

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 8091

DATE COMPLAINT FILED: Nov. 15, 2022

DATE OF NOTIFICATIONS: Nov. 22, 2022

LAST RESPONSE RECEIVED: Mar. 31, 2023

DATE ACTIVATED: June 2, 2023

EXPIRATION OF SOL: July 22, 2027–

Aug. 4, 2027

ELECTION CYCLE: 2022

COMPLAINANT: Campaign Legal Center

RESPONDENTS: Beth Harwell
 Beth Harwell (House 18)
 Tennesseans for Good State Government
 Government of the People and Debra Y. Maggart in
 her official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30125

11 C.F.R. § 100.5

11 C.F.R. § 110.3

11 C.F.R. § 300.2

11 C.F.R. § 300.61

11 C.F.R. § 300.62

INTERNAL REPORTS CHECKED: Disclosure Reports**FEDERAL AGENCIES CHECKED:** None**STATE AGENCIES CHECKED:****I. INTRODUCTION**

On July 22, 2022, Beth Harwell (House 18) (the “State Committee”),¹ a Tennessee single-candidate committee established by former member of the Tennessee House of

¹ 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

1 Representatives and 2022 Congressional candidate Beth Harwell, contributed \$35,000 to
2 Government of the People (“GOTP”), an independent expenditure-only political committee.
3 That same day, Tennesseans for Good State Government (the “State PAC”),² a Tennessee state
4 political committee also established by Harwell, contributed \$12,000 to GOTP.

5 The Complaint asserts that the State Committee and the State PAC are entities
6 established, financed, maintained or controlled (“EFMC’d”) by Harwell, a federal candidate, and
7 that their contributions to GOTP included funds that were not subject to the Act’s limitations,
8 prohibitions, and reporting requirements (“nonfederal funds”) which were then spent supporting
9 Harwell’s federal candidacy and opposing her primary election opponent. As a result, the
10 Complaint alleges, Harwell, the State Committee, and the State PAC violated the soft money
11 provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), by directing
12 or transferring nonfederal funds in connection with a federal election. Harwell, the State
13 Committee, the State PAC, and GOTP deny violating the Act.

14 For the reasons set forth below, the State Committee and the State PAC are entities
15 EFMC’d by Harwell within the meaning of 52 U.S.C. § 30125(e)(1). Accordingly, because the
16 record indicates that the State Committee and the State PAC transferred nonfederal funds to
17 GOTP in connection with an election for federal office, we recommend that the Commission find
18 reason to believe that Harwell, the State Committee, and the State PAC violated 52 U.S.C.
19 § 30125(e)(1)(A). We further recommend that the Commission find reason to believe GOTP, as

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”).

² 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 an entity EFMC'd by Harwell, violated 52 U.S.C. § 30125(e)(1)(A) by receiving and spending
2 those funds in connection with an election for federal office. Finally, we recommend that the
3 Commission authorize pre-probable cause conciliation with Harwell, the State Committee, and
4 the State PAC, and GOTP.

5 **II. BACKGROUND**

6 Beth Harwell is a former member of the Tennessee House of Representatives.³ She
7 served as speaker from 2011 to 2018.⁴ The State Committee is a state-level single-candidate
8 committee established to “support [Harwell’s] political undertakings as the leader of her party’s
9 state house caucus.”⁵ The State Committee’s mailing address is Harwell’s home address, and
10 its email address is “beth@bethharwell.com.”⁶

11 The State PAC is a state-level multi-candidate committee established by Harwell in
12 2006.⁷ Harwell serves as President of the State PAC.⁸ Like the State Committee, the State
13 PAC’s mailing address is Harwell’s home address and its email address is
14 “beth@bethharwell.com.”⁹

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

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

⁵ 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”).

⁶ *Search the Online Campaign Finance Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell” and select “Harwell (House 18), Beth”) (last visited Oct. 10, 2023); *supra* n. 3 (disclosing Harwell’s address).

⁷ Harwell Resp. at 2.

⁸ *Id.*

⁹ *Search the Online Campaign Finance Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell” and select “Harwell (House 18), Beth”) (last visited Oct. 10, 2023); *supra* n. 3 (disclosing Harwell’s address).

1 On February 24, 2022, Harwell announced her federal candidacy to represent
2 Tennessee's newly-drawn 5th Congressional District.¹⁰ She filed her Statement of Candidacy
3 the same day.¹¹ Her principal campaign committee is Harwell for Congress.¹² Harwell lost the
4 Republican primary election on August 4, 2022.¹³

5 GOTP incorporated in Tennessee on July 13, 2022, and it registered with the
6 Commission as an independent expenditure-only political committee on July 20, 2022.¹⁴ It
7 received \$35,000 from the State Committee on July 22, 2022.¹⁵ GOTP also received \$12,000
8 from the State PAC on July 22, 2022.¹⁶ Six days later, it reported spending \$90,084 on
9 independent expenditures supporting Hartwell or opposing her Republican primary election
10 opponent Andy Ogles.¹⁷ GOTP reported additional independent expenditures of \$19,475 on

¹⁰ 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>.

¹¹ Beth Harwell, Statement of Candidacy at 1 (Feb. 24, 2022), <https://docquery.fec.gov/pdf/060/202202249493674060/202202249493674060.pdf>.

¹² Harwell for Congress, Statement of Org. at 1 (Feb. 24, 2022), <https://docquery.fec.gov/pdf/051/202202249493674051/202202249493674051.pdf>.

¹³ STATE OF TENN., Republican Primary Results at 2 (Aug. 4, 2022), <https://sos-prod.tnsosgovfiles.com/s3fs-public/document/20220804RepublicanPrimarybyCounty.pdf>.

¹⁴ 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).

¹⁵ 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 "Harwell" in "Annual Year End Supplemental" reports for 2022) (last visited Aug. 11, 2023) (showing \$35,000 contribution to GOTP).

¹⁶ 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 State Government" in "Pre-Primary" reports for 2022) (last visited Aug. 11, 2023) (showing \$12,000 contribution to GOTP).

¹⁷ 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*

1 August 2, 2022, and \$3,580 on August 4, 2022, again in support of Harwell or opposing Ogles,
2 and did not make any more independent expenditures that election cycle.¹⁸ For the 2022 election
3 cycle, GOTP received \$123,500 in total contributions from fifteen contributors and spent a total
4 of \$113,139.50 on independent expenditures, all of which supported Harwell or opposed Ogles.¹⁹
5 Since August 31, 2022, GOTP has not received any contributions or made any expenditures and
6 has \$5,030.40 remaining cash on hand.²⁰

7 **A. The Complaint**

8 The Complaint asserts that Harwell was a federal candidate from February 2022 through
9 the Tennessee primary election on August 4, 2022.²¹ The Complaint also states that the State
10 Committee and the State PAC are entities EFMC'd by Harwell and that she directed the State
11 Committee and State PAC to make contributions to GOTP on July 22, 2022.²² The Complaint
12 further states that those contributions were comprised of nonfederal funds, which were then spent
13 on independent expenditures supporting Harwell's federal candidacy and opposing her primary
14 opponent between July 27, 2022 and August 1, 2022.²³ As a result, the Complaint alleges that

SuperPAC Running Ads Supporting Harwell, THE TENN. JOURNAL (July 30, 2022),
<https://onthehill.tnjournal.net/new-super-pac-running-supporting-harwell/>.

¹⁸ 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).

¹⁹ *Government of the People: Financial Summary*, FEC.GOV,
<https://www.fec.gov/data/committee/C00821009/?tab=summary> (last visited July 13, 2023).

²⁰ *Id.*

²¹ Compl. at 5.

²² *Id.* at 5-6.

²³ *Id.* at 2-3, 5-6.

1 Harwell, the State Committee, and the State PAC violated 52 U.S.C. § 30125(e)(1)(A) by
2 directing or transferring nonfederal funds in connection with a federal election.²⁴

3 **B. The Responses**

4 The Commission received a joint response from Harwell, the State Committee, and the
5 State PAC, and a separate response from GOTP. The Harwell Response makes several
6 arguments in support of its request that the Commission find no reason to believe. *First*, the
7 Harwell Response contends that the State Committee and State PAC were not EFMC'd within
8 the meaning of 52 U.S.C § 30125(e)(1) because the relationship between Harwell and the
9 committees satisfies only two out of the ten affiliation factors set forth in the Commission's
10 regulatory definition of EFMC.²⁵ *Second*, the Harwell Response argues that the State PAC's
11 contributions to GOTP consisted "primarily" of federal funds and that the State Committee's
12 contributions included "some" federal funds.²⁶ *Third*, the Harwell Response cites MUR 7114
13 (Casperson for Congress, *et al.*) and MUR 7337 (Debbie Lesko, *et al.*) as examples of cases
14 where the Commission has either voted to dismiss or voted to take no action and states that a
15 different decision in this matter would be "unfair."²⁷ *Fourth*, the Harwell Response argues that
16 if Harwell EFMC'd the State Committee and State PAC as alleged, enforcement would raise
17 constitutional concerns because she would be both the donor and recipient (because the funds
18 would support her own election), making a *quid pro quo* arrangement impossible.²⁸

²⁴ *Id.*

²⁵ *See* Harwell Resp. at 3-4 (citing Statement of Commissioner Lee E. Goodman on the "Established, Financed, Maintained or Controlled" Doctrine (Feb. 26, 2018)).

²⁶ *Id.* at 4-5.

²⁷ *Id.* at 5.

²⁸ *Id.* at 5.

1 The GOTP Response focuses on the issue of coordination and asserts that GOTP did not
2 engage in any coordinated conduct as defined in 11 C.F.R. § 109.21(d), and that no coordinated
3 communication occurred as a result.²⁹ GOTP further asserts that independent expenditure-only
4 political committees are not subject to the provisions of 52 U.S.C. § 30125(e)(1)(A).³⁰

5 **III. LEGAL ANALYSIS**

6 **A. The Commission Should Find Reason to Believe that Respondents Violated** 7 **52 U.S.C. § 30125(e)(1)(A)** 8

9 1. Legal Standard

10
11 The Act and Commission regulations prohibit candidates, individuals holding Federal
12 office, agents of a candidate or an individual holding Federal office, or an entity directly or
13 indirectly *established, financed, maintained, or controlled* by or acting on behalf of one or more
14 candidates or individuals holding Federal office from “solicit[ing], receiv[ing], direct[ing],
15 transfer[ing], or spend[ing] funds in connection with an election for Federal office, including
16 funds for any Federal election activity, unless the funds are subject to the limitations,
17 prohibitions, and reporting requirements of this Act.”³¹

18 This prohibition reinforces 52 U.S.C § 30125(a)³² by preventing federal candidates and
19 officeholders—who controlled the national committees of the political parties—from
20 circumventing the prohibitions applying to national committees by controlling ostensibly
21 separate entities that could accept and spend nonfederal funds.³³

²⁹ GOTP Resp. at 2-3 (Dec. 16, 2022).

