FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
The Thornton Law Firm, *et al.*	)	MUR 7183
	)	

STATEMENT OF REASONS OF VICE CHAIRMAN MATTHEW S. PETERSEN AND COMMISSIONER CAROLINE C. HUNTER

The complaint here relies on a single media report to allege that (1) the Thornton Law Firm (the "firm") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by making contributions in the name of another and in excess of the contribution limits, and (2) several firm partners violated the Act by allowing their names to be used for those contributions. But the reporters didn't have the whole story. The respondents have provided comprehensive and detailed denials of the allegations, as well as supporting documentation from an outside law firm and a professional auditor. Moreover, Massachusetts authorities have already investigated the activities described in the media report and have not taken further action. [redacted]

Accordingly, as explained further below, we determined this matter does not warrant the expenditure of additional resources by the Commission.[1]

I. FACTUAL BACKGROUND

On October 29, 2016, the Boston *Globe* and Center for Responsive Politics reported on a "pattern" of contributions by partners at the Thornton Law Firm to the Democratic Senatorial

[1] The suggestion that an "ideological opposition to enforcing the law," *see* Andrea Estes, *Evidence of illegal campaign donations by Boston's Thornton law firm found, case dismissed anyway*, THE BOSTON GLOBE (May 15, 2019), drove our votes, or that our votes reflected an unwillingness to enforce the law, is entirely inaccurate. Even a cursory review of Commission records demonstrates that we have approved penalties in excess of $1 million in matters implicating section 30122 violations. *See, e.g.*, MUR 7472 (Barletta) (conciliating penalty of $56,000); MUR 7248 (Cancer Treatment Centers of America) (same as to $288,000); MUR 7247 (Bell Nursery) (same as to $6,700); MUR 7234 (Miami Ass'n of Realtors) (same as $9,000); MURs 7005/7056 (Victor) (same as to $65,000); MUR 6922 (ACA Int'l) (same as to $32,219 aggregated across all respondents); MUR 6920 (American Conservative Union) (same as $350,000); MUR 6889 (National Air Transportation Ass'n) (same as to $79,600 aggregated across all respondents); MUR 6566 (Foley) (same as to $90,000); MUR 6184 (Skyway Concessions) (same as to $4,000); MUR 6143 (Danielczyk) (same as to $50,000); MUR 5818 (Fieger) (same as to $131,000); *see also* Compl., *FEC v. Rivera*, Civ. No. 17-22643 (S.D. Fla. July 14, 2017) (alleging violation of section 30122); Compl., *FEC v. Johnson*, Civ. No. 15-439 (D. Utah June 19, 2015) (same).

Campaign Committee, Democratic National Committee, the SuperPAC American Bridge 21st Century, and various Democratic candidates at the federal, state, and local level. The report claimed the contributions from the firm's partners were "offset by bonus payments" paid by the firm to the individual partner contributors.[2]

Relying on that article in the Boston *Globe*, the complaint alleged that the firm[3] violated the Act by paying "bonuses" to its partners to reimburse them for political contributions to Democratic party committees and candidates, and that individual partners violated the Act by permitting their names to be used to effect those contributions.[4] In their detailed and robust response, which includes a copy of the firm's partnership agreement and opinions from outside legal counsel and a professional auditor, the respondents state the article is inaccurate and deny partners were paid "bonuses"[5] to reimburse their contributions. Instead, the respondents assert that the so-called "bonuses" represented funds drawn from individual equity partners' respective capital accounts after the partners or their spouses made contributions by personal check or personal credit card. Because each capital account reflected a partner's equity in the firm, the respondents assert, the draws were not prohibited reimbursements from the firm but, rather, permissible withdrawals of the contributing partners' own assets.[6] The respondents also assert that this use of capital accounts is materially indistinguishable from proposals previously approved by the Commission in a series of advisory opinions.

The *Globe* article triggered multiple law enforcement inquiries. In 2016, the Massachusetts Office of Campaign and Political Finance ("OCPF") disclosed that it was investigating the contributions made by the partners.[7] In early 2017, the OCPF reportedly presented its evidence to the Massachusetts Attorney General and informed the firm's partners that they were in violation of a state law prohibition against contributing in the name of another.[8]

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2 *See* Compl. at 2 (citing Andrea Estes & Viveca Novak, *Law firm 'bonuses' tied to political donations*, THE BOSTON GLOBE / Center for Responsive Politics (Oct. 29, 2016)).

3 The Thornton Law Firm is a partnership. Partnerships, unlike corporations, may make contributions subject to the limitations set forth in the Act. *See* 11 C.F.R. § 110.1(e).

