the Commission has held that “one would expect some degree of overlap between the contributor bases of ideologically compatible organizations without there necessarily being a ‘formal or ongoing relationship’ between the two organizations.”⁷⁰ Indeed, the Commission has determined that organizations with 70% or 56% donor overlap did not warrant further investigation.⁷¹ In the context of another California ballot measure committee, the Commission held that four overlapping donors was too “tenuous” and “insufficient” to show that a campaign established, financed, maintained, or controlled the ballot measure committee.⁷² Thus, the overlap of two donors out of 282 – or .7% of the total donors at the time of the first contribution – does not come close to exceeding the Commission’s thresholds.⁷³

C. Congressman Kiley does not maintain CRHDAT.

The Commission relies on Black’s Law Dictionary to define “maintain” as “[t]o continue (something),” “[t]o care for (property) for purposes of operational productivity or appearance; to engage in general repair and upkeep,” and “[t]o support (someone) financially.”⁷⁴ In other words, “maintenance” is the provision of “overhead or ongoing support at a sufficient level to permit an organization’s continued functioning.”⁷⁵ In the context of a prior California recall effort, the Commission explained that this requirement could be met where “funds were donated regularly [i.e.,] almost weekly during the first two months of the crucial signature gathering period.”⁷⁶ Here, six relatively-minor contributions from Congressman Kiley’s campaign – near the end of CRHDAT’s initial six-months of operation – does not amount to maintaining CRHDAT on an “ongoing basis.” The complaint offers no other facts indicating that Congressman Kiley maintains CRHDAT.

D. CRHDAT’s personnel control CRHDAT, not Congressman Kiley.

The FEC has explained that “control” means “[t]he direct or indirect power to govern the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise; the power or authority to manage, direct, or oversee[.]”⁷⁷ Consistent with these principles, the Commission has held that “control” does not result under the following scenarios:

⁶⁹ See *supra* at 5.

⁷⁰ First General Counsel’s Report in MUR 5343 (Democratic Senate Majority Fund – Non-Federal), Jan. 16, 2004, <https://www.fec.gov/files/legal/murs/5343/000012B4.pdf>.

⁷¹ Vote Certification, MUR 5343, Feb. 3, 2004, <https://www.fec.gov/files/legal/murs/5343/00000740.pdf>.

⁷² Factual & Legal Analysis, MUR 5952 (Christopher Lehane), Oct. 31, 2008, <https://www.fec.gov/files/legal/murs/5952/28044220428.pdf>.

⁷³ Moreover, one of the two contributions is, technically, not by the same contributor. Walmart contributed to CRHDAT and its federal PAC contributed to Congressman Kiley’s campaign. See https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00801985&contributor_name=C00093054&two_year_transaction_period=2024.

⁷⁴ FEC Adv. Op. 2022-06 (Hispanic Leadership Trust).

⁷⁵ *Id.*

⁷⁶ Factual & Legal Analysis in 5367 (Issa).

⁷⁷ FEC Adv. Op. 2022-6.

- Where federal officeholders did not “engage in active governance or similar control over [an organization’s] activities, but instead serve[d] merely in an honorary capacity to advise ... from time to time” – and “participat[ed] in conferences and communications” – with “no authority over employment matters or [the organization’s] employees” and with no “past or current overlapping membership, employees, or officers;”⁷⁸
- Where a candidate had no “authority to control [the committee’s] personnel decisions, which were instead made solely by its board of directors;”⁷⁹
- Where a “candidate did not have a formal executive position and did not have the ability to ‘hire, appoint, demote, or otherwise control the officers;’”⁸⁰
- Where a candidate merely “endorsed,” signaled his “approval,” and “share[d] common goals” with the entity;⁸¹ and
- Where an organization’s activities were merely “inspired and perhaps influenced by [a candidate] and his political agenda.”⁸²

