

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR: 7302**

4 **DATE COMPLAINT FILED: Dec. 11, 2017**

5 **DATE OF NOTIFICATION: Dec. 13, 2017**

6 **LAST RESPONSE RECEIVED: Jan. 31, 2108**

7 **DATE ACTIVATED: Apr. 4, 2018**

8 **SOL: Sept. 14, 2022**

9 **ELECTION CYCLE: 2018**

10 **COMPLAINANT:**

American Democracy Legal Fund

11 **RESPONDENTS:**

12 Tom Campbell for North Dakota and Paul Kilgore  
13 in his official capacity as treasurer  
14 Campbell Farms-Big Lake, LLP d/b/a Campbell  
15 Farms  
16  
17

18 **RELEVANT STATUTES  
19 AND REGULATIONS:**

52 U.S.C. § 30104(b)

11 C.F.R. § 104.3(a)

11 C.F.R. § 104.13(a)

20 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

21 **FEDERAL AGENCIES CHECKED:**

None

22 **I. INTRODUCTION**

23 The Complaint alleges that Tom Campbell for North Dakota and Paul Kilgore in his  
24 official capacity as treasurer (“the Committee”) violated the Federal Election Campaign Act of  
25 1971, as amended (the “Act”), and Commission regulations by failing to report an in-kind  
26 contribution from Campbell Farms-Big Lake, LLP d/b/a Campbell Farms (“Campbell Farms-Big  
27 Lake”). The Complaint alleges that the in-kind contribution resulted from the Committee airing  
28 a campaign advertisement that featured a truck in the background bearing a “Campbell Farms”  
29 logo.<sup>1</sup> The Complaint alleges that the Committee should have, but did not, report this as both a

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<sup>1</sup> Compl. at 2 (Dec. 11, 2017).

1 receipt of an in-kind contribution from Campbell Farms-Big Lake and as a disbursement  
2 associated with producing the advertisement.<sup>2</sup>

3 The Committee responds that the use of the Campbell Farms-Big Lake truck and logo did  
4 not result in an in-kind contribution, and even it did, the value of the contribution was *de*  
5 *minimis*.<sup>3</sup>

6 As discussed below, the available information indicates that the use of the truck and logo  
7 in Campbell's ad constituted an in-kind contribution to the Committee, which the Committee did  
8 not report, and that a portion of that contribution may have been attributable to a corporate  
9 member of the partnership, which is prohibited from contributing to the Committee. The value  
10 of this in-kind contribution, however, was likely *de minimis* and does not justify the use of  
11 further Commission resources. Therefore, we recommend that the Commission exercise its  
12 prosecutorial discretion and dismiss the allegations that the Committee and Campbell Farms-Big  
13 Lake violated the Act or Commission regulations.<sup>4</sup> We recommend, however, that the  
14 Commission issue a letter of caution to Campbell Farms-Big Lake.

## 15 II. FACTS

16 Tom Campbell is a 2018 candidate for North Dakota's at-large House district seat.<sup>5</sup> The  
17 Committee is Campbell's principal campaign committee.<sup>6</sup> Campbell Farms-Big Lake is a North  
18 Dakota partnership that operates a commercial potato farm, and state records show that Tom

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<sup>2</sup> *Id.* at 2, 4-5.

<sup>3</sup> Resp. at 2, 4 (Jan. 31, 2018).

<sup>4</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>5</sup> Tom Campbell for North Dakota, Statement of Organization (June 12, 2018).

<sup>6</sup> *Id.*

1 Campbell is the registered agent of the partnership.<sup>7</sup> Campbell Farms-Big Lake lists its general  
2 partners as Campbell Farms and Kroeker Farms USA, Inc., a Delaware corporation.<sup>8</sup>

3 Citing news reports, the Complaint alleges that the Committee spent approximately  
4 \$250,000 on statewide television campaign ads from August 16 through September 24, 2017.<sup>9</sup>  
5 The Complaint alleges that one of these ads featured Campbell standing in front of a truck with a  
6 "Campbell Farms" logo on one of the truck's windows as he discusses his experience as a potato  
7 farmer and his plans for the state.<sup>10</sup>

8 The 30-second ad features Campbell leaning on the open window of a pickup truck with  
9 a "Campbell Farms" logo decal on the rear window.<sup>11</sup> The decal is visible for the first three  
10 seconds of the ad and for five seconds near the end. During the first three-second portion of the  
11 video, Campbell says "I'm Tom Campbell. Growing potatoes, you learn." During the latter five-  
12 second portion of the ad, Campbell says "I'm Tom Campbell. I'm a potato farmer, a  
13 businessman, and a conservative outsider." The logo is identical to the logo on the Campbell  
14 Farms website.<sup>12</sup> The ad contains a disclaimer indicating that it was authorized by Campbell and  
15 paid for by the Committee. The Committee's 2017 October Quarterly Report shows a  
16 \$389,950.00 disbursement to Axiom Strategies for "media consulting" made on August 16,

<sup>7</sup> See Campbell Farms-Big Lake, LLP, North Dakota Secretary of State Business Records Search, <https://apps.nd.gov/sc/busnsrch/busnSearch.htm> (last visited May 7, 2018); <http://www.tricampbellfarms.com>.

