**BEFORE THE TENNESSEE REGISTRY OF ELECTION FINANCE**

Tennessee Registry of Election Finance, )

Petitioner )

vs. )

) No. C17-01

Jeremy Durham, )

Respondent )

**ORDER**

This matter came on to be heard by the Tennessee Registry of Election Finance (“Registry”) on June 7, 2017 at its regularly scheduled meeting upon presentation of evidence substantiating that Jeremy Durham (“Respondent”) had committed multiple violations of T.C.A. §§ 2-10-105(a), 2-10-107(a)(2)(A), 2-10-107(a)(2)(B), 2-10-114(a)(7), 2-10-114(b)(1), 2-10-114(b)(2), 2-10-212(c), and 2-10-302.

**I. INTRODUCTION AND BACKGROUND**

1. On June 6, 2016 the Attorney General and Reporter referred this matter to the Registry based on the Registry’s exclusive jurisdiction over violations of the Campaign Financial Disclosure Act of 1980, as amended, T.C.A. §§ 2-10-101 *et seq*. and the Campaign Contribution Limits Act of 1994, as amended, T.C.A. §§ 2-10-301 *et seq*.

2. The referral was reviewed by the Registry at its June 8, 2016 meeting at which a quorum was present. After discussion, proper motion, and second, the Registry voted unanimously to investigate Respondent’s campaign from the 2014 election cycle forward and to issue subpoenas, as necessary, to any financial institution involving his personal, campaign and business activity.

3. The Registry’s actions were required and authorized pursuant to T.C.A. § 2-10-206(7).

4. Based on Registry’s instructions, the Registry’s staff conducted an audit of various of Respondent’s accounts for the 2014 and 2016 election cycles (the “Audit”). The Audit was conducted pursuant to the authority of T.C.A. § 2-10-207(1).

5. The Audit was completed in February, 2017. It was presented to the Registry prior to its meeting on February 28, 2017. At that meeting:

a. After discussion, proper motion, and second, the Registry voted unanimously to approve Audit with the included findings.

b. After discussion, proper motion, and second, the Registry voted unanimously to refer the Audit to the Tennessee Ethics Commission to consider matters within its jurisdiction.

c. After discussion, proper motion, and second, the Registry voted unanimously to issue Respondent a Show Cause Notice on Findings 1 - 10, 11 (for failure to maintain adequate documentation as required by statute) and 12. After discussion with Respondent’s attorney, the Registry voted unanimously to request that the Respondent’s response to the Show Cause Notice be provided to the Registry by May 1, 2017, and that this matter be placed on the Registry’s June 2017 agenda.

6. Respondent’s Response to the Show Cause Notice was received by the Registry on May 1, 2017. The Response consisted of a sixty page letter with forty-nine attachments. The letter contained a disclaimer reading as follows:

“Although Mr. Durham provided very important facts for this Response to the Report and Show Cause, the great majority of this document was prepared by Mr. Durham’s campaign advisors. Thus, not every word in this Response is directly attributable to Mr. Durham.”

7. The Response was not sworn to, and the “campaign advisors” were anonymous and their identities have not been revealed. The Registry found that the Response to Report and Show Cause notice did not satisfy the requirements of Tenn. R. & Regs. 0530-1-1-.11(b)(1), and voted unanimously to disallow it as evidence. The Response to Report and Show Cause was placed in the record for identification purposes only.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A. Unitemized Contributions**

8. The Audit found that Respondent deposited twenty-nine checks of $100 or less, totaling $2,180, between the 2013 Mid-Year reporting period through the 2015 Mid-Year reporting period. These unitemized contributions are set forth in Appendix A of this Order. None of these unitemized contributions were reported on any of Respondent’s reports.

a. Respondent violated T.C.A. § 2-10-105(a) and T.C.A. § 2-10-107(a)(2)(A) by failing to report these contributions. T.C.A. § 2-10-105(a) requires all contributions received to be reported on campaign finance reports. In addition, T.C.A. § 2-10-107(a)(2)(A) requires a lump sum disclosure of contributions of $100 or less.

b. The Registry specifically finds that Respondent’s failure to disclose these contributions was systematic.

c. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

d. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that twenty-nine (29) Class 2 civil penalties of five hundred dollars ($500) each are imposed against the Respondent for failure to report unitemized contributions, for a total civil penalty of fourteen thousand five hundred dollars ($14,500).

