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POLITICAL & GOVERNMENT | LAW ADVOCACY LITIGATION

November 29, 2019

Federal Election Commission
Office of Complaints Examination
And Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, D.C. 20463

VIA EMAIL

Re: Response to the Complaint in MUR 7653 (Slingerland)

Dear Ms. Dennis:

This Response is submitted on behalf of Dixon Slingerland, the respondent in MUR 7653. As explained further below, Mr. Slingerland did not make a contribution in the name of another or knowingly permit his name to be used to make a contribution in the name of another. Accordingly, Mr. Slingerland respectfully requests that the Commission find no reason to believe that a violation occurred, or to dismiss this matter pursuant to its prosecutorial discretion.

BACKGROUND

As the Complaint acknowledges, Mr. Slingerland worked for 23 years as head of the Youth Policy Institute (YPI), an organization that operates after-school and extra-curricular programs at approximately 100 sites across Los Angeles, serving tens of thousands of impoverished youth and adults and providing access to high-quality education and economic opportunities.

In the course of his employment at YPI, the organization provided Mr. Slingerland with an American Express (Amex) card, indistinguishable except in the card number, from his own personal Amex card. Over the years, Mr. Slingerland used his YPI Amex card for YPI expenses, and used his personal Amex card for personal expenses. Accordingly, YPI paid for the expenses incurred on the YPI Amex card and Mr. Slingerland paid the expenses incurred on his personal Amex card.

There were past instances in which Mr. Slingerland inadvertently used the wrong card for an expense. Until the occurrence of the circumstances that are the subject of the Complaint, YPI and Mr. Slingerland routinely resolved any such mistakes when they were discovered by, for instance, Mr. Slingerland paying YPI for any personal expenses that were accidentally paid using the YPI Amex card. In the ordinary course, Mr. Slingerland's occasional errors and this remedial practice were inconsequential.

A search of the FEC's database reveals that Mr. Slingerland has made approximately *150*, or more, contributions since 2004 to many federal candidates and party committees. Mr. Slingerland acknowledges that he erred when he inadvertently used the YPI Amex card instead of his own Amex card to make the *three* contributions at issue in this matter. He typically makes contributions online and believes that his computer auto-filled his YPI Amex card number instead of his personal Amex card number when he made these three particular contributions. In light of his contribution history, these contributions are otherwise entirely unremarkable in terms of the recipients, timing, or amounts. Moreover, it is significant that the Complaint indicates that YPI's forensic audit of records for the last five years, presumably since 2014, identified only these three contributions.

Consistent with past practice, when YPI brought to Mr. Slingerland's attention that he had used the YPI card for the three personal contributions at issue in this matter, Mr. Slingerland offered to pay YPI to correct his error, as he had done on past occasions when he used the wrong card for a personal expense. In this instance, however, YPI refused to accept Mr. Slingerland's payment and thereby transformed his personal error into YPI's violation, that is, YPI's refusal ripened and ratified these three contributions into YPI's contributions to the three identified committees in the name of Mr. Slingerland in violation of 52 U.S.C. § 30122.

ANALYSIS

I. Count I – Alleged Contribution in the Name of Another

The Federal Election Campaign Act and the Commissions regulations prohibit a person from making a contribution in the name of another or to "knowingly permit" his or her name to effect such a contribution. 52 U.S.C.

§ 30122; 11 C.F.R. § 110.4(b)(i)-(ii). This prohibition is one of the most aggressively enforced rules in the Act and one that conjures nefarious images of "contribution laundering." Although it is indisputable that three contributions reported in Mr. Slingerland's name were in fact funded by YPI, there are no facts suggesting a contribution reimbursement scheme like the ones the Commission frequently pursues and punishes as violations of Section 30122.

A. Mr. Slingerland Did Not Make a Contribution in the Name of Another

It is clear from the facts in the Complaint that YPI made contributions in the name of another by paying for three contributions in Mr. Slingerland's name. However, Mr. Slingerland did not also make contributions in the name of *another* by making those contributions *in his own name*.

