

STATE OF TENNESSEE
BUREAU OF ETHICS AND CAMPAIGN FINANCE

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IN THE MATTER OF:)
)
WILLIAMSON STRONG,) TENNESSEE SECRETARY OF STATE
) REGISTRY OF
) ELECTION FINANCE
Petitioner.)
) No. C-15-01
)

PETITION FOR REVIEW AND HEARING
REGARDING ORDER ASSESSING CIVIL PENALTIES

Pursuant to the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, *et seq.*, and the Tennessee Campaign Financial Disclosure Act of 19880, T.C.A. §§ 2-10-101, *et seq.* (the “Act”), Petitioner Williamson Strong (“Petitioner”) hereby: (i) petitions the Tennessee Bureau of Ethics and Campaign Finance (the “Bureau”) to review the Order of the Tennessee Registry of Election Finance (the “Registry”) assessing civil penalties against Petitioner, received by Petitioner on June 3, 2015 (the “Order”); (ii) appeals the Order with respect to all findings; and, (iii) requests a hearing on these matters before the Tennessee Bureau of Ethics and Campaign Finance.

In light of all relevant facts and circumstances, the findings outlined in the Order are arbitrary, capricious, and/or contrary to law. These findings include, but are not limited to:

- As a threshold matter, the election at issue was purely a “local” election, and according to Tenn. Code Ann. § 2-10-109, the Registry lacks jurisdiction over a local election challenge unless referred the matter by the local Attorney General. Here, the Tennessee District Attorneys General Conference reviewed this matter and made a finding of no wrongdoing on behalf of Williamson Strong, and naturally did not refer this matter to the Registry. Thus, the Registry never had jurisdiction in this matter.
- The Registry took private emails sent between individuals and made a *sua sponte* finding that these private communications somehow represented campaign finance expenditures.

The Registry never explained how it reached this absurd result or granted the individuals it deemed without any basis were the “alter egos” of Williamson Strong an opportunity to defend themselves against this nonsensical approach.

- The Registry ignored sworn affidavits submitted in order to defend against any potential facts alleged by the complainant, and instead substituted the complainant and its own members’ conjecture for its findings of fact. The Registry never permitted Williamson Strong or its counsel to argue against these flights of fancy.
- The Registry changed the statutory definition it was analyzing the actions of Williamson Strong under without giving Williamson Strong any opportunity to respond to this sudden reversal in analysis.
- The Registry also made findings of fact and law against Williamson Strong regarding spoliation of evidence that are flat out false, contradicted by the record, and were never raised prior to the issuing of its Order against Williamson Strong. These *sua sponte* findings are not only indicative of the flawed procedures used by the Registry, but they have disparaged and embarrassed Williamson Strong’s members, particularly the individuals the Registry also made a *sua sponte* finding of being the “alter egos” of Williamson Strong.

More specifically, but not limited to, the Registry made the following errors throughout each of the following sections of the order:

FINDINGS OF FACT

- The Registry issued a finding that “Williamson Strong is an unincorporated association that was formally launched in June, 2014.” The Registry offered no rationale, authority, or facts to support its finding that Williamson Strong, as an “unincorporated association,”

could be or was “formally launched” and what these undefined terms actually mean in terms of legal consequence.

- The Registry issued a finding that “Williamson Strong is the alter ego of its principals.” The Registry offered no rationale, authority, or facts to support its finding that Williamson Strong is the alter ego of a group of private individuals, and this issue had never once been raised or discussed prior to this finding. Nor were the individuals served with process or given an opportunity to respond to the charge. Accordingly, this finding is not only unsupported, but also insufficient in terms of due process.
- The Registry issued a finding that “Williamson Strong acting by itself or through its principals... supported or opposed candidates for public office and is thus a multi-candidate political committee.” The Registry alleged that the following facts led to this conclusion, despite the fact they in no way support the Registry’s *sua sponte* finding that Williamson Strong or its principals made expenditures for or against any candidates:
 - a. The Registry cited a private email sent by Jennifer Smith in her personal capacity to her personal acquaintances seeking recommendations about candidates. The Registry found this email demonstrated “intent by the organization to support or oppose candidates for public office” without any rationale, authority, or facts to support its finding that any statements made by Jennifer Smith as a private citizen constitute acts on behalf of Williamson Strong, or how seeking information about candidates demonstrates political expenditures on behalf of candidates.
 - b. The Registry cited Jennifer Smith’s e-mail to candidates who were her personal acquaintances, informing these individuals about Williamson Strong, introducing Susan Drury, and offering Drury’s assistance to their

