



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

April 11, 2024

**VIA EMAIL AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Saurav Ghosh  
Campaign Legal Center  
1101 14th Street, NW, Suite 400  
Washington, DC 20005  
[sghosh@campaignlegalcenter.org](mailto:sghosh@campaignlegalcenter.org)

RE: MUR 8091 (Beth Harwell, *et al.*)

Dear Mr. Ghosh:

This is in reference to the complaint you filed with the Federal Election Commission (the “Commission”) on November 15, 2022, concerning alleged violations of the Federal Election Campaign Act of 1971, as amended (the “Act”) by Beth Harwell, Beth Harwell (House 18), Tennesseans for Good State Government (collectively, the “Harwell Respondents”), and Government of the People and Debra Y. Maggart, in her official capacity as treasurer. On November 16, 2023, the Commission found that there was reason to believe the Harwell Respondents violated 52 U.S.C. § 30125(e)(1)(A), a provision of the Act. The Commission was equally divided on whether there was reason to believe Government of the People and Debra Y. Maggart, in her official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A). On March 12, 2024, the Commission accepted a conciliation agreement signed on behalf of the Harwell Respondents. Accordingly, the Commission voted to close the file in this matter effective today.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the conciliation agreements is enclosed for your information. Any applicable Factual and Legal Analyses or Statements of Reasons available at the time of this letter’s transmittal are enclosed.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action with respect to Government of the People and Debra Y. Maggart, in her official capacity as treasurer within 60 days of the dismissal, which became effective today. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Christopher S. Curran, the attorney assigned to this matter, at (202) 694-1362.

Sincerely,

*Mark Allen*

Mark Allen  
Assistant General Counsel

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the matter of	)	
	)	
Beth Harwell	)	MUR 8091
Beth Harwell (House 18)	)	
Tennesseans for Good State	)	
Government	)	

**CONCILIATION AGREEMENT**

The Commission found reason to believe that Beth Harwell, Beth Harwell (House 18) (the “State Committee”), and Tennesseans for Good State Government (the “State PAC”) (collectively “Respondents”), violated 52 U.S.C. § 30125(e)(1)(A) by transferring funds that were not subject to the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act of 1971, as amended (the “Act”) in connection with an election to Federal office.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Beth Harwell is a former member of the Tennessee House of Representatives.

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2. Harwell established the State Committee in January 2017 and Harwell maintains the authority or ability to direct or participate in the governance of the State Committee and has the authority to hire, appoint, demote, or otherwise control the officers of the State Committee.

3. Harwell established the State PAC in September 2006 and Harwell maintains the authority or ability to direct or participate in the governance of the State Committee and has the authority to hire, appoint, demote, or otherwise control the officers of the State Committee.

4. The State Committee and State PAC received contributions that were not subject to the limitations, prohibitions, and reporting requirements of the Act.

5. On February 24, 2022, Beth Harwell filed a Statement of Candidacy to run for Tennessee's newly-drawn 5th Congressional District and became a federal candidate.

6. On July 22, 2022, the State Committee contributed \$35,000 to the independent expenditure-only political committee Government of the People.

7. On July 22, 2022, the State PAC contributed \$12,000 to Government of the People.

8. On July 28, 2022, Government of the People spent \$90,084 on independent expenditures either supporting Harwell or opposing her Republican primary election opponent Andy Ogles.

9. On August 2, 2022 and August 4, 2022, Government of the People made additional independent expenditures of \$19,475 and \$3,580, again in support of Harwell or opposing Ogles. Government of the People did not make any more independent expenditures that election cycle.

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10. The State Committee's and State PAC's combined contributions amounted to 60.8% of Government of the People's receipts at the time they were made.

11. The State Committee's and State PAC's combined contributions represent Government of the People's largest contributions.

12. The Act prohibits federal candidates and officeholders, their agents and entities directly or indirectly established, financed, maintained or controlled by or acting on behalf of one or more candidates or individuals holding office from receiving or spending funds in connection with an election for Federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act. 52 U.S.C. § 30125(e)(1)(A).

13. To determine whether a sponsor directly or indirectly established, finances, maintains, or controls an entity, the factors described in 11 C.F.R. § 300(c)(2)(i) through (x) are examined in the context of the overall relationship between the sponsor and the entity. 11 C.F.R. § 300.2(c)(2).

14. The State Committee and State PAC were entities established, financed, maintained, or controlled by Harwell, a federal candidate, and acted on her behalf.

15. Respondents contend that Harwell was not personally involved in the decision by the State Committee and the State PAC to contribute to Government of the People.

V. Respondents violated 52 U.S.C. § 30125(e)(1)(A) by transferring a total of \$47,000 to Government of the People in connection with an election for Federal office that were not subject to the limitations, prohibitions, and reporting requirements of the Act.

VI. Respondents will take the following actions:

1. Respondents will pay a combined civil penalty to the Commission in the amount of Sixteen Thousand (\$16,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

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2. Respondents will cease and desist from committing violations of 52 U.S.C. § 30125(e)(1)(A).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

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oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

FOR THE COMMISSION:

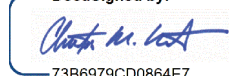
Lisa J. Stevenson  
Acting General Counsel

BY: **Charles Kitcher**  
Charles Kitcher  
Associate General Counsel  
for Enforcement

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Charles Kitcher  
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FOR THE RESPONDENT:

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(Name) Christopher M Marston  
(Position) counsel

2/22/2024

\_\_\_\_\_ Date

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 **RESPONDENTS:** Beth Harwell **MUR: 8091**  
6 Beth Harwell (House 18)  
7 Tennesseans for Good State Government  
8

9 **I. INTRODUCTION**

10 On July 22, 2022, Beth Harwell (House 18) (the “State Committee”),<sup>1</sup> a Tennessee  
11 single-candidate committee established by former member of the Tennessee House of  
12 Representatives and 2022 Congressional candidate Beth Harwell, contributed \$35,000 to  
13 Government of the People (“GOTP”), an independent expenditure-only political committee.  
14 That same day, Tennesseans for Good State Government (the “State PAC”),<sup>2</sup> a Tennessee state  
15 political committee also established by Harwell, contributed \$12,000 to GOTP.

16 The Complaint asserts that the State Committee and the State PAC are entities  
17 established, financed, maintained or controlled (“EFMC’d”) by Harwell, a federal candidate, and  
18 that their contributions to GOTP included funds that were not subject to the limitations,  
19 prohibitions, and reporting requirements of the Federal Election Campaign Act of 1971, as  
20 amended (the “Act”) (“nonfederal funds”) which were then spent supporting Harwell’s federal  
21 candidacy and opposing her primary election opponent. As a result, the Complaint alleges,  
22 Harwell, the State Committee, and the State PAC violated the soft money provisions of the Act,

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<sup>1</sup> The Complaint makes allegations against the “Beth Harwell Committee.” Compl. at 1, 5-6 (Nov. 15, 2022). It appears that the legal name of that committee is Beth Harwell (House 18). *See Search Reports*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/repsearch.htm> (search for “Harwell” and select the 4th Quarter 2018 report for “Harwell (House 18), Beth”) (last visited Oct. 10, 2023)(showing the same ending cash on hand as the “Harwell Committee” discussed in the joint response from Harwell, the State Committee, and the State PAC (the “Harwell Response”).

