



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Matthew Sanderson, Esq. and Emma K. Lewis, Esq.,
Caplin & Drysdale, Chartered
One Thomas Circle, NW, Suite 1100
Washington, DC 20005

FEB 21 2019

RE: MUR 7302
Tom Campbell
Tom Campbell for North Dakota and Paul
Kilgore in his official capacity as treasurer

Dear Mr. Sanderson and Ms. Lewis:

On December 12, 2017, the Federal Election Commission notified your clients, Tom Campbell and Tom Campbell for North Dakota and Paul Kilgore in his official capacity as treasurer, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Upon further review of the allegations contained in the complaint and information supplied by your clients, the Commission voted on February 5, 2019, to dismiss the matter and close the file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

If you have any questions, please contact Ray Wolcott, the attorney assigned to the matter, at (202) 694-1302.

Sincerely,

A handwritten signature in cursive script that reads "Jim Lee".

Jim Lee
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

1
2 **RESPONDENTS:** Tom Campbell for North Dakota and Paul Kilgore MUR 7302
3 in his official capacity as treasurer
4 Campbell Farms-Big Lake, LLP d/b/a Campbell
5 Farms

6 I. INTRODUCTION

7 The Complaint alleges that Tom Campbell for North Dakota and Paul Kilgore in his
8 official capacity as treasurer (“the Committee”) violated the Federal Election Campaign Act of
9 1971, as amended (the “Act”), and Commission regulations by failing to report an in-kind
10 contribution from Campbell Farms-Big Lake, LLP d/b/a Campbell Farms (“Campbell Farms-Big
11 Lake”). The Complaint alleges that the in-kind contribution resulted from the Committee airing
12 a campaign advertisement that featured a truck in the background bearing a “Campbell Farms”
13 logo.¹ The Complaint alleges that the Committee should have, but did not, report this as both a
14 receipt of an in-kind contribution from Campbell Farms-Big Lake and as a disbursement
15 associated with producing the advertisement.²

16 The Committee responds that the use of the Campbell Farms-Big Lake truck and logo did
17 not result in an in-kind contribution, and even it did, the value of the contribution was *de*
18 *minimis*.³

19 As discussed below, the available information indicates that, even if the use of the truck
20 and logo in Campbell’s ad constituted an in-kind contribution to the Committee, the value of any
21 such in-kind contribution was likely *de minimis* and does not justify the use of further

¹ Compl. at 2 (Dec. 11, 2017).

² *Id.* at 2, 4-5.

³ Resp. at 2, 4 (Jan. 31, 2018).

1 Commission resources. Therefore, the Commission exercises its prosecutorial discretion and
2 dismisses the allegations that the Committee and Campbell Farms-Big Lake violated the Act or
3 Commission regulations.⁴

4 **II. FACTS**

5 Tom Campbell is a 2018 candidate for North Dakota's at-large House district seat.⁵ The
6 Committee is Campbell's principal campaign committee.⁶ Campbell Farms-Big Lake is a North
7 Dakota partnership that operates a commercial potato farm, and state records show that Tom
8 Campbell is the registered agent of the partnership.⁷ Campbell Farms-Big Lake lists its general
9 partners as Campbell Farms and Kroeker Farms USA, Inc., a Delaware corporation.⁸

10 Citing news reports, the Complaint alleges that the Committee spent approximately
11 \$250,000 on statewide television campaign ads from August 16 through September 24, 2017.⁹
12 The Complaint alleges that one of these ads featured Campbell standing in front of a truck with a
13 "Campbell Farms" logo on one of the truck's windows as he discusses his experience as a potato
14 farmer and his plans for the state.¹⁰

⁴ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

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

⁶ *Id.*

⁷ 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>.

⁸ "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).

⁹ Compl. at 2.

¹⁰ *Id.*

1 The 30-second ad features Campbell leaning on the open window of a pickup truck with
2 a “Campbell Farms” logo decal on the rear window.¹¹ The decal is visible for the first three
3 seconds of the ad and for five seconds near the end. During the first three-second portion of the
4 video, Campbell says “I’m Tom Campbell. Growing potatoes, you learn.” During the latter five-
5 second portion of the ad, Campbell says “I’m Tom Campbell. I’m a potato farmer, a
6 businessman, and a conservative outsider.” The logo is identical to the logo on the Campbell
7 Farms website.¹² The ad contains a disclaimer indicating that it was authorized by Campbell and
8 paid for by the Committee. The Committee’s 2017 October Quarterly Report shows a
9 \$389,950.00 disbursement to Axiom Strategies for “media consulting” made on August 16,
10 2017, but does not provide any itemized breakdown indicating which advertisements were
11 covered by that disbursement.¹³ The Committee’s disclosure reports do not list any contributions
12 to the Committee from Campbell Farms-Big Lake.