<sup>8</sup> "Campbell Farms" is a North Dakota trade name registered by Tom Campbell, Greg Campbell, and William Campbell. Campbell Farms, North Dakota Secretary of State Business Records Search, <https://apps.nd.gov/sc/busnsrch/busnSearch.htm> (last visited May 7, 2018). Kroeker Farms USA, Inc., is a corporation registered in Delaware. Kroeker Farms, USA, Inc., Delaware Department of State: Division of Corporations, <https://icis.corp.delaware.gov/eCorp/EntitySearch/NameSearch.aspx> (last visited May 8, 2018).

<sup>9</sup> Compl. at 2.

<sup>10</sup> *Id.*

<sup>11</sup> Tom for North Dakota, *New Crop* [video] at 0:00-0:05, 0:19-0:24, YOUTUBE (Sept. 14, 2017), <https://www.youtube.com/watch?v=T4yqB26VV1E>.

<sup>12</sup> See <http://www.tricampbellfarms.com>.

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1 2017, but does not provide any itemized breakdown indicating which advertisements were  
2 covered by that disbursement.<sup>13</sup> The Committee's disclosure reports do not list any contributions  
3 to the Committee from Campbell Farms-Big Lake.

### 4 III. LEGAL ANALYSIS

#### 5 A. Relevant Law

6 A "contribution" is "any gift, subscription, loan, advance, or deposit of money or  
7 anything of value made by any person for the purpose of influencing any election for Federal  
8 office."<sup>14</sup> "Anything of value" includes in-kind contributions, which must be reported both as a  
9 receipt and as a corresponding disbursement.<sup>15</sup> Committees must report the total value of all  
10 contributions and must itemize contributions from any person that exceed \$200 in the aggregate  
11 in a calendar year.<sup>16</sup>

12 The Act and Commission regulations permit partnerships to make contributions, but such  
13 contributions are subject to the limits set forth at 52 U.S.C. § 30116(a) and must be dually  
14 attributed between the partnership and the partners.<sup>17</sup> The Act, however, prohibits contributions

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<sup>13</sup> Tom Campbell for North Dakota, 2017 October Quarterly Report at 41 (Oct. 13, 2017).

<sup>14</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (defining "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section").

<sup>15</sup> *See* 11 C.F.R. §§ 100.52(d)(1), 104.13.

<sup>16</sup> *See* 52 U.S.C. § 30104(b)(3).

<sup>17</sup> The Act defines a "person" to include a partnership. 52 U.S.C. § 30101(11). Commission regulations provide that a contribution by a partnership is dually attributed to both the partnership and to each contributing partner in one of two ways: (1) "[i]n direct proportion to his or her share of the partnership profits, according to instructions . . . provided by the partnership to the political committee or candidate;" or (2) by agreement of the partners. 11 C.F.R. § 110.1(e). A partnership contribution may be attributed by agreement of the partners as long as only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and those partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them. *Id.* § 110.1(e)(2). If no attribution instructions are provided, the contribution shall be attributed equally to each partner. *Id.* § 110.1(k)(2).

1 to candidates from corporations,<sup>18</sup> and a partnership with corporate members may not attribute  
2 any portion of a contribution to the corporate partners.<sup>19</sup>

3 The Commission has previously determined that a corporation's name, trade name,  
4 trademarks, and service marks are things of value owned by the corporation, and that allowing a  
5 committee to use them in a manner suggesting the corporation's support or endorsement of a  
6 candidate may constitute an in-kind contribution.<sup>20</sup> But in those earlier matters, the Commission  
7 found that the resulting in-kind contributions from such use of a corporation's name or mark  
8 were likely *de minimis*.<sup>21</sup> In MUR 6542 (Mullin for Congress), a matter involving similar facts,  
9 the candidate's authorized committee paid for three video advertisements that featured vehicles  
10 bearing the name and logo of the candidate's local plumbing business, as well as images of the  
11 company's storefront and appearances by company employees. Citing the likely *de minimis*  
12 value of any possible in-kind contribution, the Commission dismissed the allegation that the  
13 committee had accepted prohibited in-kind corporate contributions, but issued a letter of caution  
14 to the candidate's business.<sup>22</sup>

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<sup>18</sup> 52 U.S.C. § 30118.