campaigns. The Registry found that this email represented a “statement made by one of Williamsons Strong’s principals on its behalf and was in support of candidates for public office, to wit Eric Welch, Melody Morris, Pat Anderson, and Vicki Vogt” without offering a rationale, authority, or facts that suggest why this private email is relevant to its decision to identify Williamson Strong as a political campaign committee.

- c. The Registry cited to Williamson Strong website’s statement identifying some of its purposes were “to support those political and civic leaders who believe in Williamson County Schools...” and “building awareness among Williamson County voters about factual information as it relates to the future of education in our community.” These statements were removed after the election’s resolution, as they were no longer relevant. The Registry concluded these statements demonstrate an intent to support or oppose candidates without any rationale, authority, or facts to support its finding that a general statement of intent regarding issues represents an endorsement of specific candidates.
- d. The Registry next found that Jennifer Smith’s purchase of voter lists for the express purpose of encouraging voter turnout “demonstrates intent of the organization to support or oppose candidates for public office” without any rationale, authority, or facts to support its finding. The Registry stated that the specific records Smith used include “the most likely voters in a low turnout election such as the August, 2014 school board election” [*sic*]. Based on the Registry’s candor, it is believed this statement is meant to state that the records Smith requested were *not* “the most likely voters in a

low turnout election,” which somehow casts doubt on Smith’s intentions. Not only has the Registry failed to provide a rationale or factual basis for why this behavior would qualify as a campaign expenditure, but this theory runs counter to the notion of purchasing voter data to *increase* voter turnout in a low turnout election cycle.

- e. The Registry found that an open letter posted by Williamson Strong extolling the virtues of the Williamson County School District is a statement that demonstrates intent by the organization to support or oppose candidates, without any rationale, facts, or authority suggesting how a letter espousing policies and direction, with no reference to specific candidates, represents support to specific candidates.
- f. The Registry found that Jennifer Smith’s personal post in her individual capacity to Williamson Strong’s Facebook page of a third party’s endorsements “was on [Williamson Strong’s] behalf and is a statement in support of candidates for public office.” The Registry also falsely found that this post had subsequently been removed, despite the fact that it is and at all times has been accessible on the Williamson Strong Facebook page. The Registry did not provide any rationale, facts, or authority supporting a finding that Smith reporting on a third party’s endorsement, either as an individual Tennessee citizen or as a principal of Williamson Strong, was a statement by Williamson Strong in support of candidates for public office.
- g. The Registry found that an email sent by Kim Henke to her personal acquaintances in which she offered her personal opinions on the elections, prior to her involvement as an alleged “principal” of Williamson Strong,

was nevertheless made on behalf of Williamson Strong, without rationale or authority to support this finding, and while presenting facts in contravention of this finding, as Henke's email specifically refers to Williamson Strong as a third party group and the Registry found that she was a late addition to Williamson Strong's so-called "principals."

- h. The Registry found that the following Williamson Strong post was a statement in opposition to four candidates:

We have come together because of concerns about some of the candidates and their backers. We are proud of our schools and the direction they are headed. All of the candidates running for School Board are Republicans. This isn't partisan politics. This is about picking candidates who will best continue our County on a path of prosperity, vitality and desirability.

The Registry offered no rationale, facts, or authority for finding a statement denying political intent and supporting the direction of policies is a statement made in opposition to candidates.