13 **III. LEGAL ANALYSIS**

14 **A. Relevant Law**

15 A “contribution” is “any gift, subscription, loan, advance, or deposit of money or
16 anything of value made by any person for the purpose of influencing any election for Federal
17 office.”¹⁴ “Anything of value” includes in-kind contributions, which must be reported both as a

¹¹ 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>.

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

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

¹⁴ 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”).

1 receipt and as a corresponding disbursement.¹⁵ Committees must report the total value of all
2 contributions and must itemize contributions from any person that exceed \$200 in the aggregate
3 in a calendar year.¹⁶

4 The Act and Commission regulations permit partnerships to make contributions, but such
5 contributions are subject to the limits set forth at 52 U.S.C. § 30116(a) and must be dually
6 attributed between the partnership and the partners.¹⁷ The Act, however, prohibits contributions
7 to candidates from corporations,¹⁸ and a partnership with corporate members may not attribute
8 any portion of a contribution to the corporate partners.¹⁹

9 The Commission has previously determined that a corporation's name, trade name,
10 trademarks, and service marks are things of value owned by the corporation, and that allowing a
11 committee to use them in a manner suggesting the corporation's support or endorsement of a
12 candidate may constitute an in-kind contribution.²⁰ But in those earlier matters, the Commission
13 found that the resulting in-kind contributions from such use of a corporation's name or mark

¹⁵ See 11 C.F.R. §§ 100.52(d)(1), 104.13.

¹⁶ See 52 U.S.C. § 30104(b)(3).

¹⁷ 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).

¹⁸ 52 U.S.C. § 30118.

¹⁹ 11 C.F.R. § 110.1(e).

²⁰ 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).

1 were likely *de minimis*.²¹ In MUR 6542 (Mullin for Congress), a matter involving similar facts,
2 the candidate's authorized committee paid for three video advertisements that featured vehicles
3 bearing the name and logo of the candidate's local plumbing business, as well as images of the
4 company's storefront and appearances by company employees. Citing the likely *de minimis*
5 value of any possible in-kind contribution, the Commission dismissed the allegation that the
6 committee had accepted prohibited in-kind corporate contributions, but reminded the candidate's
7 business to take steps to ensure that its conduct was in compliance with the prohibition on
8 corporate contributions.²²

9 **B. The Allegations that the Committee Accepted a Prohibited Contribution or**
10 **Failed to Report a Contribution from Campbell Farms-Big Lake Warrant**
11 **Dismissal**

12 Although it is possible that the appearance of the Campbell Farms-Big Lake business
13 name and logo provided something of value to the Committee, and thus could have been a
14 potential in-kind contribution,²³ its cost is likely *de minimis*.²⁴

²¹ 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*).

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

²³ As a partnership, Campbell Farms-Big Lake would be permitted to make a contribution to the Committee, subject to the limits set forth at 52 U.S.C. § 30116(a), provided that no portion of the contribution was attributed to its corporate partner, Kroeker Farms USA, Inc. The Committee would be required to report such a contribution only if its value exceeded \$200.

²⁴ 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

1 Based on these circumstances, this matter does not warrant further use of Commission
2 resources. Accordingly, the Commission exercises its prosecutorial discretion and dismisses the
3 allegation that the Committee violated 52 U.S.C. § 30104(b)(3) by failing to report the receipt of
4 an in-kind contribution.²⁵ The Commission also exercises its prosecutorial discretion and
5 dismisses the allegation that Campbell Farms-Big Lake and the Committee violated 52 U.S.C.
6 § 30118(a) by making and accepting prohibited corporate contributions.²⁶ The Commission,
7 however, reminds Campbell Farms-Big Lake concerning the requirements of 52 U.S.C.
8 § 30118(a).

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*).

²⁵ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

²⁶ *Id.*