



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 27, 2021

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RE: MUR 7454  
DefendArizona and Benjamin  
Ottenhoff, as Treasurer

Dear Mr. Josefiak:

On August 8, 2018, the Federal Election Commission (the “Commission”) notified your clients, DefendArizona and Benjamin Ottenhoff in his official capacity as treasurer (“DefendArizona”), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), and the Commission’s regulations. A copy of the complaint was provided to your clients at that time. After reviewing the allegations contained in the complaint, your clients’ response, and publicly available information, the Commission, on May 20, 2021, found reason to believe that DefendArizona violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 110.1(g)(2) and (4). The Factual and Legal Analysis, which formed a basis for the Commission’s finding and was approved on July 26, 2021, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations, but is a voluntary step in the enforcement process that the Commission is offering as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1643, or by email at [sghosh@fec.gov](mailto:sghosh@fec.gov), within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

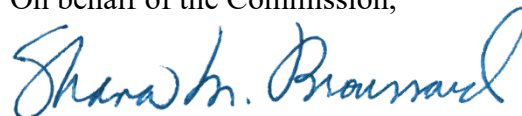
Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

We look forward to your response.

On behalf of the Commission,



Shana M. Broussard  
Chair

Enclosures  
Factual and Legal Analysis

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: DefendArizona and Benjamin Ottenhoff MUR 7454  
4 in his official capacity as treasurer  
5

6 **I. INTRODUCTION**

7 This matter was generated by a complaint filed with the Federal Election Commission  
8 (“Commission”) by the Campaign Legal Center. *See* 52 U.S.C. § 30109(a)(1). The Complaint  
9 in this matter alleges that two limited liability companies, Blue Magnolia Investments, LLC  
10 (“Blue Magnolia”), and Highway 76 LLC (“Highway 76”) (collectively, the “LLCs”) violated  
11 the Federal Election Campaign Act of 1971, as amended (the “Act”), in connection with two  
12 separate \$100,000 contributions to an independent expenditure-only political committee  
13 (“IEOPC”), DefendArizona and Benjamin Ottenhoff in his official capacity as treasurer  
14 (“DefendArizona”). The Complaint alleges that the LLCs served as conduits for unknown  
15 persons to make contributions in the name of another to DefendArizona.

16 DefendArizona states that it had no knowledge that either contribution came from any  
17 source other than the LLCs it identified on its disclosure reports, and, after receiving the  
18 Complaint in this matter, it ultimately amended its disclosure report in connection with the Blue  
19 Magnolia contribution and refunded the full amount of the Highway 76 contribution.

20 For the reasons explained below, the Commission finds reason to believe that  
21 DefendArizona violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 110.1(g)(2) and (4) by failing to  
22 properly attribute the LLC contributions in its disclosure reports.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 DefendArizona is an IEOPC that registered with the Commission on February 1, 2018.<sup>1</sup>  
4 DefendArizona made \$1.9 million in independent expenditures supporting Martha McSally, a  
5 2018 candidate for the U.S. Senate in Arizona, and made just over \$20 million in independent  
6 expenditures opposing McSally’s primary and general election opponents.<sup>2</sup> DefendArizona  
7 reported receiving a \$100,000 contribution from Blue Magnolia on May 30, 2018, and a  
8 \$100,000 contribution from Highway 76 on June 30, 2018.<sup>3</sup> Following the receipt of the  
9 Complaint in this matter, DefendArizona amended certain of its disclosure reports. On  
10 September 11, 2018, DefendArizona amended its July 2018 Quarterly Report to attribute the  
11 \$100,000 contribution from Blue Magnolia to Larry Van Tuyl.<sup>4</sup> On August 29, 2018,  
12 DefendArizona reported refunding the contribution from Highway 76, but did not amend its  
13 disclosure reports to reflect the attribution of the Highway 76 contribution.<sup>5</sup>

14 Blue Magnolia was organized as an LLC in Delaware on April 24, 2018, and its  
15 registered agent is the Corporation Trust Company, located at 1209 Orange Street, Wilmington,  
16 DE.<sup>6</sup> Highway 76 was organized as an LLC in Delaware on May 23, 2018, and its registered

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<sup>1</sup> DefendArizona Statement of Org. (Feb. 1, 2018).