<sup>2</sup> The State PAC was formerly called Harwell PAC but changed its name in 2017 to Tennesseans for Good State Government. Harwell Resp. at 2 (Apr. 4, 2023).



1 by directing or transferring nonfederal funds in connection with a federal election. Harwell, the  
2 State Committee, and the State PAC deny violating the Act.

3 For the reasons set forth below, the State Committee and the State PAC are entities  
4 EFMC'd by Harwell within the meaning of 52 U.S.C. § 30125(e)(1). Accordingly, because the  
5 record indicates that the State Committee and the State PAC transferred nonfederal funds to  
6 GOTP in connection with an election for federal office, the Commission finds reason to believe  
7 that Harwell, the State Committee, and the State PAC violated 52 U.S.C. § 30125(e)(1)(A).

## 8 **II. BACKGROUND**

9 Beth Harwell is a former member of the Tennessee House of Representatives.<sup>3</sup> She  
10 served as speaker from 2011 to 2018.<sup>4</sup> The State Committee is a state-level single-candidate  
11 committee established to “support [Harwell’s] political undertakings as the leader of her party’s  
12 state house caucus.”<sup>5</sup>

13 The State PAC is a state-level multi-candidate committee established by Harwell in  
14 2006.<sup>6</sup> Harwell serves as President of the State PAC.<sup>7</sup>

15 On February 24, 2022, Harwell announced her federal candidacy to represent  
16 Tennessee’s newly-drawn 5th Congressional District.<sup>8</sup> She filed her Statement of Candidacy the

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<sup>3</sup> Speaker Beth Harwell, TENN. GEN. ASSEMB., <https://www.capitol.tn.gov/house/archives/107GA/members/h56.html> (last visited Oct. 10, 2023).

<sup>4</sup> House Archives 1870 to Present, TENN. GEN. ASSEMB., <http://www.capitol.tn.gov/house/archives/> (last visited Oct. 10, 2023).

<sup>5</sup> Harwell Resp. at 1-2; *Search Reports*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/repsearch.htm> (search 2018 1st Quarter Reports for “Harwell”).

<sup>6</sup> Harwell Resp. at 2.

<sup>7</sup> *Id.*

<sup>8</sup> See Nate Rau, *Beth Harwell Enters District 5 Congressional Race*, AXIOS (Feb. 25, 2022), <https://www.axios.com/local/nashville/2022/02/25/beth-harwell-enters-congressional-race-district-5>.

1 same day.<sup>9</sup> Her principal campaign committee is Harwell for Congress.<sup>10</sup> Harwell lost the  
2 Republican primary election on August 4, 2022.<sup>11</sup>

3 GOTP incorporated in Tennessee on July 13, 2022, and it registered with the  
4 Commission as an independent expenditure-only political committee on July 20, 2022.<sup>12</sup> It  
5 received \$35,000 from the State Committee on July 22, 2022.<sup>13</sup> GOTP also received \$12,000  
6 from the State PAC on July 22, 2022.<sup>14</sup> Six days later, it reported spending \$90,084 on  
7 broadcast ads supporting Harwell or opposing her Republican primary election opponent Andy  
8 Ogles.<sup>15</sup> GOTP reported additional independent expenditures of \$19,475 on August 2, 2022, and  
9 \$3,580 on August 4, 2022, again in support of Harwell or opposing Ogles, and did not make any

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<sup>9</sup> Beth Harwell, Statement of Candidacy at 1 (Feb. 24, 2022), <https://docquery.fec.gov/pdf/060/202202249493674060/202202249493674060.pdf>.

<sup>10</sup> Harwell for Congress, Statement of Org. at 1 (Feb. 24, 2022), <https://docquery.fec.gov/pdf/051/202202249493674051/202202249493674051.pdf>.

<sup>11</sup> STATE OF TENN., Republican Primary Results at 2 (Aug. 4, 2022), <https://sos-prod.tnsosgovfiles.com/s3fs-public/document/20220804RepublicanPrimarybyCounty.pdf>.

<sup>12</sup> Government of the People, Statement of Organization (July 20, 2022), <https://docquery.fec.gov/pdf/588/202207209522341588/202207209522341588.pdf>; *Business Information Search*, TENN. SEC'Y OF STATE, <https://tnbear.tn.gov/Ecommerce/FilingSearch.aspx> (search "Government of the People") (last visited Oct. 10, 2023).

<sup>13</sup> Government of the People, Amended 2022 October Quarterly Report at 11 (Jan. 11, 2023), <https://docquery.fec.gov/pdf/561/202301119574673561/202301119574673561.pdf>; *Search Reports*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/repsearch.htm>, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search "Harwell" in "Annual Year End Supplemental" reports for 2022) (last visited Oct. 10, 2023) (showing \$35,000 contribution to GOTP).

<sup>14</sup> Government of the People, Amended 2022 October Quarterly Report at 11 (Jan. 11, 2023), <https://docquery.fec.gov/pdf/561/202301119574673561/202301119574673561.pdf>; *Search Reports*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/repsearch.htm> (search "Tennesseans for Good Government" in "Pre-Primary" reports for 2022) (last visited Oct. 10, 2023) (showing \$12,000 contribution to GOTP).

<sup>15</sup> Government of the People, 24/48 Hour Report of Independent Expenditures (July 28, 2022), <https://docquery.fec.gov/pdf/507/202207289525071507/202207289525071507.pdf>; Erik Schelzig, *New Local SuperPAC Running Ads Supporting Harwell*, THE TENN. JOURNAL (July 30, 2022), <https://onthehill.tnjournal.net/new-super-pac-running-supporting-harwell/>.

1 more independent expenditures that election cycle.<sup>16</sup> For the 2022 election cycle, GOTP  
2 received \$123,500 in total contributions from fifteen contributors and spent a total of  
3 \$113,139.50 on independent expenditures, all of which supported Harwell or opposed Ogles.<sup>17</sup>  
4 Since August 31, 2022, GOTP has not received any contributions or made any expenditures and  
5 has \$5,030.40 remaining cash on hand.<sup>18</sup>

## 6 **A. The Complaint**

7 The Complaint asserts that Harwell was a federal candidate from February 2022 through  
8 the Tennessee primary election on August 4, 2022.<sup>19</sup> The Complaint also states that the State  
9 Committee and the State PAC are entities EFMC'd by Harwell and that she directed the State  
10 Committee and State PAC to make contributions to GOTP on July 22, 2022.<sup>20</sup> The Complaint  
11 further states that those contributions were comprised of nonfederal funds, which were then spent  
12 on independent expenditures supporting Harwell's federal candidacy and opposing her primary  
13 opponent between July 27, 2022 and August 1, 2022.<sup>21</sup> As a result, the Complaint alleges that  
14 Harwell, the State Committee, and the State PAC violated 52 U.S.C. § 30125(e)(1)(A) by  
15 directing or transferring nonfederal funds in connection with a federal election.<sup>22</sup>

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<sup>16</sup> Government of the People, 24/48 Hour Report of Independent Expenditures (Aug. 4, 2022), <https://docquery.fec.gov/pdf/188/202208049525120188/202208049525120188.pdf> (reporting \$3,580 on GOTV texts and GOTV calls); Government of the People, 24/48 Hour Report of Independent Expenditures (Aug. 2, 2022), <https://docquery.fec.gov/pdf/562/202208029525110562/202208029525110562.pdf> (reporting \$19,475 spent on broadcast TV and GOTV efforts).