4 *See* Compl.

5 The firm acknowledges that equity partner withdrawals were inaccurately labeled as "bonuses" prior to 2015. *See* Resp. at 5 ("The Firm, rather inartfully and clearly inaccurately, labeled draws from capital for political contributions as 'bonuses' until 2015."); *id.* at 5 n.6 ("Draws from capital for political contributions are now labeled as 'draw from capital.'").

6 *See* Suppl. Resp. at 3.

7 *See* Andrea Estes and Viveca Novak, *Boston law firm could be charged on donations*, THE BOSTON GLOBE (Mar. 2. 2017).

8 *Id.*; Massachusetts law provides:

> No person shall, directly or indirectly, make a campaign contribution in any name except his own nor in any manner for the purpose of disguising the true origin of the contribution nor unless he makes his name and residential address known to the person receiving such

The Massachusetts Attorney General subsequently recused herself from the investigation, and turned it over to the Essex County District Attorney's Office.[9]

In 2018, the Essex County District Attorney's Office announced it had completed its investigation. The office described the breadth and the comprehensive nature of its investigation: "[A] Certified Fraud Examiner employed by the Essex District Attorney's Office spent over 280 hours reviewing all materials provided by OCPF, examining materials, documents, individual partner bank records, and reviewed all relevant campaign finance laws, regulations, relevant OCPF opinions, interpretive bulletins and memorandums."[10] This extensive inquiry revealed "a pattern of contributions from nine current or former partners and seven of their spouses and deposits of the same or similar amounts to their accounts," but "there was not adequate evidence to conclude that contributions were made with partnership funds or that the Thornton Law Firm reimbursed partners with firm funds for their contributions."[11]

Also in 2016, the Department of Justice ("DOJ") opened a grand jury investigation into the firm's activity.[12] No indictments have been made public in this matter. [redacted] Nor does it appear that OCPF has levied any sanctions against the firm or any of the partners named in this matter.

The Commission's Office of General Counsel ("OGC") recommended that the Commission (1) find reason to believe that the firm violated the Act by making contributions in the name of another and in excess of the Act's contribution limits, and (2) authorize an investigation to gather additional information about the partners' use of the capital accounts. We did not support these recommendations.

> contribution at the time such contribution is made; nor shall any trust, foundation or association other than a political committee make a campaign contribution unless at the time such contribution is made there is also made known to the person receiving such contribution, the names and addresses of its principal officers. . . .

M.G.L.A. 55 § 10. Massachusetts law also provides that "[c]ontributions made by a person to or on behalf of a particular candidate, including contributions made through an intermediary or conduit, shall be treated as contributions from such person to such candidate." M.G.L.A. 55 § 10A.

9 Andrea Estes, *Healey hands Thornton Law case to independent prosecutor*, THE BOSTON GLOBE (Mar. 4, 2017).

10 *Id.*

11 Press Release, Essex District Attorney's Office (Apr. 18, 2018) ("Essex County Press Release"), https://www.mass.gov/news/thornton-law-firm-investigation-complete.

12 Andrea Estes and Viveca Novak, *Boston law firm could be charged on donations*, THE BOSTON GLOBE (Mar. 2, 2017) ("Thornton Law now faces scrutiny on multiple fronts, the most serious of which is a federal grand jury that is hearing evidence on possible violations of federal campaign laws.").

II. ANALYSIS

The Act defines a contribution as "any gift, subscription, loan, advance or deposit of money" made for the purpose of influencing a federal election.[13] Under Commission regulations, partnerships may make contributions, which are subject to the limitations set forth in the Act.[14] Such contributions, however, must be attributed both to the partnership and to each partner either in direct proportion to each partner's share of the partnership's profits or otherwise by agreement of the partners.[15]

The Act also provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution.[16] A contribution made in the name of another results when, for instance, the true source of a contribution solicits a conduit to transmit funds to a political committee in the conduit's name, subject to the source's promise to advance or reimburse the funds to the conduit.[17] If a person makes a contribution using his or her own personal funds without receiving reimbursement, there can be no contribution in the name of another.[18]

The central question in this matter is whether the firm's partners were reimbursed for their contributions with the firm's funds. The record evidence suggests that the answer to this question is "no." The capital accounts from which the equity partners drew funds after making their contributions appear to have contained the partners' own personal funds, rather than the firm's funds. Under the partnership agreement, all of the firm's property is deemed to have been contributed by the partners.[19] Furthermore, the balances in the partners' capital accounts represent each partner's individual share of their contributed capital as well as each partner's

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[13] 52 U.S.C. § 30101(8)(A).