Congressman Kiley’s relationship to CRHDAT is consistent with the foregoing. Congressman Kiley does not have a formal position with CRHDAT and does not serve on any governance body with oversight of CRHDAT.⁸³ Instead, CRHDAT has vested its governance authority in an Executive Committee consisting of 11 individuals that do not include Congressman Kiley or his agents.⁸⁴ Likewise, neither Congressman Kiley nor his agents have authority to hire or fire CRHDAT personnel or a role in how CRHDAT spends its funds.⁸⁵ That authority is vested in two individuals, Greg Totten and Anne Marie Schubert.⁸⁶ Although Congressman Kiley supports CRHDAT’s goals and – like many other officeholders in California – has spoken publicly about CRHDAT’s efforts, simply sharing “common goals” does not equate to controlling CRHDAT.

Devoid of any factual basis to claim that Congressman Kiley controls CRHDAT, the complaint makes much of his alleged use of the word “we” in his communications. The complaint contends (at 5) that this “is important evidence of his position within the CRHDAT organization.” It means nothing of the sort. Rather, it is a rhetorical device to convey collective agreement with others. Ms. Ravel knows this because she used the word “we” twice in her complaint (at 1, 5) despite the fact that she is the only identified complainant.

⁷⁸ FEC Adv. Op. 2004-33 (The Ripon Society).

⁷⁹ Factual & Legal Analysis in MUR 8099 (Congressional Leadership Fund), Oct. 19, 2023, https://www.fec.gov/files/legal/murs/8099/8099_13.pdf (summarizing the outcome in MUR 7070 (Congressional Leadership Fund)).

⁸⁰ *Id.* (summarizing the outcome in MUR 6280 (Howard L. Berman)).

⁸¹ *Id.*

⁸² Statement of Reasons of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, MUR 7783, May 31, 2022, https://www.fec.gov/files/legal/murs/7783/7783_19.pdf (describing the outcome in a prior matter involving Bernie Sanders’s “Our Revolution” group).

⁸³ *See supra* at 3.

⁸⁴ *See id.*

⁸⁵ *See id.*

⁸⁶ *See id.*

E. The complaint incorrectly attempts to apply agency legal principles to salvage its allegations.

Struggling to conjure any facts to support its claims, the complaint attempts to tie Congressman Kiley and his campaign to CRHDAT based on their agency relationships with three vendors in California. It is true that the campaign and CRHDAT have legal compliance needs and, like so many other politically active organizations in California, rely on Bell, McAndrews & Hiltachk for assistance. The same is true of eFundraising Connections, which “has experience processing millions of dollars for thousands of local and federal campaigns,”⁸⁷ as well as The Monaco Group, which provides printing and mailing services to many like-minded California campaigns and committees.⁸⁸ Nothing in the vendors’ work suggests that it caused their mutual clients to establish, finance, maintain, or control each other. Otherwise, the Commission would be busy combing campaign finance reports for dual payments to UPS, Kinkos, Staples, and other vendors.

In any event, and as a matter of law, the Commission has held that an “agent” is narrowly construed for these purposes. That is,

a principal can only be held liable for the actions of an agent when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals. Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather the agent must be acting on behalf of the principal to create potential liability for the principal.⁸⁹

This interpretation allows “individuals with the ability to permissibly maintain agency relationships with a principal that may permissibly solicit and accept soft money and a principal that may not. This concept has withstood a challenge in federal court, as well as subsequent re-examination in a ... rulemaking.”⁹⁰

Here, as far as CRHDAT is aware, each of the vendors performed their services for their respective principals.⁹¹ CRHDAT certainly did not authorize any of the three vendors to do work

⁸⁷ eFundraising Connections, *About eFundraising Connections’ Political Contribution Processing Platform and Team*, <https://www.efundraisingconnections.com/resources/about-efundraising-connections/>.

⁸⁸ See The Monaco Group, *Printing and Direct Marking Production Services*, <http://www.monacogroup.com/>.