<sup>17</sup> *Government of the People: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00821009/?tab=summary> (last visited Sept. 26, 2023).

<sup>18</sup> *Id.*

<sup>19</sup> Compl. at 5.

<sup>20</sup> *Id.* at 5-6.

<sup>21</sup> *Id.* at 2-3, 5-6.

<sup>22</sup> *Id.*

1           **B.     The Response**

2           The Response from Harwell, the State Committee, and the State PAC makes several  
3 arguments in support of its request that the Commission find no reason to believe. *First*, the  
4 Harwell Response contends that the State Committee and State PAC were not EFMC'd within  
5 the meaning of 52 U.S.C § 30125(e)(1) because the relationship between Harwell and the  
6 committees satisfies only two out of the ten affiliation factors set forth in the Commission's  
7 regulatory definition of EFMC.<sup>23</sup> *Second*, the Harwell Response argues that the State PAC's  
8 contributions to GOTP consisted "primarily" of federal funds and that the State Committee's  
9 contributions included "some" federal funds.<sup>24</sup> *Third*, the Harwell Response cites MUR 7114  
10 (Casperson for Congress, *et al.*) and MUR 7337 (Debbie Lesko, *et al.*) as examples of cases  
11 where the Commission has either voted to dismiss or voted to take no action and states that a  
12 different decision in this matter would be "unfair."<sup>25</sup> *Fourth*, the Harwell Response argues that  
13 if Harwell EFMC'd the State Committee and State PAC as alleged, enforcement would raise  
14 constitutional concerns because she would be both the donor and recipient (because the funds  
15 would support her own election), making a *quid pro quo* arrangement impossible.<sup>26</sup>

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<sup>23</sup>        See Harwell Resp. at 3-4 (citing Statement of Commissioner Lee E. Goodman on the "Established, Financed, Maintained or Controlled" Doctrine (Feb. 26, 2018)).

<sup>24</sup>        *Id.* at 4-5.

<sup>25</sup>        *Id.* at 5.

<sup>26</sup>        *Id.* at 5.

1     **III.     LEGAL ANALYSIS**

2  
3           **A.     There is Reason to Believe that Harwell, the State Committee, and the State**  
4           **PAC Violated 52 U.S.C. § 30125(e)(1)(A)**

5                   1.     Legal Standard

6  
7           The Act and Commission regulations prohibit candidates, individuals holding Federal  
8 office, agents of a candidate or an individual holding Federal office, or an entity directly or  
9 indirectly *established, financed, maintained, or controlled* by or acting on behalf of one or more  
10 candidates or individuals holding Federal office from “solicit[ing], receiv[ing], direct[ing],  
11 transfer[ing], or spend[ing] funds in connection with an election for Federal office, including  
12 funds for any Federal election activity, unless the funds are subject to the limitations,  
13 prohibitions, and reporting requirements of this Act.”<sup>27</sup>

14           This prohibition reinforces 52 U.S.C § 30125(a)<sup>28</sup> by preventing federal candidates and  
15 officeholders—who controlled the national committees of the political parties—from  
16 circumventing the prohibitions applying to national committees by controlling ostensibly  
17 separate entities that could accept and spend nonfederal funds.<sup>29</sup>

18           The Commission defines the phrase *established, financed, maintained or controlled* by  
19 examining a non-exhaustive list of ten affiliation factors set forth in 11 C.F.R. § 300.2(c)(2).  
20 The factors “must be examined in the context of the overall relationship between the [candidate]

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<sup>27</sup> 52 U.S.C § 30125(e)(1)(A); 11 C.F.R. § 300.61.

<sup>28</sup> See *McConnell v. FEC*, 540 U.S. 93, 133 (2003) (“The remaining provisions of new FECA § 323 largely reinforce the restrictions in § 323(a)”).

<sup>29</sup> See *id.* at 121, 133.

1 and the entity to determine whether the presence of any factor or factors is evidence that the  
 2 [candidate] directly or indirectly [EFMC'd] the entity.”<sup>30</sup> The ten factors are:

- 3 (i) A controlling interest in an entity’s voting stock or securities;
- 4 (ii) Authority or ability to direct or participate in the governance of the entity,  
5 “formal or informal;”
- 6 (iii) Authority or ability to hire, appoint, demote, or otherwise control an  
7 entity’s officers or other decision-making employees or members;
- 8 (iv) Common or overlapping members with an entity;
- 9 (v) Common or overlapping officers or employees with an entity;
- 10 (vi) Having members, officers, or employees who were former members,  
11 officers, or employees of an entity;
- 12 (vii) Providing an entity “funds or goods in a significant amount or on an  
13 ongoing basis” such as through direct and indirect payments for  
14 administrative, fundraising, or other costs;
- 15 (viii) Causing or arranging “funds or goods in a significant amount or on an  
16 ongoing basis” to be provided to an entity;
- 17 (ix) Having “an active or significant role in the formation of an entity;”
- 18 (x) Similar patterns of receipts or disbursements with an entity.<sup>31</sup>

19 2. The State Committee and the State PAC Are Entities EFMC'd by or  
 20 Acting on Behalf of a Federal Candidate that Spent Nonfederal Funds in  
 21 Connection with a Federal Election

22 a. The State Committee and State PAC are EFMC'd by Harwell

23  
 24 The Commission has determined that a state campaign committee of a federal candidate  
 25 is, as a matter of law, EFMC'd by the federal candidate and is acting on that candidate's behalf.<sup>32</sup>  
 26 Here, the acknowledged purpose of the State Committee was to support Harwell's “political

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<sup>30</sup> See 11 C.F.R. § 300.2(c); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, Final Rules, 67 Fed. Reg. 49064, 49084 (July 29, 2002).

<sup>31</sup> 11 C.F.R. § 300.2(c). In promulgating the rule which defines “EFMC,” the Commission “recast” the existing affiliation factors found at 11 C.F.R. § 100.5(g)(4)(ii) in order to apply the existing affiliation concepts in a different context. Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49084 (July 29, 2002). Committees that are affiliated, that is, committees that are established, financed, maintained, or controlled by the same corporation, labor organization, person or group of persons, share a single limitation on the amount they can accept from any one contributor. 11 C.F.R. §§ 100.5(g), 110.3(a)(1), 110.3(a)(3)(ii).