³⁰ *Id.* at 3.

³¹ 52 U.S.C § 30125(e)(1)(A); 11 C.F.R. § 300.61.

³² *See McConnell v. FEC*, 540 U.S. 93, 133 (2003) (“The remaining provisions of new FECA § 323 largely reinforce the restrictions in § 323(a)”).

³³ *See id.* at 121, 133.

1 The Commission defines the phrase *established, financed, maintained or controlled* by
 2 examining a non-exhaustive list of ten affiliation factors set forth in 11 C.F.R. § 300.2(c)(2).
 3 The factors “must be examined in the context of the overall relationship between the [candidate]
 4 and the entity to determine whether the presence of any factor or factors is evidence that the
 5 [candidate] directly or indirectly [EFMC’d] the entity.”³⁴ The ten factors are:

- 6 (i) A controlling interest in an entity’s voting stock or securities;
- 7 (ii) Authority or ability to direct or participate in the governance of the entity,
 8 “formal or informal;”
- 9 (iii) Authority or ability to hire, appoint, demote, or otherwise control an
 10 entity’s officers or other decision-making employees or members;
- 11 (iv) Common or overlapping members with an entity;
- 12 (v) Common or overlapping officers or employees with an entity;
- 13 (vi) Having members, officers, or employees who were former members,
 14 officers, or employees of an entity;
- 15 (vii) Providing an entity “funds or goods in a significant amount or on an
 16 ongoing basis” such as through direct and indirect payments for
 17 administrative, fundraising, or other costs;
- 18 (viii) Causing or arranging “funds or goods in a significant amount or on an
 19 ongoing basis” to be provided to an entity;
- 20 (ix) Having “an active or significant role in the formation of an entity;”
- 21 (x) Similar patterns of receipts or disbursements with an entity.³⁵

³⁴ 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).

³⁵ 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).

1 2. The State Committee and the State PAC are Entities EFMC'd by or Acting
 2 on Behalf of a Federal Candidate that Spent Nonfederal Funds in
 3 Connection with a Federal Election
 4

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

6 The Commission has determined that a state campaign committee of a federal candidate
 7 is, as a matter of law, EFMC'd by the federal candidate and is acting on that candidate's behalf.³⁶
 8 Here, the acknowledged purpose of the State Committee was to support Harwell's "political
 9 undertakings as the leader of her party's state house caucus."³⁷ Structurally, the State Committee
 10 resembles a leadership PAC which, at the federal level, is a political committee directly or
 11 indirectly EFMC'd by a federal candidate.³⁸ Therefore, the State Committee should be
 12 considered EFMC'd by Harwell as a matter of law.

13 The Harwell Response also acknowledges that Harwell established the State Committee
 14 in January 2017.³⁹ And while the Commission provides for the possibility that the relationship
 15 between an entity established by a person before they become a candidate may later be severed,
 16 it does not appear that Harwell severed her relationship with the State Committee.⁴⁰ Harwell's

³⁶ 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).

³⁷ Harwell Resp. at 2.

³⁸ 11 C.F.R. § 100.5(e)(6); F&LA at 2 n.4, MUR 6435 (Rep. Charles B. Rangel, *et al.*) ("Generally, leadership PACs are formed by individuals who are federal officeholders or candidates to raise funds that they in turn contribute 'to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder's travel when campaigning for other Federal candidates.'") (quoting Notice of Proposed Rulemaking on Leadership PACs, 67 Fed. Reg. 78,753, 78,754 (Dec. 26, 2002)).

³⁹ Harwell Resp. at 1.

⁴⁰ 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

1 Response states that she ““has the authority or ability to direct or participate in the governance
 2 of [the State Committee]” and ““has the authority to hire, appoint, demote, or otherwise control
 3 the officers’ of [the State Committee].”⁴¹ Thus, the record shows that the relationship between
 4 Harwell and the State Committee *has not* been severed. Further, Harwell’s personal address and
 5 the State Committee’s physical address are the same and the State Committee’s email address is
 6 “beth@bethharwell.com,” which suggests that Harwell maintains material connections with the
 7 State Committee.⁴² Finally, the name itself—the *Beth Harwell Committee*—at the very least,
 8 suggests that Harwell maintains material connections with the State Committee and that it is
 9 EFMC’d by Harwell and not by anyone else.⁴³

10 For many of the same reasons, the record also indicates that the State PAC is EFMC’d by
 11 Harwell. Like the State Committee, Harwell admittedly established the State PAC.⁴⁴ And like

before the two entities may operate independently of each other.” Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49085 (July 29, 2002).

⁴¹ Harwell Resp. at 4 (quoting 11 CFR § 300.2(c)(2)(ii), (iii)).

⁴² See 11 C.F.R. § 300.2(c)(4)(ii). Compare *Search the Online Campaign Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell PAC”) (last visited Oct. 10, 2023) (showing email address and physical address), with *Speaker Beth Harwell*, TENN. GEN. ASSEMB., <https://www.capitol.tn.gov/house/archives/107GA/members/h56.html> (last visited Oct. 10, 2023).

⁴³ See 11 C.F.R. § 300.2(c)(4)(ii). The evidentiary value of a committee’s inclusion of a candidate’s name in its own name was the subject of disagreement in MUR 7783 (Byron Donalds for Congress, *et al.*). In that matter, OGC recommended finding that Friends of Byron Donalds, a Florida state political committee established by federal candidate Byron Donalds in August 2019, was EFMC’d by Donalds at the time it spent nonfederal funds on June 22, 2020 because the committee (1) never changed its name after Donalds resigned as chairman; (2) continued to display Donalds on its website along with the statement that it “associated” with Donalds; and (3) spent almost all of its funds supporting Donalds’ federal candidacy. See First Gen. Counsel’s Rpt. (“GCR”) at 11, MUR 7783 (Byron Donalds for Congress, *et al.*). The Commission split 3-3 on OGC’s recommendations and closed the file. Certification (“Cert.”) ¶¶ 1-3 (Apr. 26, 2022), MUR 7783 (Byron Donalds for Congress, *et al.*). In their statement of reasons, the Commissioners who voted against OGC’s recommendations stated that the committee’s name “would not affect whether Donalds exercised authority over the committee” and that there was no apparent rational connection between the committee’s inclusion of Donalds’ name and his decision-making power. Statement of Reasons (“SOR”) at 3, Comm’rs. Dickerson, Cooksey, and Trainor, III, MUR 7783 (Byron Donalds for Congress, *et al.*). Unlike the situation in MUR 7783, Harwell did not resign her position of authority with the State Committee or the State PAC prior to her federal candidacy.

⁴⁴ Harwell Resp. at 2.

1 the State Committee, the fact that Harwell has authority or ability to direct or participate in the
2 governance of the State PAC and has the authority or ability to hire, appoint, demote, or
3 otherwise control the officers of the State PAC indicates that the relationship between Harwell
4 and the State PAC *has not* been severed.⁴⁵ Indeed, Harwell remains President of the State PAC,
5 a position that ordinarily indicates the ability to control an organization.⁴⁶ And although the
6 State PAC's name is Tennesseans for Good State Government and no longer bears Harwell's
7 name, its contribution was reported by GOTP as being from *Harwell PAC*, which, like the *Beth*
8 *Harwell Committee* suggests that the State PAC is EFMC'd by Harwell and not by someone
9 else.⁴⁷ At the very least, it is suggestive of GOTP's understanding of the continuing material
10 connections between Harwell and the State PAC. Finally, the fact that Harwell's home address
11 and the State PAC's physical address are the same and that the State PAC's email address is
12 "beth@bethharwell.com" supports a conclusion that Harwell EFMC'd the State PAC.⁴⁸

13 The Harwell Response makes a number of arguments in support of its view that neither
14 the State Committee nor the State PAC are EFMC'd within the meaning of 52 U.S.C.
15 § 30125(e)(1). These arguments are not persuasive for several reasons. First, the Harwell
16 Response argues that a candidate or officeholder must "establish, finance, maintain, or control

⁴⁵ *Id.* at 4.

⁴⁶ *Id.*

⁴⁷ The State PAC is also included in Tennessee's Registry of Election Finance as "Harwell PAC." See Harwell Resp. at 2 n.1; *Search the Online Campaign Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search "Harwell PAC") (last visited Oct. 10, 2023).

⁴⁸ Compare *Search the Online Campaign Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search "Harwell PAC") (last visited Oct. 10, 2023) (showing email address and physical address), with *Speaker Beth Harwell*, TENN. GEN. ASSEMB., <https://www.capitol.tn.gov/house/archives/107GA/members/h56.html> (last visited Oct. 10, 2023).

1 the entity *while the person is a federal candidate or officeholder.*⁴⁹ But that interpretation
2 conflicts with the reason for 11 C.F.R. § 300.2(c)(4)(i)-(ii). Moreover, the Commission has
3 already rejected that view, insofar as the Commission has determined that a federal candidate's
4 state campaign committee is, as a matter of law, an EFMC'd entity. Indeed, the Commission has
5 determined that a state officeholder's state committee is an EFMC'd entity despite being formed
6 long before their federal candidacy.⁵⁰ In short, the State PAC and State Committee may still be
7 considered EFMC'd by Harwell despite their formation prior to Harwell's federal candidacy.