9. The Audit found during the 2015 Year-End reporting period that Respondent reported unitemized contributions of $550. However, thirty-one checks of $100 or less, totaling $2,315, were deposited into the campaign account during this same period. Respondent failed to report the difference of $1,765 in unitemized contributions during this period. These unitemized contributions are set forth in Appendix B. Since the campaign maintained insufficient records it could not be determined which of the unitemized contributions were not reported:

a. Respondent violated T.C.A. § 2-10-105(a) and T.C.A. § 2-10-107(a)(2)(A) by failing to report these contributions made during the audit period. T.C.A. § 2-10-105(a) requires all contributions received to be reported on campaign finance reports. In addition, T.C.A. § 2-10-107(a)(2)(A) requires a lump sum disclosure of contributions of $100 or less.

b. The Registry specifically finds that Respondent’s failure to disclose these contributions was systematic.

c. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

d. The Registry finds that under the facts and circumstances of this case, assessment of a Class 2 civil penalty is appropriate. The Registry **ORDERS** that a single Class 2 civil penalty of five thousand dollars ($5,000) is imposed against the Respondent for failure to properly report unitemized contributions during the 2015 Mid-Year reporting period.

**B. Cash Contributions**

10. The Audit found that Respondent received $4,702 in cash contributions which were deposited into the campaign account in six deposits. Respondent maintained no records to document the source of the anonymous cash contributions. These cash contributions, listed in Appendix C, were not reported on any of Respondent’s reports.

a. Respondent violated T.C.A. § 2-10-105(a) by failing to report these contributions made during the audit period.

b. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

c. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that six (6) Class 2 civil penalties of five thousand dollars ($5,000) each are imposed against the Respondent for failure to properly report cash contributions during the audit period for a total civil penalty of thirty thousand dollars ($30,000).

**C. Itemized Contributions**

11. The Audit found that Respondent failed to report $24,461.95 in contributions deposited into the campaign account from contributors who contributed more than $100 during a reporting period. This amount includes the following contributions:

a. Checks from four donors totaling $2,750,as set forth in Appendix D.

i. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(A) by failing to report these contributions. T.C.A. § 2-10-105(a) requires all contributions received to be reported on campaign finance reports. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

ii. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a single Class 2 civil penalty of five thousand dollars ($5,000) is imposed against the Respondent for failure to properly report these four contributions.

b. Five thousand of a six thousand contribution check from John and Cathy Simmonds. The $6,000 check, dated December 7, 2015, was deposited on December 11, 2015 during the Year-End 2015 reporting period. Respondent reported a $1,000 contribution from Mr. Simmonds with the remaining $5,000 being unreported.

i. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(A) by failing to report these contributions. T.C.A. § 2-10-105(a) requires all contributions received to be reported on campaign finance reports. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

ii. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for failure to properly report this contribution.

c. A $1,000 contribution check and $500 of a $5,000 contribution check from Tracy and Cynthia Miller. The $1,000 check, dated November 27, 2015, and deposited on November 30, 2015 during the 2015 Year End reporting period, was not reported. The $5,000 check, dated January 8, 2016, was deposited on January 13, 2016 during the 2015 Year-End reporting period. The $5,000 check supports three reported itemized contributions of $1,500, two from Tracy Miller and one from Cynthia Miller, totaling $4,500.

i. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(A) by failing to report these contributions. T.C.A. § 2-10-105(a) requires all contributions received to be reported on campaign finance reports. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

ii. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for failure to properly report this contribution.

d. One thousand of a three thousand contribution check from Kent Davis, where the check was written with no payee. The check, dated July 6, 2014, was deposited July 10, 2014 during the 2014 Pre-Primary reporting period. Based on the deposit slips, Respondent split the funds between Durham PAC ($2,000) and the campaign account ($1,000). Respondent reported the $2,000 deposited into the PAC account but failed to report the $1,000 deposited in the campaign account.

i. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(A) by failing to report these contributions. T.C.A. § 2-10-105(a) requires all contributions received to be reported on campaign finance reports. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

ii. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for failure to properly report this contribution.

e. A transfer of $2,211.95 from a federal political campaign committee named Volunteer Values PAC. The $2,211.95, which was the remaining balance in the PAC account when it was closed, was transferred to the campaign account on November 26, 2014 during the 2014 Fourth Quarter reporting period.

i. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(A) by failing to report this contribution. T.C.A. § 2-10-105(a) requires all contributions received to be reported on campaign finance reports. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

ii. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for failure to properly report this contribution.