<sup>32</sup> See Factual and Legal Analysis (“F&LA”) at 8, MUR 7853 (Lance Harris, *et al.*); F&LA at 6, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate); F&LA at 9, MUR 7246 (Buddy Carter for Congress, *et al.*); F&LA at 4, MUR 6985 (Zeldin for Senate, *et al.*); F&LA at 9, MUR 6601 (Oelrich for Congress); *see also* Advisory Opinion (“AO”) 2009-26 at 5 (Coulson); AO 2007-26 at 4 (Schock); AO 2007-01 at 3 (McCaskill).

1 undertakings as the leader of her party’s state house caucus.”<sup>33</sup> Therefore, the State Committee  
2 should be considered EFMC’d by Harwell as a matter of law.

3         The Harwell Response also acknowledges that Harwell established the State Committee  
4 in January 2017.<sup>34</sup> And while the Commission provides for the possibility that the relationship  
5 between an entity established by a person before they become a candidate may later be severed,  
6 it does not appear that Harwell severed her relationship with the State Committee.<sup>35</sup> Harwell’s  
7 Response states that she “has the authority or ability to direct or participate in the governance  
8 of [the State Committee]” and “has the authority to hire, appoint, demote, or otherwise control  
9 the officers’ of [the State Committee].”<sup>36</sup> Thus, the record shows that the relationship between  
10 Harwell and the State Committee *has not* been severed.

11         For many of the same reasons, the record also indicates that the State PAC is EFMC’d by  
12 Harwell. Like the State Committee, Harwell admittedly established the State PAC.<sup>37</sup> And like  
13 the State Committee, the fact that Harwell has authority or ability to direct or participate in the  
14 governance of the State PAC and has the authority or ability to hire, appoint, demote, or  
15 otherwise control the officers of the State PAC indicates that the relationship between Harwell

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<sup>33</sup> Harwell Resp. at 2.

<sup>34</sup> *Id.* at 1.

<sup>35</sup> A sponsor that has established an entity under 11 C.F.R. § 300.2(c)(2) may request a Commission advisory opinion determining that the relationship between the sponsor and the entity has been severed. 11 C.F.R. § 300.2(c)(4)(ii). Such an advisory opinion request must, among other things, “demonstrate that all material connections between the sponsor and the entity have been severed for two years.” *Id.* The Commission’s explanation and justification did note, however, that this provision does *not* require an “entity that has not directly or indirectly established, financed, maintained, or controlled another entity to obtain a determination to that effect before the two entities may operate independently of each other.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,085 (July 29, 2002).

<sup>36</sup> Harwell Resp. at 4 (quoting 11 C.F.R. § 300.2(c)(2)(ii), (iii)).

<sup>37</sup> *Id.* at 2.

1 and the State PAC *has not* been severed.<sup>38</sup> Indeed, Harwell remains President of the State PAC,  
2 a position that ordinarily indicates the ability to control an organization.<sup>39</sup>

3         The Harwell Response makes a number of arguments in support of its view that neither  
4 the State Committee nor the State PAC are EFMC'd within the meaning of 52 U.S.C.  
5 § 30125(e)(1). These arguments are not persuasive for several reasons. First, the Harwell  
6 Response argues that a candidate or officeholder must “establish, finance, maintain, or control  
7 the entity *while the person is a federal candidate or officeholder.*”<sup>40</sup> But that interpretation  
8 conflicts with the reason for 11 C.F.R. § 300.2(c)(4)(i)-(ii). Moreover, the Commission has  
9 already rejected that view, insofar as the Commission has determined that a federal candidate’s  
10 state campaign committee is, as a matter of law, an EFMC'd entity. Indeed, the Commission has  
11 determined that a state officeholder’s state committee is an EFMC'd entity despite being formed  
12 long before their federal candidacy.<sup>41</sup> In short, the State PAC and State Committee may still be  
13 considered EFMC'd by Harwell despite their formation prior to Harwell’s federal candidacy.

14         Next, the Harwell Response contends that an insufficient number of the factors listed in  
15 11 C.F.R. § 300.2(c), the Commission’s regulation defining EFMC, were satisfied to establish  
16 that Harwell EFMC'd the committees. The Harwell Response acknowledges that Harwell’s  
17 relationship with the State Committee and State PAC satisfies two factors listed in section

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<sup>38</sup> *Id.* at 4.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 3 (emphasis in original) (quoting Statement of Commissioner Lee E. Goodman on the “Established, Financed, Maintained or Controlled” Doctrine (Feb. 26, 2018)).

<sup>41</sup> *See, e.g.*, F&LA at 2, 9, MUR 7246 (Buddy Carter for Congress, *et al.*) (state committee of Buddy Carter was established in 2009 but deemed an EFMC'd entity within the meaning of 52 U.S.C. § 30125(e)(1) despite his federal candidacy starting May 6, 2013); AO 2007-01 at 3 (McCaskill) (state committee of Claire McCaskill established in preparation for her 2002 re-election campaign for state auditor ruled to be an EFMC'd entity in 2007).



1 300.2(c): she has authority or ability to direct or participate in the governance of the State  
 2 Committee and State PAC and has the authority or ability to hire, appoint, demote, or otherwise  
 3 control the officers of the State Committee and the State PAC.<sup>42</sup> But the Harwell Response  
 4 argues that Harwell’s authority with regard to the State Committee and State PAC is insufficient  
 5 to find that she EFMC’d the committees because eight other factors listed in 11 C.F.R. § 300.2(c)  
 6 are absent.<sup>43</sup> Similar arguments were rejected by the Commission in both MUR 7337 (Debbie  
 7 Lesko and Re-Elect Debbie Lesko for Senate) and MUR 7853 (Stand for Truth).<sup>44</sup> By doing so,  
 8 the Commission confirmed what it said during the soft money rulemaking: that the factors set  
 9 forth in 11 C.F.R. § 300.2(c) address the four different statutory terms that comprise EFMC.<sup>45</sup>  
 10 Such an interpretation is consistent with the plain text of the Act, because its inclusion of the  
 11 word “or” indicates that only one type of specified relationship is necessary.<sup>46</sup> Here, Harwell’s

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<sup>42</sup> Harwell Resp. at 4 (citing 11 C.F.R. § 300.2(c)(2)(ii)-(iii)). There is no indication that Harwell did not also have such authority or ability while she was a federal candidate.

<sup>43</sup> *Id.*

<sup>44</sup> See F&LA at 7-8, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate) (finding EFMC based on financing despite respondents’ argument that “most of the [EFMC] factors do not apply to them”). Most recently, in MUR 7853 respondent Stand for Truth argued that the Commission must weigh *all* the factors listed in 11 C.F.R. § 300.2(c)(2)(i)–(x) before finding the Stand for Truth became EFMC’d as a result of accepting contributions from federal candidate Lance Harris’ state campaign committee. See Stand for Truth Resp. at 4 (Dec. 28, 2020). The Commission nevertheless found reason to believe Stand for Truth became EFMC’d solely as a result of accepting funds in a significant amount from Harris’ state committee. See F&LA at 8-13, MUR 7853 (Stand for Truth). Stand for Truth made the same argument in response to the Commission’s reason to believe finding. See Stand for Truth Resp. at 2-3 (June 17, 2022). The Commission proceeded to conciliate with Stand for Truth. See Memorandum to the Commission & Attach. 1, MUR 7853 (Stand for Truth, Inc.) (May 3, 2023) & Cert. at ¶ 1, MUR 7853 (Stand for Truth, *et al.*) (May 31, 2023) (accepting negotiated conciliation agreement).