8 Next, the Harwell Response contends that an insufficient number of the factors listed in
9 11 C.F.R. § 300.2(c), the Commission's regulation defining EFMC, were satisfied to establish
10 that Harwell EFMC'd the committees. The Harwell Response acknowledges that Harwell's
11 relationship with the State Committee and State PAC satisfies two factors listed in section
12 300.2(c): she has authority or ability to direct or participate in the governance of the State
13 Committee and State PAC and has the authority or ability to hire, appoint, demote, or otherwise
14 control the officers of the State Committee and the State PAC.⁵¹ But the Harwell Response
15 argues that Harwell's authority with regard to the State Committee and State PAC is insufficient
16 to find that she EFMC'd the committees because eight other factors listed in 11 C.F.R. § 300.2(c)
17 are absent.⁵² Similar arguments were rejected by the Commission in both MUR 7337 (Debbie

⁴⁹ Harwell Resp. at 3 (emphasis in original) (quoting Statement of Commissioner Lee E. Goodman on the "Established, Financed, Maintained or Controlled" Doctrine (Feb. 26, 2018)).

⁵⁰ 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).

⁵¹ 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.

⁵² *Id.*

1 Lesko and Re-Elect Debbie Lesko for Senate) and MUR 7853 (Stand for Truth).⁵³ By doing so,
 2 the Commission confirmed what it said during the soft money rulemaking: that the factors set
 3 forth in 11 C.F.R. § 300.2(c) address the four different statutory terms that comprise EFMC.⁵⁴
 4 Such an interpretation is consistent with the plain text of the Act, because it's inclusion of the
 5 word "or" indicates that only one type of specified relationship is necessary.⁵⁵ Here, Harwell's
 6 establishment of the committees, her authority to direct or participate in the governance of the
 7 committees, and her authority to hire, appoint, demote, or otherwise control the officers of the
 8 committees is sufficient to find at this preliminary stage of administrative enforcement that she
 9 EFMC'd the committees within the meaning of 52 U.S.C. § 30125(e)(1).⁵⁶

⁵³ 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).

⁵⁴ 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.").

⁵⁵ 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).

⁵⁶ 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).

1 The Harwell Response acknowledges that the State PAC's contributions to GOTP
2 included nonfederal funds.⁶³ However, the Harwell Response cites to advisory opinions where
3 the Commission allowed a state officeholder and federal candidate to donate federally
4 permissible funds in a state account to other state and local political committees where the state
5 committee used a "reasonable accounting method" to separate permissible from impermissible
6 funds (*i.e.*, those raised consistent with state law but outside the Act's contribution limitations
7 and source prohibitions), and then made the contributions with the permissible funds.⁶⁴ The
8 Harwell Response argues that the State PAC can show, using the "last in, first transferred"
9 accounting method described in 11 C.F.R § 110.3(c)(4), that only \$2,500 of the \$12,000 the State
10 PAC contributed to GOTP included nonfederal funds.⁶⁵ But even assuming that the advisory
11 opinions cited in the Harwell Response extend to a candidate's state committee's contributions to
12 independent expenditure-only political committees, and assuming that the State PAC did, in fact,
13 utilize a last in, first transferred account method at the time, the Harwell Response's assertion
14 does not appear to be correct. According to the State PAC's disclosure reports, the last \$12,000
15 received included a \$7,500 individual contribution, which exceeded the Act's amount limits by
16 \$4,600.⁶⁶ And in any event, the entire \$12,000 contribution consisted of nonfederal funds
17 because the State PAC did not report those funds to the Commission.⁶⁷

⁶³ Harwell Resp. at 4-5.

⁶⁴ *See id.* at 4 n.16 (citing, among other advisory opinions, AO 2007-26 at 3-5 (Schock); AO 2005-38 at 4 (Casey)).

⁶⁵ *Id.* at 4-5.

⁶⁶ *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).

⁶⁷ F&LA at 8 n.35, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate) ("Even assuming that the funds comprising the [state committee's] \$50,000 contribution [to the independent expenditure-only political

1 Next, Harwell's Response argues that less than the full \$35,000 of the State Committee's
2 contribution to GOTP included excessive or prohibited funds under the Act if the last in, first
3 transferred accounting method is used.⁶⁸ Again, assuming that the advisory opinions cited in the
4 Harwell Response extend to a candidate's state committee's contributions to independent
5 expenditure-only political committees, and assuming that such an accounting method was, in
6 fact, used by the State Committee at the time, it still appears that many of the funds provided to
7 GOTP after Harwell became a federal candidate included excessive or prohibited funds.⁶⁹ This
8 is because the last \$35,000 reported by the State Committee includes a \$2,000 contribution from
9 "United Health Group Incorporated" and because the overwhelming majority of the remainder of
10 the last \$35,000 came from PACs, which, under Tennessee state law, may accept contributions
11 from individuals without limit and from corporations.⁷⁰ And, the entire \$35,000 contribution
12 consisted of nonfederal funds because the State Committee did not report those funds to the
13 Commission.⁷¹

14 The Harwell Response further argues for dismissal because it says the amount in
15 violation is "modest."⁷² But the cases cited—MURs 7114 and MUR 7337—do not support

committee] did not violate the Act's source prohibitions and amount limitations, the State Committee had not reported those funds to the Commission, thus, the contribution was not permissible.").

⁶⁸ Harwell Resp. at 4-5.

⁶⁹ 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.*)).

⁷⁰ 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").

⁷¹ F&LA at 8 n.35, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate).

⁷² Harwell Resp. at 5.

1 dismissal of this matter, which involves \$47,000 of nonfederal funds. The Commission
 2 dismissed MUR 7114, where a federal candidate's state committee raised at least \$3,000 in
 3 nonfederal funds after his federal candidacy and spent \$1,849.⁷³ In MUR 7337, far from the
 4 \$50,000 amount in violation being considered too modest, the Commission *found reason to*
 5 *believe* and conciliated with the federal recipient committee Conservative Leadership for
 6 Arizona.⁷⁴ The Commission did not agree on whether there was probable cause that the
 7 candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A).⁷⁵ Finally, in both MUR
 8 7114 and 7337, unlike in the instant matter, the relevant state law prohibited state PACs from
 9 accepting corporate contributions.⁷⁶

10 * * *

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

⁷³ 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.*).

⁷⁴ See Conciliation Agreement, MUR 7337 (Conservative Leadership for Arizona).

⁷⁵ Cert. (Sept. 29, 2022), MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate).

⁷⁶ 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.*).

1 3. Government of the People's Receipt of \$47,000 From Entities EFMC'd
2 by Harwell Caused it to Become Financed by Harwell

3 The sizable contributions made by entities EFMC'd by Harwell to GOTP raise the issue
4 of whether GOTP became financed by Harwell, thereby causing GOTP to be EFMC'd by
5 Harwell as well. The question of whether Harwell financed GOTP turns on whether the State
6 Committee and the State PAC's contributions constitute providing funds in a "significant amount
7 or on an ongoing basis" to GOTP.⁷⁷ The determination of whether an amount is "significant"
8 under 11 C.F.R. § 300.2(c)(2)(vii) may depend to some extent on what percentage of the entity's
9 total receipts the funding represents.⁷⁸ The Commission has explained that providing amounts
10 that are so large or comprise a substantial percentage of an entity's receipts would qualify as
11 being a "significant amount."⁷⁹

12 Whether funds provided to an entity qualify as "significant" under 11 C.F.R.
13 § 300.2(c)(2)(vii) and whether the receiving entity should, in turn, be considered to be EFMC'd
14 by a candidate or officeholder is determined by the Commission "on a case-by-case basis and in
15 view of all the relevant circumstances."⁸⁰ For example, in AO 2006-04, the Commission
16 determined that a federal candidate's proposed donation to a state ballot-initiative committee that
17 would constitute 50% of the committee's total receipts at the time of the donation "must be
18 considered 'a significant amount'" under 11 C.F.R. § 300.2(c)(vii) such that the federal

⁷⁷ 11 C.F.R. § 300.2(c)(2)(vii).

⁷⁸ F&LA at 9, MUR 7853 (Stand for Truth, Inc.) (citing Advisory Opinion 2004-29 at n.4 (Akin) and Advisory Opinion 2004-25 at 4 (Corzine)).

⁷⁹ *Id.*

⁸⁰ See AO 2006-04 at 4 (Tancredo) (contextual factors considered by the Commission in determining that "at the time of the donation" 25% funding was a "significant amount" included the fact that funds provided by Tancredo's committee would be used as "seed money" for the ballot initiative committee); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

1 candidate “financed” the state committee.⁸¹ In considering whether a donation of 25% (up to
2 \$50,000) of the organization’s total receipts at the time of the donation would constitute “a
3 significant amount,” the Commission said that the donation “must be examined in the context of
4 the overall relationship” between the committee and the entity.⁸² In this analysis, the
5 Commission considered the impact of “seed money” to be important in the context of the overall
6 relationship and the question of whether the entity was financed under the Act. The Commission
7 concluded that a donation of up to \$50,000 when the entity had just a little more than \$9,000
8 “would represent substantial ‘seed money’ for [the entity] and would result in [the entity]
9 depending in large part on [the candidate] for its initial existence.”⁸³

10 In the enforcement context, the Commission also considers the various facts and
11 circumstances of a particular matter in analyzing whether an entity was financed within the
12 meaning of Section 30125(e)(1) and 11 C.F.R. § 300.2(c)(2)(vii). Recently, in MUR 7853, the
13 Commission concluded that the contribution of \$126,500 by Campaign to Elect Lance Harris, the
14 state campaign committee of Louisiana Rep. and federal candidate Lance Harris, to the
15 independent expenditure-only political committee Stand for Truth, Inc., at a time when Stand for
16 Truth had only \$5,639.20, caused Stand for Truth to become financed by Lance Harris.⁸⁴ In
17 MUR 7337, the Commission found reason to believe that a \$50,000 contribution from a federal
18 candidate’s state committee which comprised ninety-nine percent of an independent expenditure-

⁸¹ AO 2006-04 at 4.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ F&LA at 12, MUR 7853 (Stand for Truth, Inc.).