12. The Audit found that Respondent reported $1,400 in contributions but the associated funds could not be verified as being deposited into the campaign account. Respondent reported three contributions totaling $1,400 that have no supporting documentation to verify that the funds were deposited into a campaign account. These contributions are set forth in Appendix E.

a. The failure to accurately disclose campaign contributions is a violation of T.C.A. § 2-10-105(a). Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

b. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that three (3) Class 2 civil penalty of one thousand dollars ($1,000) each is imposed against the Respondent for failure to properly account for these contributions for a total civil penalty of three thousand dollars ($3,000).

**D. Interest Earned**

13. The Audit found that Respondent failed to report $10,623.70 in interest earned on campaign funds and deposited $1,637.50 of that interest into Respondent’s personal bank account.

a. The definition of contribution (T.C.A. §2-10-102(4)) includes “advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, gift, or subscription of money or like thing of value” which would include interest on campaign funds. Respondent’s campaign earned interest both on the campaign bank account and through promissory note activity during the Audit period.

b. Respondent’s campaign checking account earned interest of $529.97 during the Audit period, however, only $43.77 was reported on the 2016 Second Quarter report. The remaining $486.20 was unreported.

i. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(A) by failing to report all of these contributions. T.C.A. § 2-10-105(a) requires all contributions received to be reported on campaign finance reports. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

ii. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of five thousand dollars ($5,000) is imposed against the Respondent for failure to properly report this contribution.

c. Respondent’s campaign provided funds from the campaign account to businesses and individuals, which generated interest earnings totaling $14,443.06. Respondent reported $4,305.56 of the interest on the 2016 Second Quarter report. The remaining $10,137.50 was unreported.

i. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(A) by failing to report all of these contributions. T.C.A. § 2-10-105(a) requires all contributions received to be reported on campaign finance reports. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

ii. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for failure to properly report these contributions.

d. Respondent deposited $1,637.50 of the interest earned from promissory notes held by the campaign into Respondent’s personal bank account. This is a violation of T.C.A. §2-10-114(b)(1) which prohibits the personal use of campaign funds.

i. Respondent violated T.C.A. §§ 2-10-114(b)(1) by depositing these interest earnings into his personal account. He also violated T.C.A. § 2-10-105(a) which requires all contributions received to be reported on campaign finance reports. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

ii. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for failure to properly report and account for this contribution.

**E. Excess Contributions**

14. The Audit found that Respondent received $5,500 in contributions which exceeded the individual campaign contribution limit. T.C.A. § 2-10-302 limits the amount that an individual can contribute to a candidate for the state House of Representatives to $1,500 per election. For the purpose of this statute, primary and general elections are deemed to be separate elections. These violations include the following:

a. Lee Beaman made two contributions totaling $4,500 to Respondent’s 2016 campaign: a $1,500 check dated November 23, 2015 and a $3,000 check dated May 18, 2016. The contribution limit for an individual was $3,000 ($1,500 primary and $1,500 general). The $1,500 difference is a violation of T.C.A. § 2-10-302.

i. Failure to comply with the requirements T.C.A. § 2-10-302 is subject to a maximum civil penalty of not more than ten thousand dollars ($10,000) per violation or one hundred fifteen percent (115%) of the amount of all contributions made or accepted in excess of the limitations established by this part, whichever is greater. T.C.A. § 2-10-308(a).

ii. The Registry finds that under the facts and circumstances of this case an assessment of civil penalties is appropriate. The Registry **ORDERS** that a civil penalty of five thousand dollars ($5,000) is imposed against the Respondent for exceeding the individual contribution limits.

b. Tracy and Cynthia Miller made three contributions from a joint account totaling $7,500 to Respondent’s 2016 campaign. The contributions consisted of a $1,500 check dated April 23, 2015, a $1,000 check dated November 23, 2015, and a $5,000 check dated January 8, 2016. The contribution limit for the couple was $6,000 ($1,500 primary and $1,500 general for each individual). The $1,500 difference is a violation of T.C.A. § 2-10-302.

i. Failure to comply with the requirements T.C.A. § 2-10-302 is subject to a maximum civil penalty of not more than ten thousand dollars ($10,000) per violation or one hundred fifteen percent (115%) of the amount of all contributions made or accepted in excess of the limitations established by this part, whichever is greater. T.C.A. § 2-10-308(a).

ii. The Registry finds that under the facts and circumstances of this case an assessment of civil penalties is appropriate. The Registry **ORDERS** that a civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for exceeding the individual contribution limits.

c. Kent Davis wrote a check on April 20, 2014 in the amount of $10,000 from his account. The payee was shown as “Jeremy Durham” with “PAC” in the memo line. Respondent split the contribution between Respondent’s campaign ($6,000), Durham PAC ($2,700) and Volunteer Values PAC ($1,300). The $6,000 was reported as a $3,000 ($1,500 primary and $1,500 general) contribution from Kent Davis and a $3,000 ($1,500 primary and $1,500 general) contribution from his spouse, Dorothyan Davis.