<sup>45</sup> Notice of Proposed Rulemaking, Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 Fed. Reg. 35654, 35658-59 (May 20, 2002) (“Proposed paragraph (c)(1)(ii) would focus on the establishment of entities . . . Proposed paragraph (c)(1)(iii) would address financing of an entity . . . Proposed paragraph (c)(1)(iv) would address the maintenance of an entity by a sponsor. . . Proposed paragraphs (c)(1)(v) and (c)(1)(vi) would go to control of an entity by a sponsor.”).

<sup>46</sup> See F&LA at 3 n.10, MUR 6985 (Zeldin for Senate, *et al.*) (“[a]ny one of the four factors [i.e., EFMC] will suffice if it provides the basis for four or more Commissioners to find reason to believe.”); see also ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW* at 116 (2012) (“Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives.”) (emphasis in original).

1 establishment of the committees, her authority to direct or participate in the governance of the  
2 committees, and her authority to hire, appoint, demote, or otherwise control the officers of the  
3 committees is sufficient to find at this preliminary stage of administrative enforcement that she  
4 EFMC'd the committees within the meaning of 52 U.S.C. § 30125(e)(1).<sup>47</sup>

5                   b. The State Committee and State PAC Spent Nonfederal Funds in  
6                   Connection with a Federal Election

7           As entities EFMC'd by Harwell, any funds the State Committee and State PAC solicited,  
8 received, directed, transferred, or spent in connection with a federal election after Harwell  
9 became a federal candidate were required to be federally permissible and subject to the Act's  
10 reporting provisions.<sup>48</sup>

11           The State Committee and State PAC's disclosure reports (Attachments 1 and 2) reveal  
12 that they accepted nonfederal funds. Since its establishment in 2017, the State Committee  
13 received \$63,100 in contributions from the following sources: \$54,200 from corporate PACs,  
14 \$8,000 directly from corporations, \$500 from the committee of former Nashville mayor Megan  
15 Barry, and \$400 from two individuals.<sup>49</sup> The State PAC last received contributions in 2018.<sup>50</sup>

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<sup>47</sup> The Harwell Response argues that Harwell did not "exercise control" over the State Committee and State PAC and was not involved in the committees' activities "in any significant way" since 2018. Harwell Resp. at 3, Ex. A (Decl. of Beth Harwell). But the Commission's regulatory definition speaks in terms of a sponsor's *authority or ability* to direct or participate in an entity's governance and the sponsor's *authority or ability* to hire, appoint, demote, or otherwise control an entity's officers, other decision-making employees or members, not whether a sponsor exercised that authority or ability on a particular occasion. See 11 C.F.R. § 300.2(c)(2)(ii)-(iii).

<sup>48</sup> 52 U.S.C. § 30125(e)(1)(A).

<sup>49</sup> See Attachment 1 (showing the State Committee's receipts); Attachment 2 (showing the State PAC's receipts).

<sup>50</sup> Resp. at 2.

1 The State PAC's individual contributions received in 2018 total \$98,000, of which \$64,700  
2 (66%) exceeded the Act's amount limitations.<sup>51</sup>

3 The Harwell Response acknowledges that the Committee's contributions to GOTP  
4 included nonfederal funds.<sup>52</sup> However, the Harwell Response cites to advisory opinions where  
5 the Commission allowed a state officeholder and federal candidate to donate federally  
6 permissible funds in a state account to other state and local political committees where the state  
7 committee used a "reasonable accounting method" to separate permissible from impermissible  
8 funds (*i.e.*, those raised consistent with state law but outside the Act's contribution limitations  
9 and source prohibitions), and then made the contributions with the permissible funds.<sup>53</sup> The  
10 Harwell Response argues that the Committee can show, using the "last in, first transferred"  
11 accounting method described in 11 C.F.R § 110.3(c)(4), that only \$2,500 of the \$12,000 the  
12 Committee contributed to the State PAC included nonfederal funds.<sup>54</sup> But even assuming that  
13 the advisory opinions cited in the Harwell Response extend to a candidate's state committee's  
14 contributions to independent expenditure-only political committees, and assuming that the  
15 Committee did, in fact, utilize a last in, first transferred account method at the time, the Harwell  
16 Response's assertion does not appear to be correct. According to the State PAC's disclosure

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<sup>51</sup> See Attachment 2 (showing the State PAC's 2018 receipts).

<sup>52</sup> Harwell Resp. at 4-5.

<sup>53</sup> See *id.* at 4 n.16 (citing, among other advisory opinions, AO 2007-26 at 3-5 (Schock); AO 2005-38 at 4 (Casey)).

<sup>54</sup> *Id.* at 4-5.

1 reports, the last \$12,000 received included a \$7,500 individual contribution, which exceeded the  
2 Act’s amount limits by \$4,600.<sup>55</sup>

3 Next, Harwell’s Response argues that less than the full \$35,000 of the State Committee’s  
4 contribution to GOTP included excessive or prohibited funds under the Act if the last in, first  
5 transferred accounting method is used.<sup>56</sup> Again, assuming that the advisory opinions cited in the  
6 Harwell Response extend to a candidate’s state committee’s contributions to independent  
7 expenditure-only political committees, and assuming that such an accounting method was, in  
8 fact, used by the State Committee at the time, it still appears that many of the funds provided to  
9 GOTP after Harwell became a federal candidate included excessive or prohibited funds.<sup>57</sup> This  
10 is because the last \$35,000 reported by the State Committee includes a \$2,000 contribution from  
11 “United Health Group Incorporated” and because the overwhelming majority of the remainder of  
12 the last \$35,000 came from PACs, which, under Tennessee state law, may accept contributions  
13 from individuals without limit and from corporations.<sup>58</sup>

14 The Harwell Response further argues for dismissal because it says the amount in  
15 violation is “modest.”<sup>59</sup> But the cases cited—MUR 7114 and MUR 7337—do not support  
16 dismissal of this matter, which involves \$47,000 of nonfederal funds. The Commission

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<sup>55</sup> See Attachment 2; *Search Reports*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/repsearch.htm>, (search “Tennesseans for Good State Government” in “3rd Quarter” reports for 2018) (last visited Oct. 10, 2023).

<sup>56</sup> Harwell Resp. at 4-5.

<sup>57</sup> See F&LA at 8, MUR 7853 (Stand for Truth) (“it appears that some portion of the funds provided to the Stand for Truth after Harris became a federal candidate were funds that did not comply with the Act’s source prohibitions”) (citing F&LA at 4, MUR 6985 (Zeldin for Senate, *et al.*)).