1 only political committee's total receipts constituted a "significant amount."⁸⁵ In MUR 5367, the
2 Commission determined that Darrell Issa's provision — both individually and *through an*
3 *organization* he controlled with his spouse — of more than \$1.76 million (over 60% of the
4 receipts) to a state ballot measure committee, constituted a "significant amount."⁸⁶

5 Here, when examined in the context of the overall relationship between Harwell, the
6 State Committee and State PAC, and GOTP, the record indicates that the state committees'
7 combined provision of \$47,000 to GOTP on July 22, 2022 qualifies as a "significant amount"
8 under 11 C.F.R. § 300.2(c)(2)(vii). The State Committee and State PAC's contributions
9 represented 60.8% of GOTP's total receipts at the time they were made.⁸⁷ In light of the
10 Commission's previous assessments in AO 2006-04 and MUR 5367, the fact that the State
11 Committee's and State PAC's combined contributions amounted to 60.8% of GOTP's receipts
12 must be considered a substantial percentage.⁸⁸ The State Committee and State PAC's combined

⁸⁵ See F&LA at 7, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate). *Cf.* F&LA at 3-5, MUR 6753 (People for Pearce) (noting the "relatively low dollar amount at issue," and the fact that the contribution was refunded as justifications for dismissal in matter involving candidate committee's \$10,000 donation to an independent expenditure-only political committee).

⁸⁶ See F&LA at 4-8, MUR 5367 (Congressman Darrell Issa).

⁸⁷ See *supra* at pp.4-5.

⁸⁸ Even if the Commission were to apply a lifetime receipts-only rule—which it rejected in MUR 7853 (Stand for Truth, Inc.) as contrary to the regulation's "situation-specific" test for determining when a sponsor's provision of funds constitutes a "significant amount"—the State Committee and State PAC's share of 38% of GOTP's lifetime funding would still qualify as a substantial percentage. See F&LA at 10-11, MUR 7853 (Stand for Truth). In the context of affiliation, the Commission has viewed a committee's contribution of 40% and 35% of its receipts to represent a "substantial portion" of its receipts. See AO 1976-104 at 3 (Good Government Committee of First Federal Savings of Miami) (40% of receipts is substantial); First GCR at 8 & Cert. ¶ 4 (May 10, 1982), MUR 1425 (Columbia River Trust Political Action Committee) (35% of receipts is substantial). 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 affiliation concepts in a different context. Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002). Accordingly, it appears that even if a lifetime receipts-only rule were applied to GOTP, the \$47,000 (38%) it received from the State Committee and State PAC should be considered significant.

1 contributions also represent GOTP's largest contributions.⁸⁹ Finally, GOTP was also newly
2 incorporated and newly registered with the Commission, and does not appear to have been able
3 to finance its first (and largest) reported independent expenditures in support of Harwell or
4 opposing her opponent Andy Ogles without the State Committee and State PAC's funds.⁹⁰ In
5 this context, the State Committee and the State PAC's contributions to GOTP constitute
6 providing funds in a "significant amount" under 11 C.F.R. § 300.2(c)(2)(vii).

7 It cannot be credibly argued that contributions of \$35,000 and \$12,000 are too small to
8 constitute financing under 52 U.S.C. § 30125(e)(1). The Commission has never established a
9 funding floor, either in terms of dollar amount or percentage of receipts, under which an
10 organization will be deemed *per se* not to have been financed by another entity. Indeed, when
11 the Commission promulgated 11 C.F.R. § 300.2(c)(2)(vii), it rejected carving out a \$5,000 *de*
12 *minimis* exception as contrary to the regulation and plain meaning of the Act.⁹¹ And the \$35,000
13 and \$12,000 contributions here are well above even the proposed and rejected \$5,000 exception.

14 Nor should the State Committee's \$35,000 contribution and the State PAC's contribution
15 of \$12,000 be assessed separately to determine whether GOTP became financed by Harwell.
16 Section 30125(e)(1) speaks in terms of entities EFMC'd or acting on behalf of one or more
17 *candidates*. Thus, it is the link to the candidate that is required for liability under 52 U.S.C.
18 § 30125(e)(1) and Harwell's control of the State Committee and State PAC provide that

⁸⁹ Even if not combined, the State Committee's \$35,000 contribution represented GOTP's largest contribution and the State PAC's \$12,000 contributions was GOTP's third largest. *See supra* pp. 4-5.

⁹⁰ *See supra* pp. 4-5; F&LA at 11, MUR 7853 (Stand for Truth, Inc.) (noting that the only independent expenditure made by Stand for Truth after receiving funds from Lance Harris's state committee was to support Lance Harris's federal candidacy).

⁹¹ Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

1 necessary link.⁹² Accordingly, the combined \$47,000 contributed by the State Committee and
2 State PAC to GOTP is the relevant figure for determining whether GOTP became financed by
3 Harwell.⁹³

4 Any funds GOTP solicited, received, directed, transferred, or spent in connection with a
5 federal election after becoming financed by Harwell, a federal candidate, were required to be
6 federally permissible.⁹⁴ The Harwell Response admits that portions of the State Committee and
7 State PAC's contributions included funds that did not comply with the Act's amount limitations
8 and source prohibitions. But even assuming — contrary to the Harwell Response's admissions
9 — that the State Committee's and State PAC's contributions did not violate the Act's source
10 prohibitions and amount limitations, the committees did not report any of those funds to the
11 Commission. Thus, their contributions did not consist of federal funds.⁹⁵

12 Accordingly, we recommend that the Commission find reason to believe that GOTP
13 violated 52 U.S.C. § 30125(e)(1)(A) by receiving and spending nonfederal funds in connection
14 with an election for federal office.⁹⁶

⁹² 52 U.S.C. § 30125(e).

⁹³ See Conciliation Agreement ¶ IV.13, MUR 7853 (Stand for Truth, Inc.) (independent expenditure-only committee became financed by a federal candidate *through* an entity that candidate EFMC'd); F&LA at 6-7, MUR 5367 (Congressman Darrell Issa) (combining Darrell Issa's direct donations and donations by his company to determine that he EFMC'd ballot measure committee).

⁹⁴ 52 U.S.C. § 30125(e)(1)(A).

⁹⁵ F&LA at 8 n.35, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate).

⁹⁶ The Harwell Response's final argument is that enforcement would raise constitutional concerns. Harwell Resp. at 5-6. We disagree. The Act's soft money prohibitions were upheld in *McConnell v. FEC*, 540 U.S. 93 (2003). Nowhere in that decision, or any other decision that we are aware of, did the Court suggest that soft money in a state committee's campaign account transforms into hard money (or the candidate's personal funds) merely by the passage of time.

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V. RECOMMENDATIONS

1. Find reason to believe that Beth Harwell, the Beth Harwell (House 18), and Tennesseans for Good State Government violated 52 U.S.C. § 30125(e)(1)(A) by transferring funds not subject to the limitations, prohibitions, and reporting requirements of the Act in connection with an election for federal office;
2. Find reason to believe that Government of the People and Debra Y. Maggart in her official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A) by receiving funds in connection with an election for federal office that were not subject to the limitations, prohibitions, and reporting requirements of the Act;
3. Approve the attached Factual and Legal Analyses;
4. Authorize pre-probable cause conciliation with Beth Harwell, the Beth Harwell (House 18), Tennesseans for Good State Government, and Government of the People and Debra Y. Maggart in her official capacity as treasurer;
5. Approve the attached proposed Conciliation Agreements; and
6. Approve the appropriate letters.

Lisa J. Stevenson
 Acting General Counsel

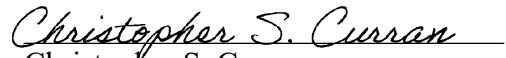
Charles Kitcher
 Associate General Counsel for Enforcement

10/17/2023
 Date

Adrienne C. Baranowicz
 Adrienne C. Baranowicz
 Deputy Associate General Counsel
 for Enforcement

Mark Allen
 Mark Allen
 Assistant General Counsel

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Christopher S. Curran
Attorney

Attachments:

1. Beth Harwell (House 18) Reported Contributions Received
2. Tennesseans for Good State Government Reported Contributions Received
3. Factual and Legal Analysis for Beth Harwell, Beth Harwell (House 18) and Tennesseans for Good State Government
- 4.
5. Factual and Legal Analysis for Government of the People
- 6.

CONTRIBUTIONS RECEIVED BY HARWELL COMMITTEE

Date	Source	Amount	Report
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

Date	Source	Amount	Report
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)

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”),¹ 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”),² 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,

¹ 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”).

² 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.³ She
10 served as speaker from 2011 to 2018.⁴ 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.”⁵ The State Committee’s mailing addresses is Harwell’s home address, and
13 its email address is “beth@bethharwell.com.”⁶

14 The State PAC is a state-level multi-candidate committee established by Harwell in
15 2006.⁷ Harwell serves as President of the State PAC.⁸ Like the State Committee, the State

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

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

⁵ 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”).

⁶ *Search the Online Campaign Finance Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell (House 18), Beth”) (last visited Oct. 10, 2023).

⁷ Harwell Resp. at 2.

⁸ *Id.*

1 PAC’s mailing address is Harwell’s home address and its email address is
2 “beth@bethharwell.com.”⁹

3 On February 24, 2022, Harwell announced her federal candidacy to represent
4 Tennessee’s newly-drawn 5th Congressional District.¹⁰ She filed her Statement of Candidacy
5 the same day.¹¹ Her principal campaign committee is Harwell for Congress.¹² Harwell lost the
6 Republican primary election on August 4, 2022.¹³

7 GOTP incorporated in Tennessee on July 13, 2022, and it registered with the
8 Commission as an independent expenditure-only political committee on July 20, 2022.¹⁴ It
9 received \$35,000 from the State Committee on July 22, 2022.¹⁵ GOTP also received \$12,000
10 from the State PAC on July 22, 2022.¹⁶ Six days later, it reported spending \$90,084 on

⁹ Search the Online Campaign Finance Database, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell PAC”) (last visited Oct. 10, 2023).

¹⁰ 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>.

¹¹ Beth Harwell, Statement of Candidacy at 1 (Feb. 24, 2022), <https://docquery.fec.gov/pdf/060/202202249493674060/202202249493674060.pdf>.

¹² Harwell for Congress, Statement of Org. at 1 (Feb. 24, 2022), <https://docquery.fec.gov/pdf/051/202202249493674051/202202249493674051.pdf>.

¹³ STATE OF TENN., Republican Primary Results at 2 (Aug. 4, 2022), <https://sos-prod.tnsosgovfiles.com/s3fs-public/document/20220804RepublicanPrimarybyCounty.pdf>.

¹⁴ 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).

¹⁵ 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).

¹⁶ 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).