[14] 11 C.F.R. § 110.1(e).

[15] 11 C.F.R. § 110.1(e)(1)-(2).

[16] 52 U.S.C. § 30122.

[17] *United States v. O'Donnell*, 608 F.3d 546, 549 (9th Cir. 2010). The Commission has enforced the Act against numerous organizations for reimbursing or advancing funds to straw donors for the purpose of making contributions. *See e.g.*, MUR 6143 (Galen Capital Group) (finding violation of then-section 441f when corporation reimbursed individuals for contributions made); MUR 5666 (MZM) (corporate reimbursement); MUR 4879 (Beaulieu of America) (same); MUR 4876 (Cadeau Express) (same); MUR 4871 (Broadcast Music) (same); MUR 4796 (DeLuca Liquor and Wine) (same); MUR 2195 (Eklutna) (same).

[18] *See, e.g.*, MUR 6713 (Sherry L. Huff, *et al.*), Factual and Legal Analysis at 6 (finding no reason to believe contributor Sherry Huff violated section 30122 where there was "no evidence that another source transferred money . . . [to Huff] in order to make a contribution."); MUR 6519 (Calvin C. Fayard, Jr., *et al.*), Factual and Legal Analysis (finding no reason to believe where respondent made complained of contribution with her own funds); MUR 6190 (Kelly Bearden, *et al*.), Factual and Legal Analysis (no reason to believe where contributions were made from personal funds available to the contributors).

[19] *See* Resp. Ex. C., Section 3.2.

profit allocation as determined by the partnership agreement.[20] Moreover, partners could (and did) draw funds from those accounts at various times for a variety of personal expenses unrelated to political contributions,[21] and the balances in the partners' capital accounts would also be reduced by the amount of any allocated losses, expenses, and distributions.[22] The record also includes a 2006 legal opinion analyzing the firm's practices and concluding they were permissible, as well as a sworn affidavit from an experienced outside auditor who examined the firm's accounting procedures relating to the partners' political contributions.[23] If, as these facts suggest, the partners' capital accounts contained the personal funds of each partner, the contributions at issue would not have violated the Act's straw donor prohibition.[24]

We need not, however, make a final determination about the ownership of the funds in the capital accounts to justify our vote. As noted above, the reported activities that form the basis for the allegations in this matter have already been the subject of investigations at the state and federal levels, and the record does not indicate that those investigations uncovered evidence of wrongdoing by the respondents. The investigation by the Essex County District Attorney's Office, for example, appears to have included extensive analyses of the relevant information. Yet on the same question that a Commission investigation would attempt to answer, the Essex County District Attorney's Office concluded that "there was not adequate evidence to conclude that contributions were made with partnership funds or that the Thornton Law Firm reimbursed partners with firm funds for their contributions."[25] [redacted]

Faced with limited resources and a record number of pending administrative complaints, this Commission must manage its enforcement docket prudently by investigating and prosecuting complaints with the greatest likelihood of success. Based on a careful assessment of the record here, it does not appear that yet another time- and resource-intensive investigation would yield substantially different results from those achieved by other agencies that have

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20 *See id.*; Resp. Ex. B., Affidavit of Carl Jenkins; Resp. Ex. C. (defining "Capital Account").

21 *See* Resp. at 4-5.

22 *See* Ex. C. (defining "Capital Account").

23 *See* Resp.; Suppl. Resp.

24 *See, e.g.*, Advisory Opinion 1982-63 (Manatt, Phelps, Rothenberg & Tunney) (approving law firm partnership's proposal to "withhold a specified amount from their share of Firm profits and to transfer said amount directly to the PAC" provided that those contributing partners "take a deduction in their share of Firm profits, or an increase in their share of Firm losses, which is in direct proportion to their interest in partnership profits or which is determined according to some other agreement of the partners"); Advisory Opinion 1984-10 (Arnold & Porter) (approving proposal for law firm partners to make contributions by checks drawn on general partnership account used by firm for day-to-day operations where contributions would be charged against each contributing partner's personal firm account and equal amount would be deducted from partner's subsequent quarterly income distribution).

25 Essex County Press Release.

already gone down this path. Thus, we decided that sinking additional agency resources into this matter would not advance the interests of either the public or the Commission.[26] Accordingly, we did not vote to find reason to believe that a violation occurred.

Matthew S. Petersen
Vice Chairman

5/22/19
Date

Caroline C. Hunter
Commissioner

5/22/19
Date

26 *See Heckler v. Chaney*, 470 U.S. 821 (1985); *CREW v. FEC*, 892 F.3d 434 (D.C. Cir. 2018).