<sup>58</sup> TENN. BUREAU OF ETHICS AND CAMPAIGN FINANCE, PAC FAQs, <https://www.tn.gov/tref/tref-pacs/tref-pacs0.html> (last visited Oct. 10, 2023) (“corporate contributions are allowed to be made to candidates and PACs . . . there are no limits on the amount of contributions that may be made to a PAC”).

<sup>59</sup> Harwell Resp. at 5.

1 dismissed MUR 7114, where a federal candidate’s state committee raised at least \$3,000 in  
 2 nonfederal funds after his federal candidacy and spent \$1,849.<sup>60</sup> In MUR 7337, far from the  
 3 \$50,000 amount in violation being considered too modest, the Commission *found reason to*  
 4 *believe* and conciliated with the federal recipient committee Conservative Leadership for  
 5 Arizona.<sup>61</sup> The Commission did not agree on whether there was probable cause that the  
 6 candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A).<sup>62</sup> Finally, in both MUR  
 7 7114 and 7337, unlike in the instant matter, the relevant state law prohibited state PACs from  
 8 accepting corporate contributions.<sup>63</sup>

9 \* \* \*

10 Because the record indicates that Harwell EFMC’d the State Committee and the State  
 11 PAC, and that the State Committee and State PAC’s contributed nonfederal funds to GOTP, the  
 12 Commission finds reason to believe that Harwell, the State Committee, and the State PAC  
 13 violated 52 U.S.C. § 30125(e)(1)(A) by transferring nonfederal funds in connection with an  
 14 election for federal office.

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<sup>60</sup> First GCR at 6-7, MUR 7114 (Casperson for Congress, *et al.*). The Commission did not agree on the rationale for its dismissal pursuant to *Heckler v. Chaney*. See Cert. ¶ 1 (June 22, 2017) & Cert. ¶¶ 1, 2 (Sept. 20, 2017), MUR 7114 (Casperson for Congress, *et al.*).

<sup>61</sup> See Conciliation Agreement, MUR 7337 (Conservative Leadership for Arizona).

<sup>62</sup> Cert. (Sept. 29, 2022), MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate).

<sup>63</sup> F&LA at 8 n.34, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate); Tom Casperson for State Senate Resp. at 2, MUR 7114 (Casperson for Congress, *et al.*).

**CONTRIBUTIONS RECEIVED BY HARWELL COMMITTEE**

<b>Date</b>	<b>Source</b>	<b>Amount</b>	<b>Report</b>
1/3/2017	MAXIM HEALTHCARE INC TN PAC	\$500.00	Early Year End Supplemental (2016)
1/3/2017	TENNESSEE VOLUNTEER PAC	\$1,000.00	Early Year End Supplemental (2016)
1/4/2017	AMERICAN INSURANCE ASSOCIATION	\$500.00	Early Year End Supplemental (2016)
1/4/2017	AMERIGROUP TENNESSEE, INC.	\$1,000.00	Early Year End Supplemental (2016)
1/4/2017	ASSN BUILDERS & CONTRACTORS - MID. TN	\$1,000.00	Early Year End Supplemental (2016)
1/4/2017	INSURORS OF TN PAC	\$2,500.00	Early Year End Supplemental (2016)
1/4/2017	MID-SOUTH CARPENTERS REGIONAL COUNCIL	\$500.00	Early Year End Supplemental (2016)
1/4/2017	PEDIATRIX MEDICAL GROUP, INC. PAC	\$1,000.00	Early Year End Supplemental (2016)
1/4/2017	TENNESSEE APPRAISER COALITION PAC	\$500.00	Early Year End Supplemental (2016)
1/4/2017	TENNESSEE REALTORS PAC	\$2,500.00	Early Year End Supplemental (2016)
1/4/2017	THE KROGER CO.	\$1,000.00	Early Year End Supplemental (2016)
1/5/2017	CONCERNED AUTO. RETAILERS PAC	\$2,500.00	Early Year End Supplemental (2016)
1/5/2017	HOSPAC	\$2,500.00	Early Year End Supplemental (2016)
1/5/2017	TDG-PAC	\$1,000.00	Early Year End Supplemental (2016)
1/5/2017	TENNESSEE BANKERS ASSN PAC	\$2,500.00	Early Year End Supplemental (2016)
1/5/2017	TENNESSEE CHAMBER OF COMMERCE AND INDUSTRY PAC	\$500.00	Early Year End Supplemental (2016)
1/5/2017	TENNESSEE INTERIOR DESIGNERS PAC	\$300.00	Early Year End Supplemental (2016)
1/6/2017	BICO ASSOCIATES	\$2,500.00	Early Year End Supplemental (2016)
1/6/2017	BIV-PAC	\$2,500.00	Early Year End Supplemental (2016)
1/6/2017	BLUE CROSS BLUE SHIELD OF TN PAC	\$5,000.00	Early Year End Supplemental (2016)
1/6/2017	CSX GOOD GOVERNMENT FUND - TN	\$1,000.00	Early Year End Supplemental (2016)
1/6/2017	DELTA DENTAL OF TENNESSEE PAC	\$2,500.00	Early Year End Supplemental (2016)
1/6/2017	TENNESSEANS FOR TRANSIT	\$500.00	Early Year End Supplemental (2016)
1/6/2017	TENNESSEE ANESTHESIOLOGISTS PAC	\$2,500.00	Early Year End Supplemental (2016)

1/6/2017	TENNESSEE EDUC ASSN FUND FOR CHILDREN & PUBLIC EDU	\$2,500.00	Early Year End Supplemental (2016)
1/6/2017	TENNESSEE HOSPITALITY PAC	\$1,000.00	Early Year End Supplemental (2016)
1/6/2017	TENNESSEE PROFESSIONAL ENGINEERS PAC	\$2,500.00	Early Year End Supplemental (2016)
1/9/2017	BMHC PAC	\$500.00	Early Year End Supplemental (2016)
1/9/2017	FRIENDS OF MEGAN BARRY	\$500.00	Early Year End Supplemental (2016)
1/9/2017	HOMETOWN PHARMACY PAC	\$2,500.00	Early Year End Supplemental (2016)
1/9/2017	MILLER AND MARTIN PAC	\$1,000.00	Early Year End Supplemental (2016)
1/9/2017	MWB PAC	\$1,000.00	Early Year End Supplemental (2016)
1/9/2017	TENNESSEE EMPLOYEES ACTION MOVEMENT	\$1,000.00	Early Year End Supplemental (2016)
6/30/2017	ETLINGER , FRANK C.	\$250.00	Early Mid Year Supplemental (2017)
6/30/2017	MARTIN , WILLIAM B.	\$150.00	Early Mid Year Supplemental (2017)
6/30/2017	TENNESSEE REALTORS PAC	\$2,500.00	Early Mid Year Supplemental (2017)
1/8/2018	INDEPENDENT MEDICINE'S PAC-TN	\$2,500.00	Early Year End Supplemental (2017)
1/8/2018	INSURANCE AND FINANCIAL ADVISORS PAC	\$1,000.00	Early Year End Supplemental (2017)
1/8/2018	MICROSOFT POLITICAL ACTION COMMITTEE	\$1,000.00	Early Year End Supplemental (2017)
1/8/2018	TDS TELECOMMUNICATIONS CORPORATION PAC	\$400.00	Early Year End Supplemental (2017)
1/8/2018	TDS TELECOMMUNICATIONS CORPORATION PAC	\$2,500.00	Early Year End Supplemental (2017)
1/8/2018	UNITEDHEALTH GROUP INCORPORATED	\$2,000.00	Early Year End Supplemental (2017)
1/8/2018	WPG PAC	\$500.00	Early Year End Supplemental (2017)