1 broadcast ads supporting Harwell or opposing her Republican primary election opponent Andy
2 Ogles.¹⁷ GOTP reported additional independent expenditures of \$19,475 on August 2, 2022, and
3 \$3,580 on August 4, 2022, again in support of Harwell or opposing Ogles, and did not make any
4 more independent expenditures that election cycle.¹⁸ For the 2022 election cycle, GOTP
5 received \$123,500 in total contributions from fifteen contributors and spent a total of
6 \$113,139.50 on independent expenditures, all of which supported Harwell or opposed Ogles.¹⁹
7 Since August 31, 2022, GOTP has not received any contributions or made any expenditures and
8 has \$5,030.40 remaining cash on hand.²⁰

9 A. The Complaint

10 The Complaint asserts that Harwell was a federal candidate from February 2022 through
11 the Tennessee primary election on August 4, 2022.²¹ The Complaint also states that the State
12 Committee and the State PAC are entities EFMC'd by Harwell and that she directed the State
13 Committee and State PAC to make contributions to GOTP on July 22, 2022.²² The Complaint
14 further states that those contributions were comprised of nonfederal funds, which were then spent

¹⁷ 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/>.

¹⁸ 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).

¹⁹ *Government of the People: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00821009/?tab=summary> (last visited Oct. 10, 2023).

²⁰ *Id.*

²¹ Compl. at 5.

²² *Id.* at 5-6.

1 on independent expenditures supporting Harwell’s federal candidacy and opposing her primary
2 opponent between July 27, 2022 and August 1, 2022.²³ As a result, the Complaint alleges that
3 Harwell, the State Committee, and the State PAC violated 52 U.S.C. § 30125(e)(1)(A) by
4 directing or transferring nonfederal funds in connection with a federal election.²⁴

5 **B. The Response**

6 The Response from Harwell, the State Committee, and the State PAC makes several
7 arguments in support of its request that the Commission find no reason to believe. *First*, the
8 Harwell Response contends that the State Committee and State PAC were not EFMC’d within
9 the meaning of 52 U.S.C § 30125(e)(1) because the relationship between Harwell and the
10 committees satisfies only two out of the ten affiliation factors set forth in the Commission’s
11 regulatory definition of EFMC.²⁵ *Second*, the Harwell Response argues that the State PAC’s
12 contributions to GOTP consisted “primarily” of federal funds and that the State Committee’s
13 contributions included “some” federal funds.²⁶ *Third*, the Harwell Response cites MUR 7114
14 (Casperson for Congress, *et al.*) and MUR 7337 (Debbie Lesko, *et al.*) as examples of cases
15 where the Commission has either voted to dismiss or voted to take no action and states that a
16 different decision in this matter would be “unfair.”²⁷ *Fourth*, the Harwell Response argues that
17 if Harwell EFMC’d the State Committee and State PAC as alleged, enforcement would raise

²³ *Id.* at 2-3, 5-6.

²⁴ *Id.*

²⁵ *See* Harwell Resp. at 3-4 (citing Statement of Commissioner Lee E. Goodman on the “Established, Financed, Maintained or Controlled” Doctrine (Feb. 26, 2018)).

²⁶ *Id.* at 4-5.

²⁷ *Id.* at 5.

1 constitutional concerns because she would be both the donor and recipient (because the funds
2 would support her own election), making a *quid pro quo* arrangement impossible.²⁸

3 III. LEGAL ANALYSIS

4 A. There is Reason to Believe that Harwell, the State Committee, and the State 5 PAC Violated 52 U.S.C. § 30125(e)(1)(A)

6 1. Legal Standard

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.”²⁹

14 This prohibition reinforces 52 U.S.C § 30125(a)³⁰ 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.³¹

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
21

²⁸ *Id.* at 5.

²⁹ 52 U.S.C § 30125(e)(1)(A); 11 C.F.R. § 300.61.

³⁰ *See McConnell v. FEC*, 540 U.S. 93, 133 (2003) (“The remaining provisions of new FECA § 323 largely reinforce the restrictions in § 323(a)”).

³¹ *See id.* at 121, 133.

1 The factors “must be examined in the context of the overall relationship between the [candidate]
2 and the entity to determine whether the presence of any factor or factors is evidence that the
3 [candidate] directly or indirectly [EFMC’d] the entity.”³² The ten factors are:

- 4 (i) A controlling interest in an entity’s voting stock or securities;
- 5 (ii) Authority or ability to direct or participate in the governance of the entity,
6 “formal or informal;”
- 7 (iii) Authority or ability to hire, appoint, demote, or otherwise control an
8 entity’s officers or other decision-making employees or members;
- 9 (iv) Common or overlapping members with an entity;
- 10 (v) Common or overlapping officers or employees with an entity;
- 11 (vi) Having members, officers, or employees who were former members,
12 officers, or employees of an entity;
- 13 (vii) Providing an entity “funds or goods in a significant amount or on an
14 ongoing basis” such as through direct and indirect payments for administrative,
15 fundraising, or other costs;
- 16 (viii) Causing or arranging “funds or goods in a significant amount or on an ongoing
17 basis” to be provided to an entity;
- 18 (ix) Having “an active or significant role in the formation of an entity;”
- 19 (x) Similar patterns of receipts or disbursements with an entity.³³

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

23 a. The State Committee and State PAC are EFMC’d by Harwell

24
25 The Commission has determined that a state campaign committee of a federal candidate
26 is, as a matter of law, EFMC’d by the federal candidate and is acting on that candidate’s behalf.³⁴

³² 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).

³³ 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).

³⁴ 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 Here, the acknowledged purpose of the State Committee was to support Harwell’s “political
2 undertakings as the leader of her party’s state house caucus.”³⁵ Structurally, the State Committee
3 resembles a leadership PAC which, at the federal level, is a political committee directly or
4 indirectly EFMC’d by a federal candidate.³⁶ Therefore, the State Committee should be
5 considered EFMC’d by Harwell as a matter of law.

6 The Harwell Response also acknowledges that Harwell established the State Committee
7 in January 2017.³⁷ And while the Commission provides for the possibility that the relationship
8 between an entity established by a person before they become a candidate may later be severed,
9 it does not appear that Harwell severed her relationship with the State Committee.³⁸ Harwell’s
10 Response states that she ““has the authority or ability to direct or participate in the governance
11 of’ [the State Committee]” and ““has the authority to hire, appoint, demote, or otherwise control
12 the officers’ of [the State Committee].”³⁹ Thus, the record shows that the relationship between
13 Harwell and the State Committee *has not* been severed. Further, Harwell’s personal address and
14 the State Committee’s physical address are the same and the State Committee’s email address is

³⁵ Harwell Resp. at 2.

³⁶ 11 C.F.R. § 100.5(e)(6); F&LA at 2 n.4, MUR 6435 (Rep. Charles B. Rangel, *et al.*) (“Generally, leadership PACs are formed by individuals who are federal officeholders or candidates to raise funds that they in turn contribute ‘to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder’s travel when campaigning for other Federal candidates.’”) (quoting Notice of Proposed Rulemaking on Leadership PACs, 67 Fed. Reg. 78,753, 78,754 (Dec. 26, 2002)).

³⁷ Harwell Resp. at 1.

³⁸ 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).

³⁹ Harwell Resp. at 4 (quoting 11 C.F.R. § 300.2(c)(2)(ii), (iii)).

1 “beth@bethharwell.com,” which suggests that Harwell maintains material connections with the
2 State Committee.⁴⁰ Finally, the name itself—the *Beth Harwell Committee*—at the very least,
3 suggests that Harwell maintains material connections with the State Committee and that it is
4 EFMC’d by Harwell and not by anyone else.⁴¹

5 For many of the same reasons, the record also indicates that the State PAC is EFMC’d by
6 Harwell. Like the State Committee, Harwell admittedly established the State PAC.⁴² And like
7 the State Committee, the fact that Harwell has authority or ability to direct or participate in the
8 governance of the State PAC and has the authority or ability to hire, appoint, demote, or
9 otherwise control the officers of the State PAC indicates that the relationship between Harwell
10 and the State PAC *has not* been severed.⁴³ Indeed, Harwell remains President of the State PAC,
11 a position that ordinarily indicates the ability to control an organization.⁴⁴ And although the
12 State PAC’s name is Tennesseans for Good State Government and no longer bears Harwell’s
13 name, its contribution was reported by GOTP as being from *Harwell PAC*, which, like the *Beth*
14 *Harwell Committee*, suggests that the State PAC is EFMC’d by Harwell and not by someone
15 else.⁴⁵ At the very least, it is suggestive of GOTP’s understanding of the continuing material

⁴⁰ See 11 C.F.R. § 300.2(c)(4)(ii). Compare *Search the Online Campaign Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell PAC”) (last visited Oct. 10, 2023) (showing email address and physical address), with Speaker Beth Harwell, Tennessee General Assembly, <https://www.capitol.tn.gov/house/archives/107GA/members/h56.html> (last visited Oct. 10, 2023).

⁴¹ See 11 C.F.R. § 300.2(c)(4)(ii).

⁴² Harwell Resp. at 2.

⁴³ *Id.* at 4.

⁴⁴ *Id.*

⁴⁵ The State PAC is also included in Tennessee’s Registry of Election Finance as “Harwell PAC.” See Harwell Resp. at 2 n.1; *Search the Online Campaign Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell PAC”) (last visited Oct. 10, 2023).

1 connections between Harwell and the State PAC. Finally, the fact that Harwell’s home address
2 and the State PAC’s physical address are the same and that the State PAC’s email address is
3 “beth@bethharwell.com” supports a conclusion that Harwell EFMC’d the State PAC.⁴⁶

4 The Harwell Response makes a number of arguments in support of its view that neither
5 the State Committee nor the State PAC are EFMC’d within the meaning of 52 U.S.C.
6 § 30125(e)(1). These arguments are not persuasive for several reasons. First, the Harwell
7 Response argues that a candidate or officeholder must “establish, finance, maintain, or control
8 the entity *while the person is a federal candidate or officeholder.*”⁴⁷ But that interpretation
9 conflicts with the reason for 11 C.F.R. § 300.2(c)(4)(i)-(ii). Moreover, the Commission has
10 already rejected that view, insofar as the Commission has determined that a federal candidate’s
11 state campaign committee is, as a matter of law, an EFMC’d entity. Indeed, the Commission has
12 determined that a state officeholder’s state committee is an EFMC’d entity despite being formed
13 long before their federal candidacy.⁴⁸ In short, the State PAC and State Committee may still be
14 considered EFMC’d by Harwell despite their formation prior to Harwell’s federal candidacy.