⁸⁹ FEC Adv. Op. 2004-25 (Corzine) (quoting Explanation and Justification for Final Rules on “Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money,” 67 Fed. Reg. 49064, 49083 (July 29, 2002)).

⁹⁰ Statement of Reasons of Chairman Allen J. Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III, MURs 7672, 7674, and 7732 (Iowa Values, Inc.), at 15, https://www.fec.gov/files/legal/murs/7732/7732_12.pdf.

⁹¹ See *supra* at 5. The complaint’s reliance on FEC Advisory Opinion 2003-12 undermines, rather than supports, its argument. Unlike here, the 2003 request explained that “Representative Flake and his agents would like to be able to direct and participate in the governance [of the third-party organization, including] to formulate [the organization’s] strategy and tactics for the ballot referendum.” (Emphasis added.) Here, so far as CRHDAT is aware, Congressman Kiley did not authorize any of the three identified vendors to act as his agent while working for CRHDAT. See *supra* at 5.

April 23, 2024

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with Congressman Kiley or his campaign.⁹² Thus, there is no argument that Congressman Kiley established, financed, maintained, or controlled CRHDAT through vendors.

CONCLUSION

In a recent media interview about this matter, Ms. Ravel observed that “I’ve never seen anything quite this excessive, honestly.”⁹³ To be frank, neither have we. The complaint is replete with factual and legal errors and – as a former FEC Commissioner and Chair “in a position to know”⁹⁴ – Ms. Ravel should never have filed it.

Although the Commission cannot put the proverbial genie back in the bottle, it can send a powerful message that it will not participate in political gamesmanship by accepting speculative and baseless complaints. The Commission should find no reason to believe CRHDAT violated the FECA and quickly dismiss it from this matter.

Respectfully,



Caleb P. Burns
Andrew G. Woodson

Enclosures

⁹² See *supra* at 5.

⁹³ Anabel Sosa, *Congressman in Prop. 47 Overhaul Initiative Violated Campaign Finance Law, Former FEC Chair Says*.

⁹⁴ Ann M. Ravel, *How Not to Enforce Campaign Laws*, N.Y. Times, Apr. 2, 2014, <https://www.nytimes.com/2014/04/03/opinion/how-not-to-enforce-campaign-laws.html>.

BEFORE THE FEDERAL ELECTION COMMISSION

State of California)	
)	Matter Under Review 8236
Sacramento County)	

DECLARATION OF GREG TOTTEN

I, Greg Totten, hereby declare as follows:

1. I have personal knowledge of all information contained in this Declaration.
2. Currently, I am the Chief Executive Officer of the California District Attorneys Association. From November 2002 until January 2021, I was the District Attorney for Ventura County, California.
3. I am also the co-chair of Golden State Communities (“GSC”), a 501(c)(4) social welfare organization whose mission is to build safe and vibrant communities by supporting data-driven public policy. GSC’s Executive Committee consists of ten other individuals.
4. GSC also sponsors a California political committee, Californians to Reduce Homelessness, Drug Addiction, and Theft (“CRHDAT”). CRHDAT’s mission is to enact common sense, targeted reforms to Proposition 47.
5. In furtherance of these goals, Thomas Hiltachk submitted a proposed initiative to amend Proposition 47 – labelled Initiative 23-0017 – to the state for review on September 22, 2023. This petition is the amended, operative version of a petition initially submitted on August 22, 2023.
6. On April 9, 2024, CRHDAT received notice of a complaint filed with the Federal Election Commission alleging that CRHDAT is established, financed, maintained, or controlled by Congressman Kevin Kiley and his congressional campaign.
7. CRHDAT was founded by the Executive Committee of Golden State Communities, which consists of eleven individuals who are listed on the organization’s website at www.goldenstatecommunities.com/about-us. Congressman Kiley has never served on the Executive Committee.
8. The Executive Committee is CRHDAT’s governing body and has vested principal oversight and strategy for CRHDAT in two directors: Greg Totten and Anne Marie Schubert.
9. Neither Congressman Kiley nor his agents have served in any position – formal or informal – with CRHDAT and exercise no authority over CRHDAT.

