

**RECEIVED**

By OGC-CELA at 9:41 am, Apr 27, 2021

**BEFORE THE FEDERAL ELECTION COMMISSION**

)  
 )     **MUR 7442**  
 )

**SUPPLEMENTAL RESPONSE OF AMERICA FIRST ACTION, INC., JON PROCH AS  
 TREASURER**

By and through undersigned counsel, America First Action, Inc. and Jon Proch as Treasurer (“America First” or the “Committee”) submit this Supplemental Response in the above-captioned Matter Under Review (“MUR”). Following the Committee’s July 31, 2019 Response to the Supplemental Complaint in this MUR, the Committee learned additional information from the public record—including in a federal criminal indictment—that reasonably called into question the true source of the \$325,000 contribution at issue. In light of that information, the Committee has now disgorged the funds through an interpleader proceeding in federal court, as was required to release the Committee from a lawsuit into which it was joined and settle the demands of multiple claimants to the funds. In other words, America First did not knowingly accept a contribution in the name of another and the funds have since been disgorged. We thus renew our request that the Commission dismiss the Committee as a Respondent in this MUR.

In October 2019, two important developments concerning the \$325,000 contribution occurred—raising additional questions about the true source of the contributed funds:

1. On October 10, 2019, an indictment was unsealed in the Southern District of New York charging Lev Parnas, Igor Fruman, and two other individuals with violating campaign finance laws. The indictment alleged that Parnas and Fruman conspired to make the contribution at issue in the name of another and “falsely reported that the contribution[] came from” Global Energy Producers, LLC (“GEP”). See ECF No. 1 ¶ 14, *United States v. Parnas et al.*, No. 1:19-cr-00725-JPO (S.D.N.Y. Oct. 9, 2019). According to the indictment, the attribution to GEP was allegedly made “*to evade the reporting requirements under the Election Act and to conceal that [Parnas and Fruman] were the true source of the contributions.*” *Id.* ¶ 15 (emphasis added). Shortly thereafter, counsel representing Fruman requested that America First refund the \$325,000 contribution.

2. On October 29, 2019, a federal judge permitted the plaintiff in a different legal proceeding in the Southern District of Florida (“Florida proceeding”) to join America First in that lawsuit. *See* ECF No. 33, *Pues Family Trust IRA v. Parnas Holdings, Inc.*, No. 9:19-cv-80024-DMM (S.D. Fla. Oct. 29, 2019). In the Florida proceeding, the plaintiff alleged that the \$325,000 contribution to America First constituted a fraudulent transfer from Parnas to the Committee and that the plaintiff was entitled to the funds to satisfy a judgment it had won against Parnas. *See* ECF Nos. 18, 25, 49, *Pues Family Trust IRA*, No. 9:19-cv-80024-DMM (S.D. Fla.).<sup>1</sup>

These developments provided America First sufficient reason under 11 C.F.R. § 103.3(b) to question the lawfulness of the \$325,000 contribution it had received. *See* Advisory Op. 1991-1939 (D’Amato) at 2 (“[T]he Commission concludes that the criminal indictment, along with the cited Department of Justice letter, provided sufficient basis to question the lawfulness of the contributions under the Act pursuant to 11 CFR 103.3(b).”). In order to comply with its obligations under federal election law and, at the same time, obtain dismissal and release from liability in the Florida proceeding, America First filed a Motion for Interpleader<sup>2</sup> disclaiming the funds and requesting that the court settle the competing demands for their refund. *See* ECF Nos. 68 & 86, *Pues Family Trust IRA*, No. 9:19-cv-80024-DMM (S.D. Fla.); *see also* Advisory Op. 1991-39 (D’Amato) at 2 (“The Commission determines that these funds, in the unusual circumstances present in this advisory opinion request, where the Committee cannot at this point determine the identity of the original contributor, shall be disbursed by the Committee for a lawful purpose unrelated to any Federal election, campaign, or candidate.”). The federal court granted America First’s motion; accepted the deposit of the \$325,000 contribution at issue into the court registry; and, on

---

<sup>1</sup> The plaintiff in the Florida proceeding initially alleged that the contribution was a fraudulent transfer and sought to implead America First into the case in April 2019. *See* ECF No. 18, *Pues Family Trust IRA*, No. 9:19-cv-80024-DMM (S.D. Fla. Apr. 15, 2019). Thus, the Committee risked potential liability to the plaintiff in that matter for the amount of the funds. During the pendency of the Florida proceeding and this MUR, America First ensured that the funds remained segregated from its general treasury and that no portion was used in connection with a federal election or for any other purpose.

<sup>2</sup> The purpose of interpleader is to “prevent[] the stakeholder from being obliged to determine at his peril which claimant has the better claim” and “protects the stakeholder from the vexation of multiple suits and the possibility of multiple liability that could result from adverse determinations in different courts.” Wright & Miller, 7 Fed. Prac. & Proc. Civ. § 1702 (3d ed.).

March 30, 2021, dismissed the Committee from the Florida proceeding entirely. ECF Nos. 107, 112, 118, *Pues Family Trust IRA*, No. 9:19-cv-80024-DMM (S.D. Fla.).

Simply put, America First did not knowingly accept a contribution in the name of another and has disgorged the funds in the course of a federal judicial proceeding. Accordingly, the Commission should find there is no reason to believe that the Committee violated the law and dismiss the Committee as a Respondent in this MUR.

Respectfully submitted,



---

Megan Sowards Newton  
Stephen J. Kenny  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, DC 20001  
Tel. (202) 879-3939  
mnewton@jonesday.com

*Counsel for America First Action, Inc. and  
Jon Proch as Treasurer*