15 Next, the Harwell Response contends that an insufficient number of the factors listed in
16 11 C.F.R. § 300.2(c), the Commission’s regulation defining EFMC, were satisfied to establish
17 that Harwell EFMC’d the committees. The Harwell Response acknowledges that Harwell’s

⁴⁶ Compare *Search the Online Campaign Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell PAC”) (last visited Oct. 10, 2023) (showing email address and physical address), with *Speaker Beth Harwell*, TENN. GEN. ASSEMB., <https://www.capitol.tn.gov/house/archives/107GA/members/h56.html> (last visited Oct. 10, 2023).

⁴⁷ Harwell Resp. at 3 (emphasis in original) (quoting Statement of Commissioner Lee E. Goodman on the “Established, Financed, Maintained or Controlled” Doctrine (Feb. 26, 2018)).

⁴⁸ 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 relationship with the State Committee and State PAC satisfies two factors listed in section
 2 300.2(c): she has authority or ability to direct or participate in the governance of the State
 3 Committee and State PAC and has the authority or ability to hire, appoint, demote, or otherwise
 4 control the officers of the State Committee and the State PAC.⁴⁹ But the Harwell Response
 5 argues that Harwell’s authority with regard to the State Committee and State PAC is insufficient
 6 to find that she EFMC’d the committees because eight other factors listed in 11 C.F.R. § 300.2(c)
 7 are absent.⁵⁰ Similar arguments were rejected by the Commission in both MUR 7337 (Debbie
 8 Lesko and Re-Elect Debbie Lesko for Senate) and MUR 7853 (Stand for Truth).⁵¹ By doing so,
 9 the Commission confirmed what it said during the soft money rulemaking: that the factors set
 10 forth in 11 C.F.R. § 300.2(c) address the four different statutory terms that comprise EFMC.⁵²
 11 Such an interpretation is consistent with the plain text of the Act, because its inclusion of the

⁴⁹ 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.

⁵⁰ *Id.*

⁵¹ 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).

⁵² 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.”).

1 word “or” indicates that only one type of specified relationship is necessary.⁵³ Here, Harwell’s
2 establishment of the committees, her authority to direct or participate in the governance of the
3 committees, and her authority to hire, appoint, demote, or otherwise control the officers of the
4 committees is sufficient to find at this preliminary stage of administrative enforcement that she
5 EFMC’d the committees within the meaning of 52 U.S.C. § 30125(e)(1).⁵⁴

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

8 As entities EFMC’d by Harwell, any funds the State Committee and State PAC solicited,
9 received, directed, transferred, or spent in connection with a federal election after Harwell
10 became a federal candidate were required to be federally permissible and subject to the Act’s
11 reporting provisions.⁵⁵

12 The State Committee and State PAC’s disclosure reports (Attachments 1 and 2) reveal
13 that they accepted nonfederal funds. Since its establishment in 2017, the State Committee
14 received \$63,100 in contributions from the following sources: \$54,200 from corporate PACs,
15 \$8,000 directly from corporations, \$500 from the committee of former Nashville mayor Megan

⁵³ 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).

⁵⁴ 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).

⁵⁵ 52 U.S.C. § 30125(e)(1)(A).

1 Barry, and \$400 from two individuals.⁵⁶ The State PAC last received contributions in 2018.⁵⁷
2 The State PAC's individual contributions received in 2018 total \$118,000, of which \$84,700
3 (71.7%) exceeded the Act's amount limitations.⁵⁸ The State PAC also received a \$143,500 loan
4 from Sam Harwell (Beth Harwell's spouse) on July 31, 2018.⁵⁹ The entire amount of the loan
5 remains outstanding.⁶⁰ If the loan is considered a contribution, 86.1% of the State PAC's total
6 individual contributions since January 2018 exceeded the Act's amount limitations.

7 The Harwell Response acknowledges that the Committee's contributions to GOTP
8 included nonfederal funds.⁶¹ However, the Harwell Response cites to advisory opinions where
9 the Commission allowed a state officeholder and federal candidate to donate federally
10 permissible funds in a state account to other state and local political committees where the state
11 committee used a "reasonable accounting method" to separate permissible from impermissible
12 funds (*i.e.*, those raised consistent with state law but outside the Act's contribution limitations
13 and source prohibitions), and then made the contributions with the permissible funds.⁶² The
14 Harwell Response argues that the Committee can show, using the "last in, first transferred"
15 accounting method described in 11 C.F.R. § 110.3(c)(4), that only \$2,500 of the \$12,000 the

⁵⁶ See Attachment 1 (showing the State Committee's receipts); Attachment 2 (showing the State PAC's receipts).

⁵⁷ Resp. at 2.

⁵⁸ See Attachment 2 (showing the State PAC's 2018 receipts).

⁵⁹ *Search Reports*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search "Tennesseans for Good State Government" in "3rd Quarter" reports for 2018) (last visited Oct. 10, 2023).

⁶⁰ *Id.* (search "Tennesseans for Good State Government" in "Annual Mid Year Supplemental" reports for 2023) (last visited Oct. 10, 2023).

⁶¹ Harwell Resp. at 4-5.

⁶² See *id.* at 4 n.16 (citing, among other advisory opinions, AO 2007-26 at 3-5 (Schock); AO 2005-38 at 4 (Casey)).

1 Committee contributed to the State PAC included nonfederal funds.⁶³ But even assuming that
2 the advisory opinions cited in the Harwell Response extend to a candidate’s state committee’s
3 contributions to independent expenditure-only political committees, and assuming that the
4 Committee did, in fact, utilize a last in, first transferred account method at the time, the Harwell
5 Response’s assertion does not appear to be correct. According to the State PAC’s disclosure
6 reports, the last \$12,000 received included a \$7,500 individual contribution, which exceeded the
7 Act’s amount limits by \$4,600.⁶⁴ And in any event, the entire \$12,000 contribution consisted of
8 nonfederal funds because the State PAC did not report those funds to the Commission.⁶⁵

9 Next, Harwell’s Response argues that less than the full \$35,000 of the State Committee’s
10 contribution to GOTP included excessive or prohibited funds under the Act if the last in, first
11 transferred accounting method is used.⁶⁶ Again, assuming that the advisory opinions cited in the
12 Harwell Response extend to a candidate’s state committee’s contributions to independent
13 expenditure-only political committees, and assuming that such an accounting method was, in
14 fact, used by the State Committee at the time, it still appears that many of the funds provided to
15 GOTP after Harwell became a federal candidate included excessive or prohibited funds.⁶⁷ This

⁶³ *Id.* at 4-5.

⁶⁴ 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).

⁶⁵ F&LA at 8 n.35, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate) (“Even assuming that the funds comprising the [state committee’s] \$50,000 contribution [to the independent expenditure-only political committee] did not violate the Act’s source prohibitions and amount limitations, the State Committee had not reported those funds to the Commission, thus, the contribution was not permissible.”).

⁶⁶ Harwell Resp. at 4-5.

⁶⁷ 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.*)).

1 is because the last \$35,000 reported by the State Committee includes a \$2,000 contribution from
2 “United Health Group Incorporated” and because the overwhelming majority of the remainder of
3 the last \$35,000 came from PACs, which, under Tennessee state law, may accept contributions
4 from individuals without limit and from corporations.⁶⁸ And, the entire \$35,000 contribution
5 consisted of nonfederal funds because the State Committee did not report those funds to the
6 Commission.⁶⁹

7 The Harwell Response further argues for dismissal because it says the amount in
8 violation is “modest.”⁷⁰ But the cases cited—MUR 7114 and MUR 7337—do not support
9 dismissal of this matter, which involves \$47,000 of nonfederal funds. The Commission
10 dismissed MUR 7114, where a federal candidate’s state committee raised at least \$3,000 in
11 nonfederal funds after his federal candidacy and spent \$1,849.⁷¹ In MUR 7337, far from the
12 \$50,000 amount in violation being considered too modest, the Commission *found reason to*
13 *believe* and conciliated with the federal recipient committee Conservative Leadership for
14 Arizona.⁷² The Commission did not agree on whether there was probable cause that the
15 candidate and her state committee violated 52 U.S.C. § 30125(e)(1)(A).⁷³ Finally, in both MUR

⁶⁸ 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”).

⁶⁹ F&LA at 8 n.35, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate).

⁷⁰ Harwell Resp. at 5.

⁷¹ 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.*).

⁷² See Conciliation Agreement, MUR 7337 (Conservative Leadership for Arizona).

⁷³ Cert. (Sept. 29, 2022), MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate).

1 7114 and 7337, unlike in the instant matter, the relevant state law prohibited state PACs from
2 accepting corporate contributions.⁷⁴

3 * * *

4 Because the record indicates that Harwell EFMC'd the State Committee and the State
5 PAC, and that the State Committee and State PAC's contributed nonfederal funds to GOTP, the
6 Commission finds reason to believe that Harwell, the State Committee, and the State PAC
7 violated 52 U.S.C. § 30125(e)(1)(A) by transferring nonfederal funds in connection with an
8 election for federal office.

⁷⁴ 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.*).

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Government of the People and **MUR:** 8091
Debra Y. Maggart in her official
capacity as treasurer

I. INTRODUCTION

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

For the reasons set forth below, the State Committee and the State PAC are entities established, financed, maintained or controlled (“EFMC’d”) by Harwell, a federal candidate, and their contributions to GOTP consisted of funds that were not subject to the Act’s limitations, prohibitions, and reporting requirements (“nonfederal funds”) which were then spent supporting Harwell’s federal candidacy and opposing her primary election opponent. Accordingly, the Commission finds reason to believe GOTP, as an entity EFMC’d by Harwell, violated 52 U.S.C. § 30125(e)(1)(A) by receiving and spending nonfederal funds in connection with an election for federal office.

¹ The Complaint references 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*, TN 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).

² The State PAC was formerly called Harwell PAC but changed its name in 2017 to Tennesseans for Good State Government.