"The only interpretation of the phrase 'no person shall make a contribution in the name of another' in section 30122 that is consistent with the English language is that the prohibited 'person' is the actual contributor, that is, the source of the monetary donation. Nothing else makes sense. . . . Only the person (or persons) who are the source (or sources) of the monetary donation can qualify as those who "make" contributions to the political candidates." *Federal Election Commission v. Swallow*, 304 F. Supp. 3d 1113, 1116-1117 (D. Utah 2018) (distinguishing a fellow district Court's broader interpretation, *in the context of a conduit contribution scheme*, that "someone can make a contribution in the name of another by initiating, instigating, or significantly participating in a conduit-contribution scheme, even where that person was not the source of the contributed funds," quoting *United States v. Danielczyk*, 788 F. Supp. 2d 472 (E.D. Va. 2011)).

Mr. Slingerland acknowledges that while attempting to make personal contributions to the three committees identified in the Complaint, he inadvertently used his YPI Amex card instead of his own. Those contributions were disclosed by the recipients committees in Mr. Slingerland's name because Mr. Slingerland mistakenly believed that these contributions were paid using his own funds and therefore allowed his name and personal information to be provided to the recipient committees. Nevertheless, the "source" of the three contributions

disclosed in Mr. Slingerland's name was YPI because the contributions were paid for by YPI.

Accordingly, while YPI made contributions in the name of another (Mr. Slingerland) due to Mr. Slingerland's error and its refusal to allow him to pay for the contributions, Mr. Slingerland did not—through those same contributions—also make contributions in the name of another. If, for the sake of argument, Mr. Slingerland was indeed the maker of the contributions that were disclosed in his own name, then he did not violate section 30122 because the contributions would not have been in the name of *another,* they would have been in the name of *the maker of the contribution*.

Moreover, although the Act and the Commission's regulations, as interpreted by the Courts, impute liability to YPI for Mr. Slingerland's error, there is no corresponding notice that YPI's violation will be imputed to Mr. Slingerland. The Act and the Commission's rules and policies provide clear notice as to when an individual may face personal liability for a potential violation of the Act committed by an organization for which they work. For example, in Section 30118(a), Congress placed the public on notice that "any officer or any director of any corporation or any national bank or any officer of any labor organization" could be punished if they consented to a prohibited contribution by the entity for which they worked. 52 U.S.C. § 30118(a).[1]

The Commission's policy on treasurer liability also provides notice to political committee treasurers, on whom the Act places numerous duties to ensure their committees' compliance with the Act, that they are *not personally liable* for their committees' violations—unless they had actual knowledge their own conduct violated a legal duty under the Act, they recklessly failed to fulfill a legal duty under the Act, or they intentionally deprived themselves of the facts giving rise to the violation. *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed.

[1] The Complaint does not allege a violation of Section 30118(a). If the Commission considers liability for Mr. Slingerland under that provision, he respectfully requests formal notice and an opportunity to respond. In short, that provision does not provide a basis for penalizing Mr. Slingerland like a person who uses their control of a company to orchestrate a contribution reimbursement scheme. Mr. Slingerland did not know that, through his error, YPI would pay for his personal contributions or, after discovering that it had, that it YPI would refuse to allow him to pay for his own contributions. Accordingly, Mr. Slingerland did not in any way "consent" to YPI's prohibited corporate contributions.

Reg. 3, 5 (2005). In practice, despite the importance of treasurers fulfilling their duties to ensure the integrity of the campaign finance disclosure system, the Commission will not proceed against a treasurer in their personal capacity for simple errors. Here, Mr. Slingerland was acting his capacity as a member of the public, not as a duty-bound treasurer. He unwittingly made a simple mistake with the help of a computer and YPI refused to allow him to avoid or mitigate its violation by preventing him from paying for his own contribution.

Finally, the Commission's limited post-*Swallow* enforcement history includes an example of a matter in which one person who controlled several businesses flagrantly and personally used his power to have them reimburse contributions in violation of Section 30122—but the Commission did not hold him individually liable for the Section 30122 violations. Factual and Legal Analysis at 6, MUR 7242 (Barletta, *et al.*) (stating that the Commission received information that "Barletta caused [his companies] to use corporate funds to reimburse $39,800 in federal contributions," establishing "reason to believe that [his companies] made prohibited corporate contributions in the names of others in violation of sections 30118(a) and 30122," but Barletta's violations did not include 30122); Conciliation Agreement, MUR 7472 (Barletta, *et al.*) (Commission agreement reflecting that Barletta's companies violated Section 30122, but Barletta's violations did not include Section 30122).

Accordingly, Mr. Slingerland respectfully requests that the Commission conclude there is no reason to believe he made a contribution in the name of another in violation of section 30122.