**CONTRIBUTIONS RECEIVED BY TENNESSEANS FOR GOOD GOVERNMENT**

<b>Date</b>	<b>Source</b>	<b>Amount</b>	<b>Report</b>
1/8/2017	RETIREMENT CO. OF AMERICA LLC	\$ 1,000.00	Annual Year End Supplemental (2017)
10/19/2017	ADAMS AND REESE PAC	\$ 1,000.00	Annual Year End Supplemental (2017)
10/19/2017	ANHEUSER BUSCH	\$ 1,000.00	Annual Year End Supplemental (2017)
10/19/2017	COMCAST CORPORATION	\$ 3,000.00	Annual Year End Supplemental (2017)
10/19/2017	ELI LILLY & CO. PAC	\$ 1,000.00	Annual Year End Supplemental (2017)
10/19/2017	H. G. HILL REALTY PAC	\$ 1,000.00	Annual Year End Supplemental (2017)
10/19/2017	HCA TRISTAR FUND	\$ 2,000.00	Annual Year End Supplemental (2017)
10/19/2017	JACK DANIEL'S PAC	\$ 10,000.00	Annual Year End Supplemental (2017)
10/19/2017	SANOFI US SERVICES INC. EMPLOYEES PAC - TN	\$ 1,000.00	Annual Year End Supplemental (2017)
10/19/2017	TENNESSEE RADIOLOGISTS PAC	\$ 500.00	Annual Year End Supplemental (2017)
10/19/2017	TENNESSEE REALTORS PAC	\$ 2,500.00	Annual Year End Supplemental (2017)
10/19/2017	TENNESSEE REYNOLDS AMERICAN INC. PAC	\$ 5,000.00	Annual Year End Supplemental (2017)
10/19/2017	WALLER LANSDEN PAC	\$ 1,000.00	Annual Year End Supplemental (2017)
12/28/2017	ALKERMES	\$ 1,000.00	Annual Year End Supplemental (2017)
12/28/2017	AMERIGROUP TENNESSEE, INC.	\$ 2,000.00	Annual Year End Supplemental (2017)
12/28/2017	BB&S GOOD GOVT. COMMITTEE	\$ 1,000.00	Annual Year End Supplemental (2017)
12/28/2017	CIGNA CORPORATION PAC	\$ 1,000.00	Annual Year End Supplemental (2017)
12/28/2017	COMCAST CORPORATION	\$ 1,000.00	Annual Year End Supplemental (2017)
12/28/2017	CORECIVIC, INC. PAC	\$ 5,000.00	Annual Year End Supplemental (2017)
12/28/2017	HOUSING INDUSTRY PAC	\$ 1,000.00	Annual Year End Supplemental (2017)
12/28/2017	INSURORS OF TN PAC	\$ 1,000.00	Annual Year End Supplemental (2017)
12/28/2017	INTERNATIONAL PAPER PAC (IP PAC)	\$ 1,500.00	Annual Year End Supplemental (2017)
12/28/2017	PFIZER INC. PAC	\$ 2,500.00	Annual Year End Supplemental (2017)
12/28/2017	TENNESSEE ASSN OF NURSE ANESTHETISTS PAC	\$ 750.00	Annual Year End Supplemental (2017)
12/28/2017	TENNESSEE CERTIFIED PUBLIC ACCOUNTANTS PAC	\$ 750.00	Annual Year End Supplemental (2017)
12/28/2017	VERIZON PAC	\$ 500.00	Annual Year End Supplemental (2017)
1/7/2018	ASSN BUILDERS & CONTRACTORS - MID. TN CHAPTER	\$ 500.00	Annual Year End Supplemental (2017)
1/7/2018	BRADLEY ARANT BOULT CUMMINGS TENNESSEE STATE PAC	\$ 1,000.00	Annual Year End Supplemental (2017)
1/7/2018	BUTLER SNOW PAC	\$ 750.00	Annual Year End Supplemental (2017)



1/7/2018	CONCERNED AUTOMOTIVE RETAILERS PAC	\$ 2,000.00	Annual Year End Supplemental (2017)
1/7/2018	CVS HEALTH	\$ 500.00	Annual Year End Supplemental (2017)
1/7/2018	HUMANA INC.	\$ 1,000.00	Annual Year End Supplemental (2017)
1/7/2018	TENNESSEE GROCERS & CONVENIENCE STORE PAC	\$ 500.00	Annual Year End Supplemental (2017)
1/7/2018	TENNESSEE REALTORS PAC	\$ 5,000.00	Annual Year End Supplemental (2017)
1/7/2018	VALERO ENERGY CORP. PAC	\$ 1,000.00	Annual Year End Supplemental (2017)
1/8/2018	CHARTER COMMUNICATIONS INC., TENNESSEE PAC	\$ 2,000.00	Annual Year End Supplemental (2017)
1/8/2018	EASTMAN STATE OF TENNESSEE PAC	\$ 2,000.00	Annual Year End Supplemental (2017)
1/8/2018	SCAROLA , FREDERIC A.	\$ 25,000.00	Annual Year End Supplemental (2017)
1/8/2018	TENNESSEANS FOR PUTTING STUDENTS FIRST	\$ 1,000.00	Annual Year End Supplemental (2017)
7/23/2018	Steve McDaniel	\$ 10,000.00	Pre-Primary 2018
7/24/2018	David Ingram	\$ 30,000.00	3rd Quarter 2018
7/26/2018	Goven White	\$ 7,500.00	3rd Quarter 2018
7/27/2018	Fred Dettwiler	\$ 20,000.00	3rd Quarter 2018
7/27/2018	Robert S. Doochin	\$ 1,000.00	3rd Quarter 2018
7/27/2018	John Ferguson	\$ 2,000.00	3rd Quarter 2018
7/27/2018	James Loden	\$ 500.00	3rd Quarter 2018
7/30/2018	Sevier County Good Government PAC	\$ 5,000.00	3rd Quarter 2018
7/31/2018	Sam Harwell	\$ 143,500.00	3rd Quarter 2018
8/1/2018	Earl Dunn	\$ 2,000.00	3rd Quarter 2018
8/1/2018	James P. O'Rourke	\$ 2,500.00	3rd Quarter 2018
8/1/2018	Thompson Patterson	\$ 1,000.00	3rd Quarter 2018
8/1/2018	John Simmonds	\$ 5,000.00	3rd Quarter 2018
8/13/2018	Barry Banker	\$ 2,000.00	3rd Quarter 2018
8/13/2018	Orrin Ingram	\$ 7,500.00	3rd Quarter 2018
8/13/2018	Thomas Loventhal	\$ 2,000.00	3rd Quarter 2018
	Unitemized	\$ 1,000.00	Annual Year End Supplemental (2017)