1 **II. BACKGROUND**

2 Beth Harwell is a former member of the Tennessee House of Representatives.³ She
3 served as speaker from 2011 to 2018.⁴ The State Committee is a state-level single-candidate
4 committee established to support Harwell’s political undertakings as the leader of her party’s
5 state house caucus.⁵ The State Committee’s mailing address is Harwell’s home address, and its
6 email address is “beth@bethharwell.com.”⁶

7 The State PAC is a state-level multi-candidate committee established by Harwell in 2006.
8 Harwell serves as President of the State PAC. Like the State Committee, the State PAC’s
9 mailing address is Harwell’s home address and its email address is “beth@bethharwell.com.”⁷

10 On February 24, 2022, Harwell announced her federal candidacy to represent
11 Tennessee’s newly-drawn 5th Congressional District.⁸ She filed her Statement of Candidacy the

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

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

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

⁶ *Search the Online Campaign Finance Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell” in 4th quarter 2018 reports and select “Harwell (House 18), Beth”) (last visited Oct. 10, 2023).

⁷ *Search the Online Campaign Finance Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell PAC” and “Harwell Committee”) (last visited Oct. 10, 2023).

⁸ 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.⁹ Her principal campaign committee is Harwell for Congress.¹⁰ Harwell lost the
2 Republican primary election on August 4, 2022.¹¹

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, 2022.¹² It
5 received \$35,000 from the State Committee on July 22, 2022.¹³ GOTP also received \$12,000
6 from the State PAC on July 22, 2022.¹⁴ Six days later, it reported spending \$90,084 on
7 independent expenditures supporting Harwell or opposing her Republican primary election
8 opponent Andy Ogles.¹⁵ GOTP reported additional independent expenditures of \$19,475 on
9 August 2, 2022, and \$3,580 on August 4, 2022, again in support of Harwell or opposing Ogles,

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

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

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

¹² 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).

¹³ 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 "Harwell" in "Annual Year End Supplemental" reports for 2022) (last visited Oct. 10, 2023) (showing \$35,000 contribution to GOTP).

¹⁴ 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 State Government" in "Pre-Primary" reports for 2022) (last visited Oct. 10, 2023) (showing \$12,000 contribution to GOTP).

¹⁵ 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 and did not make any more independent expenditures that election cycle.¹⁶ For the 2022 election
2 cycle, GOTP received \$123,500 in total contributions from fifteen contributors and spent a total
3 of \$113,139.50 on independent expenditures, all of which supported Harwell or opposed Ogles.¹⁷
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.¹⁸

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, 2022.¹⁹ 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, 2022.²⁰ 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 in violation of 52 U.S.C.
14 § 30125(e)(1)(A).²¹

¹⁶ 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).

¹⁷ Government of the People: Financial Summary, FEC.GOV, <https://www.fec.gov/data/committee/C00821009/?tab=summary> (last visited Oct. 10, 2023).

¹⁸ *Id.*

¹⁹ Compl. at 5.

²⁰ *Id.* at 5-6.

²¹ *Id.* at 2-3, 5-6.

1 **B. The Response**

2 The GOTP Response focuses on the issue of coordination and asserts that GOTP did not
3 engage in any coordinated conduct as defined in 11 C.F.R. § 109.21(d), and that no coordinated
4 communication occurred as a result.²² GOTP further asserts that independent expenditure-only
5 political committees are not subject to the provisions of 52 U.S.C. § 30125(e)(1)(A).²³

6 **III. LEGAL ANALYSIS**

7
8 **A. There is Reason to Believe that GOTP Violated 52 U.S.C. § 30125(e)(1)(A)**

9 1. Legal Standard

10
11 The Act and Commission regulations prohibit candidates, individuals holding Federal
12 office, agents of a candidate or an individual holding Federal office, or an entity directly or
13 indirectly *established, financed, maintained, or controlled* by or acting on behalf of one or more
14 candidates or individuals holding Federal office from “solicit[ing], receiv[ing], direct[ing],
15 transfer[ing], or spend[ing] funds in connection with an election for Federal office, including
16 funds for any Federal election activity, unless the funds are subject to the limitations,
17 prohibitions, and reporting requirements of this Act.”²⁴

18 This prohibition reinforces 52 U.S.C § 30125(a)²⁵ by preventing federal candidates and
19 officeholders—who controlled the national committees of the political parties—from

²² GOTP Resp. at 2-3 (Dec. 16, 2022).

²³ *Id.* at 3.

²⁴ 52 U.S.C § 30125(e)(1)(A); 11 C.F.R. § 300.61.

²⁵ *See McConnell v. FEC*, 540 U.S. 93, 133 (2003) (“The remaining provisions of new FECA § 323 largely reinforce the restrictions in § 323(a)”).

1 circumventing the prohibitions applying to national committees by controlling ostensibly
2 separate entities that could accept and spend nonfederal funds.²⁶

3 The Commission defines the phrase *established, financed, maintained or controlled* by
4 examining a non-exhaustive list of ten affiliation factors set forth in 11 C.F.R. § 300.2(c)(2).
5 The factors “must be examined in the context of the overall relationship between the [candidate]
6 and the entity to determine whether the presence of any factor or factors is evidence that the
7 [candidate] directly or indirectly [EFMC’d] the entity.”²⁷ The ten factors are:

- 8 (i) A controlling interest in an entity’s voting stock or securities;
- 9 (ii) Authority or ability to direct or participate in the governance of the entity,
10 “formal or informal;”
- 11 (iii) Authority or ability to hire, appoint, demote, or otherwise control an
12 entity’s officers or other decision-making employees or members;
- 13 (iv) Common or overlapping members with an entity;
- 14 (v) Common or overlapping officers or employees with an entity;
- 15 (vi) Having members, officers, or employees who were former members,
16 officers, or employees of an entity;
- 17 (vii) Providing an entity “funds or goods in a significant amount or on an
18 ongoing basis” such as through direct and indirect payments for
19 administrative, fundraising, or other costs;
- 20 (viii) Causing or arranging “funds or goods in a significant amount or on an
21 ongoing basis” to be provided to an entity;
- 22 (ix) Having “an active or significant role in the formation of an entity;”
- 23 (x) Similar patterns of receipts or disbursements with an entity.²⁸

²⁶ See *id.* at 121, 133.

²⁷ See 11 C.F.R. § 300.2(c); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, Final Rules, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

²⁸ 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).

1 2. The State Committee and State PAC are Entities EFMC'd by Harwell

2 The Commission has determined that a state campaign committee of a federal candidate
3 is, as a matter of law, EFMC'd by the federal candidate and is acting on that candidate's behalf.²⁹
4 Here, the purpose of the State Committee was to support Harwell's political undertakings as the
5 leader of her party's state house caucus. Structurally, the State Committee resembles a
6 leadership PAC which, at the federal level, is a political committee directly or indirectly
7 EFMC'd by a federal candidate.³⁰ Therefore, the State Committee should be considered
8 EFMC'd by Harwell as a matter of law.

9 While the Commission provides for the possibility that the relationship between an entity
10 established by a person before they become a candidate may later be severed, it does not appear
11 that Harwell severed her relationship with the State Committee.³¹ Information in the
12 Commission's possession indicates that Harwell has the authority or ability to direct or
13 participate in the governance of the State Committee and has the authority to hire, appoint,
14 demote, or otherwise control the officers of the State Committee. Further, Harwell's personal

²⁹ 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).

³⁰ 11 C.F.R. § 100.5(e)(6); F&LA at 2 n.4, MUR 6435 (Rep. Charles B. Rangel, *et al.*) ("Generally, leadership PACs are formed by individuals who are federal officeholders or candidates to raise funds that they in turn contribute 'to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder's travel when campaigning for other Federal candidates.'") (quoting Notice of Proposed Rulemaking on Leadership PACs, 67 Fed. Reg. 78,753, 78,754 (Dec. 26, 2002)).

³¹ 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).

1 address and the State Committee’s physical address are the same and the State Committee’s
2 email address is “beth@bethharwell.com,” which suggests that Harwell maintains material
3 connections with the State Committee.³² Finally, the name itself—the *Beth Harwell*
4 *Committee*—at the very least, suggests that Harwell maintains material connections with the
5 State Committee and that it is EFMC’d by Harwell and not by anyone else.³³

6 For many of the same reasons, the State PAC also appears to be EFMC’d by Harwell.
7 Information in the Commission’s possession indicates that Harwell (1) established the State
8 PAC; (2) has authority or ability to direct or participate in the governance of the State PAC and
9 has the authority or ability to hire, appoint, demote, or otherwise control the officers of the State
10 PAC; and (3) remains President of the State PAC, a position that ordinarily indicates the ability
11 to control an organization. Thus, it appears that the relationship between Harwell and the State
12 PAC *has not* been severed. And although the State PAC’s name is Tennesseans for Good State
13 Government and no longer bears Harwell’s name, its contribution was reported by GOTP as
14 being from *Harwell PAC*, which, like the *Beth Harwell Committee*, suggests that the State PAC
15 is EFMC’d by Harwell and not by someone else.³⁴ At the very least, it is suggestive of GOTP’s
16 understanding of the continuing material connections between Harwell and the State PAC.
17 Finally, the fact that Harwell’s home address and the State PAC’s physical address are the same

³² See 11 C.F.R. § 300.2(c)(4)(ii). Compare *Search the Online Campaign Database*, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell PAC”) (last visited Oct. 10, 2023) (showing email address and physical address), with Speaker Beth Harwell, TENN. GEN. ASSEMB., <https://www.capitol.tn.gov/house/archives/107GA/members/h56.html> (last visited Oct. 10, 2023).

³³ See 11 C.F.R. § 300.2(c)(4)(ii).

³⁴ The State PAC is also included in Tennessee’s Registry of Election Finance as “Harwell PAC.” TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell PAC”) (last visited Oct. 10, 2023).