Mr. Davis contributed an additional $1,500 on January 12, 2015, which was disclosed on the 2014 Fourth Quarter report. In addition, Respondent split a $3,000 check, dated July 6, 2014, between Respondent’s campaign ($1,000) and Durham PAC ($2,000). The $2,500 in excess contributions is a violation of T.C.A. § 2-10-302.

i. Failure to comply with the requirements T.C.A. § 2-10-302 is subject to a maximum civil penalty of not more than ten thousand dollars ($10,000) per violation or one hundred fifteen percent (115%) of the amount of all contributions made or accepted in excess of the limitations established by this part, whichever is greater. T.C.A. § 2-10-308(a).

ii. The Registry finds that under the facts and circumstances of this case an assessment of civil penalties is appropriate. The Registry **ORDERS** that a civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for exceeding the individual contribution limits.

**F. Inaccurate Disclosure of Contributor**

15. The Audit found Respondent failed to accurately disclose the name of a contributor. T.C.A. § 2-10-107(a)(2)(A) requires that each contribution over $100 disclosed must contain the complete name, address, amount, occupation and employer.

a. The contribution involved a $2,000 check from Bryan Spicer which was deposited on October 13, 2013. Respondent allocated the contribution as $1,500 from Mr. Spicer and $500 from Cassidy Spicer, Mr. Spicer’s wife. The check is not from a joint account, and the allocation to Cassidy Spicer was improper.

i. Each failure to accurately disclose a contribution is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

ii. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of two thousand five hundred dollars ($2,500) is imposed against the Respondent for failure to properly report and account for this contribution.

**G. Expenditures**

16. The Audit found 208 instances where Respondent failed to report expenses as itemized expenditures totaling $75,938.55. The 208 instances include expenditures that were not reported and expenditures that were reported as unitemized expenditures. These include single vendor transactions and multiple transactions grouped together by vendor. These expenditures are set forth in Appendix F.

a. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(B) by failing to report these itemized expenditures. T.C.A. § 2-10-105(a) requires all expenditures made by or on behalf of a candidate to be reported on campaign finance reports. T.C.A. § 2-10-107(a)(2)(B) requires that all expenditures of more than $100 dollars be reported, including the full name and address of the person paid, the total amount paid, and the purpose of the payment which shall clearly identify that it is an allowable expenditure under § 20-10-114.

b. The Registry specifically finds that Respondent failed to report $27,938.55 in expenditures.

c. Each failure to accurately report an expenditure .is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

d. The Registry finds that under the facts and circumstances of this case assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that two hundred and eight (208) Class 2 civil penalties of one thousand dollars ($1,000) per violation is imposed against the Respondent for failure to properly report and account for these expenses, for a total civil penalty of two hundred eight thousand dollars ($208,000).

17. The Audit found that Respondent failed to report the correct amount for sixteen expenditures resulting in a net reporting error of $4,458.91. The incorrect reporting consisted of three expenses understated by a total orf $39.46 and thirteen expenditures overstated by a total of $4,498.37. These reporting errors are set forth in Appendix G.

a. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(B) by failing to accurately report the total amount of each expenditure. T.C.A. § 2-10-105(a) requires all expenditures made by or on behalf of a candidate to be reported on campaign finance reports. T.C.A. 2-10-107(a)(2)(B) requires that all expenditures of more than $100 dollars be reported, including the total amount paid. .

b. The Registry finds that Respondent failed to correctly report the amount of these sixteen expenditures.

c. Each failure to accurately report an expenditure .is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

d. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of two thousand five hundred dollars ($2,500) is imposed against the Respondent for failure to properly report these expenditures.