B. Mr. Slingerland Did Not Knowingly Permit His Name to be Used to Make a Contribution in the Name of Another

Mr. Slingerland also did not "knowingly permit" his name to be used to make a contribution in the name of another because he did not know his name was being used to make a contribution in the name of another, much less *knowingly permit* his name to be use for YPI's contribution.

"[T]he term 'knowingly' . . . requires proof of knowledge of the facts that constitute the offense." *Bryan v. United States*, 524 U.S. 184, 193 (1988); *FEC v. Kalogianis*, 2007 U.S. Dist. LEXIS 88139, *14 (M.D. Fla. 2007) (same); *Federal Election Comm'n v. California Med. Ass'n,* 502 F. Supp. 196,

203-204 (N.D. Cal. 1980) (party's knowledge of the facts making his conduct unlawful constitutes a "knowing acceptance" under the Act); *see also United States v. Mongiello*, 442 F. Supp. 835, 838 (E.D.Penn. 1977) ("It is well recognized that when a statute uses the word "knowingly" the essential element is knowledge"); *see also United States v. Marvin*, 687 F.2d 1221, 1227 (8th Cir. 1982)*, cert. denied*, 460 U.S. 1081, 76 L. Ed. 2d 342, 103 S. Ct. 1768 (1983) ("the purpose of including the word "knowingly" in § 2024(b) is 'to insure that no one will be convicted for an act done because of mistake, or accident or other innocent reason.'").

Accordingly, for a conduit to *knowingly permit* their name to be used for a contribution in the name of another in violation of the Act, they must in fact know their name is being used for another person's contribution. *See* Second General Counsel's Report at 20, MUR 5279 (Bill Bradley for President, *et al.*) (conduits did not knowingly permit their names to be used in violation of the Act because they were ignorant their names were being used for contributions); Certification, MUR 5279 (Bill Bradley for President, *et al.*) (approving recommendation to take no further action involving individuals who did not know their names were used for partnerships' contributions).

For the three contributions at issue here, Mr. Slingerland lacked knowledge of the facts that rendered his conduct unlawful. Specifically, he did not know his computer was using his YPI Amex card instead of his personal Amex card to make what he intended to be his personal contributions. Instead, he believed he was using *his name* to make *his own contribution*. In fact, upon discovery of the credit card error, he affirmatively asked to pay YPI so that the contribution in his name would not be YPI's—but YPI would not accept his payment. These facts establish that he never *knowingly permitted* YPI to use his name for its contribution.

Accordingly, Mr. Slingerland respectfully requests that the Commission find that there is no reason to believe he violated Section 30122 by knowingly permitting YPI to use his name to make a contribution in the name of another.

II. Count II

The final paragraph of the Complaint contains a throwaway allegation that, even if true (it is not), does not constitute a violation of the

Act. After noting that political committees must disclose their contributors, the Complaint appears to allege that Mr. Slingerland somehow violated the Act because his error caused the recipient committees to erroneously identify him as the contributor instead of YPI.

The Complaint does not identify a provision of the Act that Mr. Slingerland violated. Like the authors of the Complaint, which include a former General Counsel of the FEC, we are unable to identify any provision of the Act that the allegation, if true, would violate. Such an interpretation would empower the Commission, without statutory authorization, to pursue any campaign *contributor* who makes an error when filling out a donor card.

Further, the allegation is based on a false premise. Mr. Slingerland did not 'falsely certify' that his contributions were his own and not YPI's. Mr. Slingerland mistakenly believed that he was using his own Amex card to make his own contributions and, when notified of the error, asked to pay for the contributions so that they would not be YPI's—but YPI refused his payment.

Accordingly, there is no good-faith basis in the law or the facts for this spurious allegation.

CONCLUSION

We reiterate that Mr. Slingerland has an extensive record of political contributions, and that of the 150+ contributions he has made, only three were made in error—a fact consistent with a good faith mistake rather than a pattern of conduit contributions. Moreover, Mr. Slingerland offered to reimburse YPI immediately upon discovery of his mistake, and was precluded from doing so only by YPI's refusal to accept his payment.

For the foregoing reasons, Mr. Slingerland respectfully requests that the Commission find no reason to believe he made a contribution in the name of another or to dismiss this matter in an exercise of its prosecutorial discretion. *See Heckler v Chaney*, 470 U.S. 821 (1985).

Sincerely,

Christopher E. Skinnell
Michael A. Columbo