1 and that the State PAC’s email address is “beth@bethharwell.com” supports a conclusion that
2 Harwell EFMC’d the State PAC.³⁵

3 3. Government of the People’s Receipt of \$47,000 From Entities EFMC’d
4 by Harwell Caused it to Become Financed by Harwell

5 The sizable contributions made by entities EFMC’d by Harwell to GOTP raises the issue
6 of whether GOTP became financed by Harwell, thereby causing GOTP to be EFMC’d by
7 Harwell. The question of whether Harwell financed GOTP turns on whether the State
8 Committee and the State PAC’s contributions constitute providing funds in a “significant amount
9 or on an ongoing basis” to GOTP.³⁶ The determination of whether an amount is “significant”
10 under 11 C.F.R. § 300.2(c)(2)(vii) may depend to some extent on what percentage of the entity’s
11 total receipts the funding represents.³⁷ The Commission has explained that providing amounts
12 that are so large or comprise a substantial percentage of an entity’s receipts would qualify as
13 being a “significant amount.”³⁸

14 Whether funds provided to an entity qualify as “significant” under 11 C.F.R.
15 § 300.2(c)(2)(vii) and whether the receiving entity should, in turn, be considered to be EFMC’d
16 by a candidate or officeholder is determined by the Commission “on a case-by-case basis and in
17 view of all the relevant circumstances.”³⁹ For example, in AO 2006-04, the Commission

³⁵ Compare Search the Online Campaign Database, TENN. ONLINE CAMPAIGN FINANCE, <https://apps.tn.gov/tncamp/public/cpsearch.htm> (search “Harwell PAC”) (last visited Oct. 4, 2023) (showing email address and physical address), with Speaker Beth Harwell, TENN. GEN. ASSEMB., <https://www.capitol.tn.gov/house/archives/107GA/members/h56.html> (last visited Oct. 10, 2023).

³⁶ 11 C.F.R. § 300.2(c)(2)(vii).

³⁷ F&LA at 9, MUR 7853 (Stand for Truth, Inc.) (citing Advisory Opinion 2004-29 at n.4 (Akin) and Advisory Opinion 2004-25 at 4 (Corzine)).

³⁸ *Id.*

³⁹ See AO 2006-04 at 4 (Tancredo) (contextual factors considered by the Commission in determining that “at the time of the donation” 25% funding was a “significant amount” included the fact that funds provided by

1 determined that a federal candidate’s proposed donation to a state ballot-initiative committee that
2 would constitute 50% of the committee’s total receipts at the time of the donation “must be
3 considered ‘a significant amount’” under 11 C.F.R. § 300.2(c)(vii) such that the federal
4 candidate “financed” the state committee.⁴⁰ In considering whether a donation of 25% (up to
5 \$50,000) of the organization’s total receipts at the time of the donation would constitute “a
6 significant amount,” the Commission said that the donation “must be examined in the context of
7 the overall relationship” between the committee and the entity.⁴¹ In this analysis, the
8 Commission considered the impact of “seed money” to be important in the context of the overall
9 relationship and the question of whether the entity was financed under the Act. The Commission
10 concluded that a donation of up to \$50,000 when the entity had just a little more than \$9,000
11 “would represent substantial ‘seed money’ for [the entity] and would result in [the entity]
12 depending in large part on [the candidate] for its initial existence.”⁴²

13 In the enforcement context, the Commission also considers the various facts and
14 circumstances of a particular matter in analyzing whether an entity was financed within the
15 meaning of Section 30125(e)(1) and 11 C.F.R. § 300.2(c)(2)(vii). Recently, in MUR 7853, the
16 Commission concluded that the contribution of \$126,500 by Campaign to Elect Lance Harris, the
17 state campaign committee of Louisiana Rep. and federal candidate Lance Harris, to the
18 independent expenditure-only political committee Stand for Truth, Inc., at a time when Stand for

Tancredo’s committee would be used as “seed money” for the ballot initiative committee); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

⁴⁰ AO 2006-04 at 4.

⁴¹ *Id.*

⁴² *Id.*

1 Truth had only \$5,639.20, caused Stand for Truth to become financed by Lance Harris.⁴³ In
2 MUR 7337, the Commission found reason to believe that a \$50,000 contribution from a federal
3 candidate’s state committee which comprised ninety-nine percent of an independent expenditure-
4 only political committee’s total receipts constituted a “significant amount.”⁴⁴ In MUR 5367, the
5 Commission determined that Darrell Issa’s provision — both individually and *through an*
6 *organization* he controlled with his spouse — of more than \$1.76 million (over 60% of the
7 receipts) to a state ballot measure committee, constituted a “significant amount.”⁴⁵

8 Here, when examined in the context of the overall relationship between Harwell, the
9 State Committee and State PAC, and GOTP, the record indicates that the state committees’
10 combined provision of \$47,000 to GOTP on July 22, 2022 qualifies as a “significant amount”
11 under 11 C.F.R. § 300.2(c)(2)(vii). The State Committee and State PAC’s contributions
12 represented 60.8% of GOTP’s total receipts at the time they were made.⁴⁶ In light of the
13 Commission’s previous assessments in AO 2006-04 and MUR 5367, the fact that the State
14 Committee’s and State PAC’s combined contributions amounted to 60.8% of GOTP’s receipts
15 must be considered a substantial percentage.⁴⁷ The State Committee and State PAC’s combined

⁴³ F&LA at 12, MUR 7853 (Stand for Truth, Inc.).

⁴⁴ See F&LA at 7, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate). Cf. F&LA at 3-5, MUR 6753 (People for Pearce) (noting the “relatively low dollar amount at issue,” and the fact that the contribution was refunded as justifications for dismissal in matter involving candidate committee’s \$10,000 donation to an independent expenditure-only political committee).

⁴⁵ See F&LA at 4-8, MUR 5367 (Congressman Darrell Issa).

⁴⁶ See *supra* at 3-4.

⁴⁷ Even if the Commission were to apply a lifetime receipts-only rule—which it rejected in MUR 7853 (Stand for Truth, Inc.) as contrary to the regulation’s “situation-specific” test for determining when a sponsor’s provision of funds constitutes a “significant amount”—the State Committee and State PAC’s share of 38% of GOTP’s lifetime funding would still qualify as a substantial percentage. See F&LA at 10-11, MUR 7853 (Stand for Truth). In the context of affiliation, the Commission has viewed a committee’s contribution of 40% and 35% of its receipts to represent a “substantial portion” of its receipts. See AO 1976-104 at 3 (Good Government Committee of First

1 contributions also represent GOTP's largest contributions.⁴⁸ Finally, GOTP was also newly
2 incorporated and newly registered with the Commission, and does not appear to have been able
3 to finance its first (and largest) reported independent expenditures in support of Harwell or
4 opposing her opponent Andy Ogles without the State Committee and State PAC's funds.⁴⁹ In
5 this context, the State Committee and the State PAC's contributions to GOTP constitute
6 providing funds in a "significant amount" under 11 C.F.R. § 300.2(c)(2)(vii).

7 It cannot be credibly argued that contributions of \$35,000 and \$12,000 are too small to
8 constitute financing under 52 U.S.C. § 30125(e)(1). The Commission has never established a
9 funding floor, either in terms of dollar amount or percentage of receipts, under which an
10 organization will be deemed *per se* not to have been financed by another entity. Indeed, when
11 the Commission promulgated 11 C.F.R. § 300.2(c)(2)(vii), it rejected carving out a \$5,000 *de*
12 *minimis* exception as contrary to the regulation and plain meaning of the Act.⁵⁰ And the \$35,000
13 and \$12,000 contributions here are well above even the proposed and rejected \$5,000 exception.

14 Nor should the State Committee's \$35,000 contribution and the State PAC's contribution
15 of \$12,000 be assessed separately to determine whether GOTP became financed by Harwell.

Federal Savings of Miami) (40% of receipts is substantial); First GCR at 8 & Cert. ¶ 4 (May 10, 1982), MUR 1425 (Columbia River Trust Political Action Committee) (35% of receipts is substantial). 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 affiliation concepts in a different context. Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002). Accordingly, it appears that even if a lifetime receipts-only rule were applied to GOTP, the \$47,000 (38%) it received from the State Committee and State PAC should be considered significant.

⁴⁸ Even if not combined, the State Committee's \$35,000 contribution represented GOTP's largest contribution and the State PAC's \$12,000 contributions was GOTP's third largest. *See supra* p. 3.

⁴⁹ *See supra* pp. 3-4; F&LA at 11, MUR 7853 (Stand for Truth, Inc.) (noting that the only independent expenditure made by Stand for Truth after receiving funds from Lance Harris's state committee was to support Lance Harris's federal candidacy).

⁵⁰ Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,084 (July 29, 2002).

1 Section 30125(e) speaks in terms of entities EFMC'd or acting on behalf of one or more
2 *candidates*. Thus, it is the link to the candidate that is required for liability under 52 U.S.C.
3 § 30125(e)(1)(A) and Harwell's control of the State Committee and State PAC provide that
4 necessary link.⁵¹ Accordingly, the combined \$47,000 contributed by the State Committee and
5 State PAC to GOTP is the relevant figure for determining whether GOTP became financed by
6 Harwell.⁵²

7 Any funds GOTP solicited, received, directed, transferred, or spent in connection with a
8 federal election after becoming financed by Harwell, a federal candidate, were required to be
9 federally permissible.⁵³ The State Committee and State PAC's contributions included funds that
10 did not comply with the Act's amount limitations and source prohibitions.⁵⁴ But even assuming
11 that the State Committee's and State PAC's contributions did not violate the Act's source
12 prohibitions and amount limitations, the committees did not report any of those funds to the
13 Commission. Thus, their contributions did not consist of federal funds.⁵⁵

14 Accordingly, the Commission finds reason to believe that GOTP violated 52 U.S.C.
15 § 30125(e)(1)(A) by receiving and spending nonfederal funds in connection with an election for
16 federal office.

⁵¹ 52 U.S.C. § 30125(e)(1)(A).

⁵² See Conciliation Agreement ¶ IV.13, MUR 7853 (Stand for Truth, Inc.) (independent expenditure-only committee became financed by a federal candidate *through* an entity that candidate EFMC'd); F&LA at 6-7, MUR 5367 (Congressman Darrell Issa) (combining Darrell Issa's direct donations and donations by his company to determine that he EFMC'd ballot measure committee).

⁵³ 52 U.S.C. § 30125(e)(1)(A).

⁵⁴ See Attachment 1; Attachment 2.

⁵⁵ F&LA at 8 n.35, MUR 7337 (Debbie Lesko and Re-Elect Debbie Lesko for Senate).