18. The Audit found that Respondent reported nine expenditures totaling $8,154 which were not incurred. These non-incurred expenditures are set forth in Appendix H.

a. Respondent violated T.C.A. §§ 2-10-105(a) and 2-10-107(a)(2)(B) by reporting expenditures that were not incurred. T.C.A. § 2-10-105(a) requires all expenditures made by or on behalf of a candidate to be reported on campaign finance reports. T.C.A. § 2-10-107(a)(2)(B) requires that all expenditures of more than $100 dollars be reported, including the full name and address of the person paid, the total amount paid, and the purpose of the payment which shall clearly identify that it is an allowable expenditure under § 20-10-114.

b. The Registry specifically finds that Respondent’s failed to properly report $8,154 in expenditures which were not incurred.

c. Each failure to accurately report an expenditure .is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

d. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that nine (9) Class 2 civil penalties of one thousand dollars ($1,000) each are imposed against the Respondent for failure to properly report these expenditures for a total civil penalty of nine thousand dollars ($9,000).

19. The Audit found that Respondent double reported expenses totaling $13,158.13. The double reported expenditures were separately reported in two different reporting periods. These double-reported expenditures are set forth in Appendix I.

a. Respondent violated T.C.A. §§2-10-105(a) and 2-10-107(a)(2)by failing to accurately report all expenditures. T.C.A. § 2-10-105(a) requires all expenditures made by or on behalf of a candidate to be reported on campaign finance reports. T.C.A. § 2-10-107(a)(2)(B) requires that all expenditures of more than $100 dollars be reported, including the full name and address of the person paid, the total amount paid, and the purpose of the payment which shall clearly identify that it is an allowable expenditure under § 20-10-114.

b. The Registry finds that Respondent double-reported these expenditures totaling $13,158.13.

c. Each failure to accurately report an expenditure .is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

d. The Registry finds that under the facts and circumstances of this case, assessment of a Class 2 civil penalty is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of one thousand dollars ($1,000) is imposed against the Respondent for double reporting these expenditures.

20. The Audit found that Respondent disbursed $10,176.35 in campaign funds for prohibited activities. These disbursements include the following:

i. Bank wire transfer fees $30 related to Respondent’s facilitating a transaction as an attorney.

ii. Benton Smith check for $500. Benton Smith was both a campaign worker and employee of Battleground Title and Escrow LLC. This check was written to Benton Smith from the campaign account and reported as professional services but deposited into the operating account of Battleground Title and Escrow LLC. Based on statements provided by Benton Smith, the funds were not paid for professional services but were a transfer from the campaign account to the business to assist in business expenses. The deposit occurs on the day that text messages between Respondent and Benton Smith indicated that Respondent could transfer funds from the campaign account to the business but would need to get credit for funding as an owner.

iii. Cool Springs EyeCare LLC $105: This expense appears on Respondent’s personal credit card with the notation “suns”. This indicates the purchase of sunglasses which is not campaign related expense or an ordinary and necessary expense of an office holder.

iv. Defined by Darla for $500: Defined by Darla is a custom home décor service.

v. Heritage Cleaners was paid $108.84 from 10/31/2014 to 2/2/2016 for dry cleaning which is additional clothing related prohibited purchases.

vi. Herron Travel for $30.00: Based on the records provided, this travel expense is associated with Respondent’s wife’s travel to the Chicago ALEC conference. Respondent’s travel was paid for by the State of Tennessee. Campaign funds may be used to reimburse the candidate’s travel to such a conference but not for a spouse.

vii. Herron Travel for $30.00: Based on the records provided this travel expense is associated with Respondent’s wife’s travel to the Washington, D.C. ALEC conference.

viii. Johnathan Shearon was paid $1,474 from October 10, 2013 to April 11, 2016 for landscaping services for Respondent’s personal residence or rental properties from the campaign account. Based on discussions with Respondent and an internet search, it was determined Shearon operates a lawn care/landscaping business and was paid to keep the grounds of Respondent’s personal residence or rental property used for campaign storage or events.

ix. Lee’s Alterations was paid $290.69 in two transactions: Clothing alteration is a clothing related purchase which is prohibited.

x. LogicForce for $1,850. Respondent personally paid and then reimbursed from the campaign account a $1,000 payment to LogicForce and then later paid $850 to the firm directly from the campaign account. LogicForce is a computer forensic company. Based on Respondent’s statements and other records, Respondent hired the firm to make a forensic copy of Respondent’s mobile phone to assist Respondent in a defense against allegations investigated by the Attorney General and Reporter. The hiring of a firm to provide forensic services for a possible legal defense is not a campaign expense or an ordinary and necessary expense incurred in connection with the office of an.

xi. PayPal eBay Marketplace for $1,807.14 (Four transactions $111.99, $665.20, $854.95 and $175.00). All the expenses appear on Respondent’s personal credit card and were included in reimbursements paid from the campaign account. A note next to the expense reads “suits”. This is for purchase of clothing.