<sup>19</sup> 11 C.F.R. § 110.1(e).

<sup>20</sup> See e.g., Advisory Op. 2007-10 (Reyes); Factual and Legal Analysis at 7, MUR 6542 (Mullin for Congress); Factual and Legal Analysis at 10-11, MUR 6110 (Obama Victory Fund); see also MUR 6322 (Tommy Sowers); MUR 5243 (Oberweis).

<sup>21</sup> See e.g., MUR 6542 (Mullin for Congress) (dismissal of, *inter alia*, allegations that the committee accepted prohibited in-kind corporate contributions where committee paid for video advertisements that featured name and logo of the candidate's business); MURs 6287, 6288, and 6297 (Liberatore for Congress) (EPS dismissal based on a determination that the value of a possible in-kind contribution associated with inclusion of a corporate logo on a campaign mailer was *de minimis*); MUR 6331 (Comm. to Elect Shirley Gibson for Congress) (EPS dismissal based on a determination that the value of a possible in-kind contribution associated with several corporate logos included on printed invitations for a candidate's fundraising event was *de minimis*).

<sup>22</sup> Letter from Peter G. Blumberg, Assistant General Counsel, FEC, to Markwayne Mullin, Mullin Plumbing (Mar. 22, 2013).

1           **B.     The Allegations that the Committee Accepted a Prohibited Contribution or**  
2           **Failed to Report a Contribution from Campbell Farms-Big Lake Warrant**  
3           **Dismissal**  
4

5           Under Commission precedent described above, the use of the Campbell Farms-Big Lake  
6 business name and logo appear to constitute an in-kind contribution. As a partnership, Campbell  
7 Farms-Big Lake would be permitted to make such a contribution to the Committee, subject to the  
8 limits set forth at 52 U.S.C. § 30116(a), provided that no portion of the contribution was  
9 attributed to its corporate partner, Kroeker Farms USA, Inc. If the value of the contribution  
10 exceeded \$200, the Committee would have been required to report the use of the truck and logo  
11 as an itemized receipt.

12           The available information is insufficient to determine the precise value of the apparent in-  
13 kind contribution or whether any portion of the in-kind contribution may have been attributed to  
14 the partnership's corporate member, Kroeker Farms USA, Inc. However, as in MUR 6542, any  
15 such contribution here was likely *de minimis*.

16           Based on these circumstances, we do not believe that this matter warrants further use of  
17 Commission resources. Accordingly, we recommend that the Commission exercise its  
18 prosecutorial discretion and dismiss the allegation that the Committee violated 52 U.S.C.  
19 § 30104(b)(3) by failing to report the receipt of an in-kind contribution.<sup>23</sup> We also recommend  
20 that the Commission exercise its prosecutorial discretion and dismiss the allegation that  
21 Campbell Farms-Big Lake and the Committee violated 52 U.S.C. § 30118(a) by making and  
22 accepting prohibited corporate contributions.<sup>24</sup> We recommend, however, that the Commission  
23 caution Campbell Farms-Big Lake concerning its possible violation of 52 U.S.C. § 30118(a)

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<sup>23</sup>        See *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>24</sup>        *Id.*

1 involving the portion of the apparent in-kind contribution that may have been attributable to the  
2 partnership's corporate member.

3 **IV. RECOMMENDATIONS**

- 4 1. Dismiss the allegation that Tom Campbell for North Dakota and Paul Kilgore in  
5 his official capacity as treasurer violated 52 U.S.C. § 30104(b)(3);
- 6 2. Dismiss the allegation that Campbell Farms-Big Lake, LLP d/b/a Campbell Farms  
7 and Tom Campbell for North Dakota and Paul Kilgore in his official capacity as  
8 treasurer violated 52 U.S.C. § 30118(a);
- 9 3. Approve the attached Factual and Legal Analysis;
- 10 4. Approve the appropriate letters; and
- 11 5. Close the file.


12 Lisa J. Stevenson  
13 Acting General Counsel  
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16 Kathleen M. Guith  
17 Associate General Counsel for Enforcement  
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20 7.26.18  
21 Date

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24 Stephen Gura  
25 Deputy Associate General Counsel for Enforcement  
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29 Jin Lee  
30 Acting Assistant General Counsel  
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34 Ray L. Wolcott  
35 Attorney  
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