- i. The Registry found that an open letter published by Williamson Strong to Williamson County teachers to "become educated on the candidates who are running for the governing body of our school system" and referencing, but not elaborating upon, Williamson Strong's own "specific endorsements" represents a statement on behalf of candidates only named in private emails between Smith, Henke, and their personal acquaintances. The Registry offered no rationale, facts, or authority for finding that a vague statement referencing specific endorsements that were never actually made in any public forum could be a statement in support of or in opposition to candidates for public office.

- j. The Registry found that a Facebook post made by Williamson Strong reporting on unspecified candidates withdrawing from a School Board forum, and generally questioning why they would do so, represented a statement in opposition to four specific candidacies. The Registry offered no rationale, facts, or authority for this finding.
- k. The Registry found that a Facebook post made by “Sarah Evans Bernhard” [*sic*] discussing how Williamson County school performance impacts property values was a statement by Williamson Strong in opposition to four specific candidates. The Registry again falsely alleged that this post by Sarah Barnard had been removed, when in fact this post is and always has been available on the Williamson Strong Facebook page. The Registry offered no rationale, facts, or authority in support of this finding that Barnard’s post about correlations in education and property values represented a statement by Williamson Strong in opposition to four candidacies.
- l. The Registry found that an article on Williamson Strong’s website about a group known as the 912 Project and public figure Glenn Beck’s views on public education, highlighting specific school board members and candidates’ ties to these entities, was a statement by Williamson Strong in opposition to four candidates’ candidacies. The Registry offered no rationale, facts, or authority for this contention. The Registry also appeared to express wrongdoing by Williamson Strong in editing the article after the August 7, 2014 election in order to keep its contents relevant.

- m. The Registry found that a post made by “Sarah Evans Bernhard” [*sic*] on behalf of Williamson Strong dispelling false information distributed by Susan Curlee and presenting factual information about the organization Americans for Prosperity represented statements in opposition to Susan Curlee’s candidacy. The Registry again falsely alleged that this post was removed when it is and always has been accessible online. The Registry did not offer a rationale, facts, or authority for this contention that Williamson Strong’s post of factual statements about Curlee’s campaign literature represented a statement against Curlee’s candidacy.
- The Registry issued a finding that “Williamson Strong acting by itself or through its principals... made expenditures in support of or in opposition to candidates for public office.” The Registry goes on to highlight actual disclosed expenditures by individuals on behalf of Williamson Strong and false expenditures derived from unsworn conjecture presented by Susan Curlee, without providing rationale, facts, or authority as to how any of these expenditures, both real and fictional, were on behalf of or in opposition to any candidates.
 - The Registry explicitly ignored sworn evidence provided by Williamson Strong refuting Curlee’s unsworn conjecture in contravention of its own Rules.
 - The Registry found that “Williamson Strong failed to appoint a treasurer prior to making expenditures in support of or in opposition to candidates for public office” without adequately supporting why Williamson Strong was obligated to do so.
 - The Registry found “that Williamson Strong failed to file a second quarter campaign financial disclosure report with the Williamson County Election Commission on or

before July 10, 2014” without adequately supporting why Williamson Strong was obligated to do so.

- The Registry found “that Williamson Strong failed to file a pre-general campaign financial disclosure report with the Williamson County Election Commission on or before July 28, 2014” without adequately supporting why Williamson Strong was obligated to do so.
- The Registry found “that Williamson Strong failed to file a third quarter campaign financial disclosure report with the Williamson County Election Commission on or before October 10, 2014” without adequately supporting why Williamson Strong was obligated to do so.
- The Registry found “that at some time subsequent to the filing of this complaint Williamson Strong's principals scrubbed potentially problematic posts from its website and Facebook timeline. As noted above, some of this scrubbing has been detected by the Registry. On this basis, the Registry concludes that there has been intentional spoliation of evidence in this matter by Williamson Strong acting through its principals.” Not only were these *sua sponte* findings made for the first time in the final Order, but no one was ever afforded any opportunity to challenge these accusations of wrongdoing. Each record cited by the Registry as being “scrubbed” was provided to the Registry by Williamson Strong to refute Curlee’s baseless claims. Furthermore, all of these allegedly “scrubbed” records were never actually deleted and are, and always have been, available online. Finally, none of these allegedly deleted posts are relevant to the issue of whether Williamson Strong made contributions for or in opposition to any candidates.
- The Registry found that “[t]he intentional spoliation or destruction of evidence raises an inference that the evidence would have been unfavorable to the cause of the spoliator,