xii. Physician paid by campaign $95: Based on the various records reviewed this is a payment to Respondent’s personal physician for professional services.

xiii. RCGOLF $115.72: This expense appears on Respondent’s personal credit card with the notation “suns”. This is for the purchase of sunglasses.

xiv. Southwest Airlines for $541.70: Based on the records provided this travel expense is airfare for Respondent’s wife’s travel to the Washington, D.C. ALEC conference.

xv. Tennessee Bar Association $125. Based on a review of the TBA fee schedules, this is for continuing professional education fees for Respondent as an attorney.

xvi. Tennessee Bar Association $145. Based on a review of the TBA fee schedules, this is for membership dues for Respondent as an attorney.

xvii. Tennessee Commission on Continuing Education $12. Additional continuing professional education fees for being an attorney.

xviii. Tennessee Department of Commerce and Insurance paid $110: This is part of the start-up expenses for Battleground Title and Escrow LLC.

xix. Tennessee Department of Safety for $50. Based on statement from Respondent, this expense is for a handgun carry permit.

xx. Tennessee Secretary of State $300: Based on records obtained from the Tennessee Secretary of State and campaign bank statements, a campaign check paid the filing fee for the Articles of Organization for Battleground Title and Escrow LLC.

xxi. Tennessee Secretary of State $20: Based on records obtained from the Tennessee Secretary of State and campaign bank statements, a campaign check paid the filing fee related to a Change of Registered Agent/Office for Battleground Title and Escrow LLC.

xxii. Tom James Company for $179.17: Tom James Company is a custom clothier. This is a prohibited clothing purchase.

b. Respondent violated T.C.A. § 2-10-114 by using campaign funds for purposes other than an allowed expenditure. T.C.A. §2-10-114(b)(1) provides that no candidate for public office shall use any campaign funds for any other purpose other than a contribution or expenditure as defined in T.C.A. § 2-10-102. The disbursement of campaign funds for a candidate's personal use is not permitted.

c. The Registry finds that Respondent disbursed $10,176.35 in campaign funds for these prohibited activities.

d. Each disbursement in violation of T.C.A. § 2-10-114.is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

g. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that twenty-two (22) Class 2 civil penalties of one thousand dollars ($1,000) each are imposed against the Respondent for expending campaign funds for prohibited purposes, for a total civil penalty of twenty-two thousand dollars ($22,000).

21. The Audit found that Respondent disbursed $11,829.14 to himself from the campaign account where no campaign expenses can be identified as having been incurred.

a. The Audit found that Respondent withdrew a total of $5,750 in cash in ten transactions from the campaign account throughout the audit period. These withdrawals are set forth in Appendix J.

i. Respondent failed to provide any records documenting the purpose of the cash withdrawals. Accordingly, the entire $5,750 is deemed to be for personal expenses. These cash withdrawals constitute violations of T.C.A. §2-10-114(b)(1) which prohibits the use of campaign funds for personal expenses. ii. The Registry finds that Respondent disbursed $5,750 in campaign funds to himself for personal use.

ii. Each disbursement in violation of T.C.A. § 2-10-114.is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

iii. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for converting campaign funds to his personal use.

b. The Audit found that the Respondent reimbursed himself $6,079.04 in excess of related campaign expenditures.

1. The Audit found that Respondent made several purchases on Respondent’s personal credit card for which Respondent reimbursed himself or his spouse from the campaign account along with other expenses.

ii. The Audit further found that during several reporting periods, the reimbursement check was larger than the expenses supported. These payments in excess of documented and allowed campaign expenditures include: (1) credit card reimbursements where no related campaign expense was identified as being reimbursed, as set forth in Appendix K, and (2) credit card reimbursements where there was no related campaign expenses identified from Respondent’s personal account, as set forth in Appendix L.

iii. These overpayments, in excess of documented and allowed campaign expenditures, totaling $6,079.14, constitute disbursements for a candidate’s own personal use in violation of T.C.A. § 2-10-114(b)(1).

iv. The Registry finds that Respondent disbursed $6,079.14 in campaign funds to himself for personal use.

v. Each disbursement in violation of T.C.A. § 2-10-114.is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

vi. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of two thousand five hundred dollars ($2,500) is imposed against the Respondent for expending campaign funds for prohibited purposes.

