



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

BEFORE THE FEDERAL ELECTION COMMISSION

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

STATEMENT OF REASONS OF CHAIRMAN SEAN J. COOKSEY

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

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

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

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

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

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

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

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

OGC’s methodology is flawed, however, because it fails to consider the entirety of GOTP’s receipts. Instead, it uses the arbitrary cutoff of considering GOTP’s receipts only up to the date of the State Committees’ contributions—not all receipts in the relevant time period. During its active period, GOTP received only fifteen contributions—totaling \$123,250—all over a single two-week span from July 20 to August 3, 2022.⁸ The State Committees made their contributions on July 22, 2022.⁹ Given that the entirety of GOTP’s funds were raised over the course of 15 days, it is misleading, in my view, to calculate the proportion of the State Committee’s contributions as part of GOTP’s overall receipts based on the monies received in the first three days of fundraising, but not the following twelve.¹⁰ By OGC’s logic, every committee would also be controlled by its first contributor, who by definition provides 100 percent of the committee’s funds up to that point. This is plainly wrong.

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

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

⁷ *Id.* at 20–21.

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

⁹ *Id.*

¹⁰ *Id.*

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

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

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



Sean J. Cooksey
Chairman

April 9, 2024

Date