10. Pursuant to California law, CRHDAT identified Golden State Communities as its sponsor, not Congressman Kiley or his campaign.

11. As of April 11, 2024, CRHDAT has raised \$8,318.013.47 from 282 unique donors.

12. Some of these donors are corporations acutely affected by retail theft. Other donors, however, are concerned citizens.

13. One of CRHDAT's donors is Congressman Kiley's congressional campaign. To date, the campaign has made the following in-kind contributions to CRHDAT, totaling \$44,200.27.

2/20/24	\$14,216.00	Volunteer Petition Signatures
2/27/24	\$10,905.77	Printing and Mailing Costs
2/27/24	\$3,389.05	Mass Mailing
3/18/24	\$3,529.46	Mass Mailing
3/28/24	\$1,687.22	Mass Mailing
4/1/24	\$10,472.77	Mass Mailing

14. CRHDAT had already raised \$3,214,464.84 prior to receiving any contributions from Congressman Kiley's campaign.

15. Neither Congressman Kiley nor his campaign have contributed to CRHDAT since April 1, 2024.

16. Neither Congressman Kiley nor his campaign have made any monetary contributions to CRHDAT.

17. CRHDAT has not expended any funds for advertising that mentions or features Congressman Kiley.

18. CRHDAT did not consult with Congressman Kiley regarding any public communications in support of CRHDAT's efforts that the complaint alleges were disseminated by Congressman Kiley's campaign.

19. To the best of my knowledge, the Kiley campaign's communications in support of CRHDAT's efforts solicited contributions solely for Kiley's campaign rather than CRHDAT directly.

20. CRHDAT has employed a number of vendors to help with its efforts, some of which appear to have performed work for the Kiley campaign. CRHDAT did not authorize any of these vendors to work with Congressman Kiley or his campaign on CRHDAT's behalf.

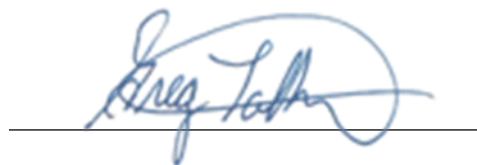
ATTACHMENT A

21. To the best of my knowledge, Congressman Kiley and his campaign did not authorize the vendors to work on CRHDATA's matters.

22. I am aware of the complaint's allegation that "Rep. Kiley opened [CRHDATA in 2023] with an initial \$50,000 donation from his federal campaign committee 'Kevin Kiley for Congress,' effectively making CRHDATA a federal committee." However, I have no record of such a contribution by the Kiley campaign.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.

Dated this 18th day of April 2024

A handwritten signature in blue ink, appearing to read "Greg Latta", is written over a horizontal line.



March 27, 2024

NOTICE OF POTENTIAL CAMPAIGN CONTRIBUTION VIOLATION

To Whom It May Concern:

We are organizations representing tens of thousands of crime survivors and men and women living with old conviction records or otherwise impacted by the justice system and more than 650,000 Californians of faith from more than 500 local congregations up and down the state.

A recently submitted Federal Elections Committee (FEC) complaint (attached) claiming the "Californians to Reduce Homelessness, Drug Addiction, and Theft, Sponsored by Golden State Communities," ballot measure committee is not complying with federal law and FEC regulations. The facts and allegations raised in the complaint are serious violations of both civil and criminal federal statutes.

We are writing to provide notice that your contribution to the ballot measure committee likely violates federal contribution limits set forth by the FEC. We ask you take immediate corrective actions to ensure compliance with all FEC rules and regulations such as, but not limited to, requesting a refund of any contributions to the ballot measure committee above \$5,000.

Respectfully,

Tinisch Hollins
Executive Director, Californians for Safety and Justice

Amika Mota
Executive Director, Young Women's Freedom Center

Joseph Tomás McKellar
Executive Director, PICO California