22. The Audit found that Respondent reimbursed himself from his campaign account $475 for the 2014 ALEC conference registration fee expenses that was also reimbursed by the State of Tennessee.

a. This reimbursement constitutes a disbursement for a candidate’s own personal use in violation of T.C.A. §2-10-114(b)(1).

b. The Registry finds that Respondent disbursed $ 475 in campaign funds to himself for personal use.

c. Each disbursement in violation of T.C.A. § 2-10-114.is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

d. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of five hundred dollars ($500) is imposed against the Respondent for converting campaign funds to personal use.

23. The Audit found that Respondent failed to retain sufficient expense records to determine whether all expenditures were allowable for the 2014 and 2016 election cycles.in violation of

a. Respondent violated T.C.A. § 2-10-212(c), which requires that a candidate retain copies of all checks, bank statements and vendor receipts for two years after the date of the election to which the records refer.

b. The Registry finds that Respondent failed to maintain sufficient expense records for the 2014 and 2016 election cycles.

c. Each violation of T.C.A. §2-10-212(c) is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

d. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for failure to maintain adequate records supporting contributions and expenditures for the 2014 and 2016 election cycles.

24. The Audit found that Respondent disbursed $64,800 from his campaign account for personal promissory and convertible note activity which consists of the following activity:

a. $10,000 to enhance a personal investment.

i. On or about January 25, 2014 Respondent personally invested in Oak Street Health LLC with Respondent’s personal funds. The investment was confirmed both by a disbursement check from the personal account and the candidate’s 2014 Statement of Interest, filed with the Tennessee Ethics Commission.

ii. In November 2014, Respondent and Oak Street Health LLC entered into a note purchase agreement/convertible note agreement. The purchase price of the note was $25,000. The payment was made by two checks: one from the campaign account (Check 2171 for $10,000 dated November 26, 2014) and the other from Respondent’s personal account (Check 521 for $15,000 dated November 26, 2014).

iii. The purchase agreement had the following terms:

(1) Maturity date and conversion: All unpaid principal if not converted by of March 31, 2015 will convert to Company Investor II Class units as prescribed in note (conversion securities);

(2) Conversion on Qualified Financing: Prior to maturity and on closing of a Qualified Financing event the principal will convert preferred round units as prescribed in the note (conversion securities).

(3) The note purchase agreement was signed by a member of Oak Street LLC (name is unreadable) and Jeremy Durham. The convertible promissory note which was referenced in the purchase agreement was signed by a member of Oak Street LLC (again unreadable name),

(4) The agreement is only in Respondent’s name and there was no other related activity in the campaign account or disclosed on the campaign disclosure reports. It appears that Respondent used campaign funds to enhance his personal investment.

iv. This $10,000 disbursement constitutes a disbursement for a candidate’s own personal use in violation of T.C.A. §2-10-114(b)(1).

v. The Registry finds that that Respondent disbursed $ 10,000 in campaign funds to himself for personal use

vi. Each disbursement in violation of T.C.A. § 2-10-114.is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

vii. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for converting campaign funds to his personal use.

1. $29,800 in payments to David Whitis.

i. Respondent issued three checks to Mr. Whitis from the campaign account: check 2315 dated October 6, 2015 for $15,000, check 2316 dated October 12, 2015 for $8,800 and check 2211 dated November 3, 2015 for $6,000.

ii. Checks 2315 and 2211 have a note on the memo line which reads “loan to friend”.

iii. The checks were cashed but not deposited by Mr. Whitis.

iv. When asked about the transactions, Respondent stated that these disbursements were related to another promissory note. The note was dated October 14, 2015 and was between Respondent and Mr. Whitis. The note stated that it was capital for a startup venture and that a transfer of $23,800 in funds had already been made to Mr. Whitis. The note stated that if the $23,800 was repaid in full prior to February 2, 2016, no interest would be incurred. If it was repaid after February 2, 2016 the note would accrue interest at 10% per annum from the note’s execution date. The note was unsigned.

v. The campaign account shows no other activity related to Mr. Whitis. As the agreement is unsigned and the Audit was unable to confirm any transaction with Mr. Whitis, the disbursement cannot be attributed to the note. The only support for the disbursements is the notation on the checks themselves that state “Loan to Friend”. A loan to friend with campaign funds is not an allowable expenditure as defined in T.C.A. § 2-10-102(6).

vii. Respondent violated T.C.A. §2-10-114(b)(1) by disbursing campaign funds for a purpose other than an allowable expenditure as defined in T.C.A. § 2-10-102(6).

viii. The Registry finds that Respondent disbursed $29,800 in campaign funds to David Whitis as a “Loan to Friend”.