and the Registry finds that there are other materials unfavorable to Williamson Strong that have been destroyed or hidden.” This finding is spurious and scurrilous, as each record cited by the Registry as being “scrubbed” was provided to the Registry by Williamson Strong to refute Curlee’s baseless claims. Furthermore, each of these allegedly “scrubbed” records were never actually deleted and are, and always have been, available online. Finally, none of these allegedly deleted posts are relevant to the issue of whether Williamson Strong made contributions for or in opposition to any candidates.

STATEMENT OF POLICY AND CONCLUSIONS OF LAW

- The Registry found that Tenn. Code Ann. § 2-10-102(12)(A) was “pertinent” despite only instructing Williamson Strong to refute allegations against Williamson Strong pursuant to Tenn. Code Ann. § 2-10-102(12)(C). Subsection (C) is the only “pertinent” definition in relation to an affiliation such as Williamson Strong. The Registry did so without jurisdiction, in violation of the individuals it declared to be the alter egos of Williamson Strong’s rights, and despite the fact this restriction constituted a prior restraint on speech without any semblance of being narrowly tailored.
- The Registry found that “[c]ampaign finance registration and reporting requirements do not impair rights under the First Amendment of the Constitution” despite the Registry’s findings clearly impairing Williamson Strong members’ First Amendment rights.
- The Registry found that “[c]ampaign finance registration and reporting requirements do not impair rights under the Tennessee Constitution” despite the Registry’s findings clearly impairing Williamson Strong members’ rights pursuant to Article I, Section 19 of the Tennessee Constitution.
- The Registry found that “intentional spoliation or destruction of evidence raises an inference that the evidence would have been unfavorable to the cause of the spoliator”

despite the fact the allegedly destroyed evidence was never destroyed, and contrarily was fully and intentionally disclosed by Williamson Strong to the Registry.

RULING

- The Registry assessed a Class 2 Civil penalty of two thousand five hundred dollars (\$2,500) against Williamson Strong “for violation of T.C.A. § 2-10-105(e)(1)” without adequately supporting how Williamson Strong had done so.
- The Registry assessed a Class 2 Civil penalty of two thousand five hundred dollars (\$2,500) against Williamson Strong “for multiple violations of T.C.A. § 2-10-105(c)(1)” without adequately supporting how Williamson Strong had done so.

This above is not an exhaustive list of the grounds and reasons for Petitioner’s objections to the Order, and Petitioner reserves the right hereafter to raise additional grounds and reasons by amendment of this Petition or otherwise.

Petitioner hereby requests that the Bureau of Ethics and Campaign Finance amend the Order to find Petitioner Williamson Strong is not a “political campaign committee,” is not in violation of any provisions of the Act, and is accordingly relieved of any obligation to pay civil penalties for any violations. If the Order is so amended, the forgoing appeal would be moot and would be withdrawn by Petitioner.

DATED this 1st day of July, 2015.

Respectfully Submitted,



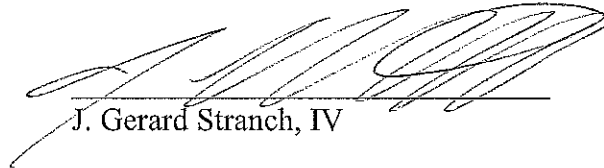
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by hand delivery upon Administrative Procedures Division, 312 Rosa L. Parks Avenue, Snodgrass Tower, 8th Floor, Nashville, Tennessee 37243, Drew Rawlins, Executive Director of the Tennessee Bureau of Ethics and Campaign Finance, 404 James Robertson Parkway, Suite 104, Nashville, Tennessee 37243-1360, on the 1st of July, 2015.


J. Gerard Stranch, IV