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 8091  
Beth Harwell, *et al.* )  
 )

**STATEMENT OF REASONS OF CHAIRMAN SEAN J. COOKSEY**

The Complaint in this matter alleged that former member of the Tennessee House of Representatives and one-time congressional candidate Beth Harwell, through two of her state-level political committees—the Beth Harwell Committee and the Harwell PAC (“State Committees”)—violated the soft-money provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), by using non-federal funds to support her bid for federal office.<sup>1</sup> The Commission voted to find reason to believe that such a violation did occur and conciliated with those parties.<sup>2</sup> For the reasons set forth below, however, I did not agree with the Office of General Counsel’s (“OGC”) recommendations to further pursue enforcement against the independent expenditure-only political committee to which Harwell’s committees contributed—Government of the People (“GOTP”).<sup>3</sup>

First, I disagreed with OGC’s decision to name and include GOTP as a party in this matter in the first instance. While the Complaint asserts detailed allegations against Harwell and the State Committees, it does not name GOTP as a respondent nor allege that it committed any violation of the Act.<sup>4</sup> Nevertheless, OGC saw fit to add GOTP to the matter without Commission approval and to recommend enforcement based on its own review of GOTP’s reports and an independently derived theory that Harwell controlled GOTP by virtue of the State Committees’ contributions. As commissioners have raised in many previous matters, OGC’s exercise of unilateral discretion to add respondents is unmoored from any set of Commission-approved procedures or limiting principles, and it likely lacks legal justification.<sup>5</sup>

<sup>1</sup> Complaint at 1–2 (Nov. 15, 2022), MUR 8091 (Beth Harwell, *et al.*).

<sup>2</sup> See 52 U.S.C. § 30125(e); Certification (Nov. 16, 2023), (Beth Harwell, *et al.*); Certification (March 12, 2024), (Beth Harwell, *et al.*).

<sup>3</sup> See First General Counsel’s Report at 18–22 (Oct. 17, 2023), MUR 8091 (Beth Harwell, *et al.*).

<sup>4</sup> See generally Complaint (Nov. 15, 2022), MUR 8091 (Beth Harwell, *et al.*).

<sup>5</sup> See Statement of Reasons of Vice Chair Donald McGahn at 6–8 (Sept. 16, 2013), MUR 6576 (Wright McLeod for Congress, *et al.*). See also Statement of Reasons of Vice Chairman Sean J. Cooksey, and Commissioners Allen Dickerson and James E. “Trey” Trainor, III at 5 (Jan. 20, 2023), MUR 7889 (SIG SAUER, Inc.); Statement of Reasons of Vice Chairman Allen Dickerson, and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III at 5 n.30 (Aug. 27, 2021), MUR 7507 (Aftab for Ohio, *et al.*).

Second, even if GOTP had been properly included as a respondent, I disagreed with OGC’s legal analysis concluding that Harwell controlled GOTP, and that GOTP therefore violated the Act’s soft-money provisions by receiving non-federal funds. OGC maintains that Harwell assumed control by “financing” GOTP—that is, the State Committees’ contributions to GOTP made up such a large proportion of its overall receipts as to functionally give Harwell control over it.<sup>6</sup> In its analysis, OGC determined that the \$47,000 in total given by the State Committees constituted 60.8% of GOTP’s receipts at the time of the contributions, and in light of various Commission precedents, this constituted an amount sufficient enough to establish control.<sup>7</sup>

OGC’s methodology is flawed, however, because it fails to consider the entirety of GOTP’s receipts. Instead, it uses the arbitrary cutoff of considering GOTP’s receipts only up to the date of the State Committees’ contributions—not all receipts in the relevant time period. During its active period, GOTP received only fifteen contributions—totaling \$123,250—all over a single two-week span from July 20 to August 3, 2022.<sup>8</sup> The State Committees made their contributions on July 22, 2022.<sup>9</sup> Given that the entirety of GOTP’s funds were raised over the course of 15 days, it is misleading, in my view, to calculate the proportion of the State Committee’s contributions as part of GOTP’s overall receipts based on the monies received in the first three days of fundraising, but not the following twelve.<sup>10</sup> By OGC’s logic, every committee would also be controlled by its first contributor, who by definition provides 100 percent of the committee’s funds up to that point. This is plainly wrong.

Properly considered then, as a total of all contributions to GOTP, the State Committees’ contributions constituted only 38 percent of overall contributions—not 60.8 percent. That brings the level of financing in this matter far below others in which the Commission has found control based on the proportion of funding provided by a single contributor.<sup>11</sup> Absent other circumstances, I do not believe that providing 38 percent of an entity’s funding is sufficient to establish control over it. OGC’s sole citation in support of the opposite conclusion is an enforcement matter from 1982 applying the Commission’s affiliation regulations, which I find unpersuasive.<sup>12</sup> Consequently, I concluded that there was no basis to find that Harwell controlled GOTP, and as a result, GOTP did not violate the Act’s soft-money provisions by receiving non-federal funds.

\* \* \*

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<sup>6</sup> First General Counsel’s Report at 18–22 (Oct. 17, 2023), MUR 8091 (Beth Harwell, *et al.*).

<sup>7</sup> *Id.* at 20–21.

<sup>8</sup> Government of the People, Amended 2022 October Quarterly Report (Jan. 8, 2024).

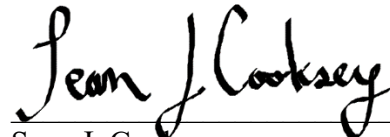
<sup>9</sup> *Id.*

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

<sup>11</sup> *See, e.g.*, Factual & Legal Analysis at 10–11 (May 19, 2022), MUR 7853 (Stand for Truth, Inc.) (finding control based on contributions constituting 95.5 percent of a committee’s funding in the relevant time period); Factual & Legal Analysis at 6–8 (Aug. 13, 2019), MUR 7337 (Debbie Lesko *et al.*) (finding control based on a single contribution constituting 99 percent of a committee’s funding); Factual & Legal Analysis at 6 (Feb. 20, 2004), MUR 5367 (Darrell Issa) (finding control based on a federal candidate providing 60 percent of a committee’s funding).

<sup>12</sup> First General Counsel’s Report at 20 n.88 (Oct. 17, 2023), MUR 8091 (Beth Harwell, *et al.*).

For the foregoing reasons, I did not find reason to believe that Government of the People committed a violation in this matter.

  
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Sean J. Cooksey  
Chairman

April 9, 2024  
\_\_\_\_\_  
Date