ix. Each disbursement in violation of T.C.A. § 2-10-114(b)(1) is a Class 2 violation punishable by a civil penalty of not more than $10,000 or fifteen percent of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

x. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that three (3) Class 2 civil penalties of ten thousand dollars ($10,000) each are imposed against the Respondent for expending funds for unallowable use for a total civil penalty of thirty thousand dollars ($30,000).

c. $25,000 check (Check 2280) from the campaign account to Jessica Durham on August 12, 2015 which was deposited into Respondent’s joint personal account on August 20, 2015.

i. Respondent stated this disbursement related to a promissory note dated October 15, 2014 and was between Respondent and Respondent’s campaign.

ii. This note was set up as a line of credit allowing multiple draws up to a maximum limit of $30,000. The note has no maturity date. The note indicates an interest rate of 2.5% per annum but is silent on when the payment of interest is to occur. The obligation is payable on demand.

iii. On October 31, 2015, Jessica Durham wrote a check to the campaign for $5,000 with the notation in the memo line of “loan repayment”. This appears to be the return of $5,000 of the $25,000 principal drawn on August 12, 2015.

iv. The check was a repayment of principal only as no interest was disclosed on the campaign reports. The campaign account shows no other activity related to promissory note.

v. The line of credit from the campaign to the candidate is a personal use of campaign funds.

vi. This $25,000 disbursement constitutes a disbursement for a candidate’s own personal use in violation of T.C.A. §2-10-114(b)(1).

v. The Registry finds that that Respondent disbursed $ 25,000 in campaign funds to himself for personal use

vi. Each disbursement in violation of T.C.A. § 2-10-114.is a Class 2 violation punishable by a civil penalty of not more than ten thousand dollars ($10,000) per violation or fifteen percent (15%) of the amount in controversy, if fifteen percent of the amount in controversy is greater than $10,000. T.C.A. § 2-10-110(a)(2).

vii. The Registry finds that under the facts and circumstances of this case, assessment of Class 2 civil penalties is appropriate. The Registry **ORDERS** that a Class 2 civil penalty of ten thousand dollars ($10,000) is imposed against the Respondent for converting campaign funds to his personal use.

25. The Registry finds, as set forth herein, that Respondent has committed multiple violations of T.C.A. §§ 2-10-105(a), 2-10-107(a)(2)(A), 2-10-107(a)(2)(B), 2-10-114(a)(7), 2-10-114(b)(1), 2-10-114(b)(2), 2-10-212(c), and 2-10-302 and that a total of $465,000 in civil penalties should be imposed against Respondent for these violations.

**III. STATEMENT OF POLICY**

It is the intent of the general assembly to provide adequate financial disclosure by public officials, candidates for public office, and lobbyists. Furthermore, it is the intent of the general assembly to establish a registry of election finance to ensure enforcement of these statutes. T.C.A. § 2-10-202.

**IV. APPEAL RIGHTS**

1. The Executive Director shall issue this Order on behalf of the Registry, and cause a copy of this Order to be provided to the Respondent, by either personal service, certified mail, return receipt requested, or overnight delivery, along with a notice of Respondent’s rights described below.

2. Respondent may obtain a contested case hearing by filing, within thirty (30) days of the date of entry of this order, a written request with the Registry. By timely filing such a request, Respondent will be entitled to all rights afforded to participants in a contested case proceeding as provided by the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 - 4-5-325.

3. In the alternative, and without waiving the right to timely request a contested case proceeding at a later time, Respondent may ask the Registry to reconsider this Order by filing a request for reconsideration with the Registry within fourteen (14) days of the date of entry of this Order. If Respondent timely files a request for reconsideration, Respondent will have an additional thirty (30) days from receipt of the Registry’s response to the request for reconsideration in which to file a request for a contested case proceeding.

4. If Respondent does not timely file a request for a contested case proceeding, either within thirty (30) days of receipt of this order or receipt of an order responding to a request for reconsideration, the right to a contested case proceeding will be waived, and this Order shall become final.

SO ORDERED this \_\_\_ day of July, 2017.

FOR THE TENNESSEE REGISTRY OF ELECTION FINANCE

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Executive Director

Bureau of Ethics and Campaign Finance

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing document has been sent by certified mail on July \_\_\_, 2017 to Jeremy R. Durham, 802 Founders Pointe Boulevard, Franklin, Tennessee 37064 and Peter J. Strianse, Tune, Entrekin & White, 315 Deaderick Street, Suite 1700, Nashville, Tennessee 37238.

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Drew Rawlins

Executive Director

Tennessee Bureau of Ethics and Campaign Finance

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