<sup>2</sup> DefendArizona, Spending, 2017-2018, available at <https://www.fec.gov/data/committee/C00668301/?tab=spending&cycle=2018>.

<sup>3</sup> DefendArizona July 2018 Quarterly Report at 6, 7 (July 15, 2018).

<sup>4</sup> DefendArizona Amend. July 2018 Quarterly Report at 6 (Sept. 11, 2018).

<sup>5</sup> DefendArizona Oct. 2018 Quarterly Report at 35 (Oct. 15, 2018). DefendArizona asserts that it refunded the Highway 76 contribution because it “was unable to determine with certainty if the contribution could be retained within the applicable time period . . . set forth at 11 C.F.R. § 103.3(b)(2).” DefendArizona Resp. at 2 (Sept. 27, 2018).

<sup>6</sup> Delaware Div. of Corps. Entity Search, “Blue Magnolia Investments, LLC.”

1 agent is also the Corporation Trust Company, located at 1209 Orange Street, Wilmington, DE.<sup>7</sup>  
2 Blue Magnolia has a single natural person member, Larry Van Tuyl, and Highway 76 is a  
3 disregarded entity for federal tax purposes and has a single member, which is another tax-  
4 disregarded single-member LLC (“LLC 2”); LLC 2’s single member is, in turn, a third LLC  
5 (“LLC 3”) that is taxed as a partnership and has two members, both of which are trusts: The  
6 2005-1 Bidwell Family Trust (“Trust 1”) and the 2005-2 Bidwell Family Trust (“Trust 2”). Each  
7 of these entities is managed by Michael Bidwell.

8 The Complaint alleges that “the only information available” about Blue Magnolia and  
9 Highway 76 “is that each entity was incorporated in Delaware and made a \$100,000 contribution  
10 to DefendArizona approximately five weeks after being created[,]” and that the public record  
11 thus “provide[s] no indication that Blue Magnolia or Highway 76 had accrued sufficient assets,  
12 investment earnings, business revenues, or bona fide capital investments to make these  
13 contributions without an infusion of funds provided to them for that purpose.”<sup>8</sup> On this basis, the  
14 Complaint alleges that the funds used to make the contributions attributed to Blue Magnolia and  
15 Highway 76 came from other unknown persons, and were, in fact, contributions in the name of  
16 another.

## 17 **B. Legal Analysis**

### 18 1. LLCs Must Provide Accurate Attribution Information for Contributions, 19 and Political Committees Must Accurately Disclose LLC Contributions

20 Under the Act, all political committees, including IEOPCs, are required to file periodic  
21 disclosure reports with the Commission which accurately report all contributions received and

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<sup>7</sup> Delaware Div. of Corps. Entity Search, “Highway 76 LLC.”

<sup>8</sup> Compl. at 6 (Aug. 3, 2018).

1 disbursements made.<sup>9</sup> Contributions by an LLC that is disregarded for tax purposes and does not  
2 have a single natural-person member are treated as partnership contributions, which must be  
3 attributed to both the entity and to each of its members.<sup>10</sup> Contributions by an LLC that has a  
4 single natural-person member and is not taxed as a corporation, *i.e.*, a tax-disregarded entity,  
5 must be attributed only to the LLC’s single natural-person member.<sup>11</sup> Furthermore, when either  
6 of these types of LLC makes a contribution, it must affirm to the recipient, at the time it makes  
7 the contribution, that it is eligible to make a contribution and indicate how the contribution is to  
8 be attributed.<sup>12</sup>

9         The Commission’s regulations concerning the attribution of LLC contributions apply on  
10 their face to all LLC contributions irrespective of recipient.<sup>13</sup> These regulations uphold the Act’s  
11 reporting framework and inhibit attempts to circumvent the Act’s contribution source  
12 prohibitions and amount limitations, including prohibitions applicable to IEOPCs.<sup>14</sup> The

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<sup>9</sup> 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

<sup>10</sup> 11 C.F.R. §§ 110.1(e), (g)(2).

<sup>11</sup> 11 C.F.R. § 110.1(g)(4).

<sup>12</sup> 11 C.F.R. § 110.1(g)(5).

<sup>13</sup> See Statement of Reasons of Chair Caroline C. Hunter and Comm’r Matthew S. Petersen, MUR 6969 (MMWP12, LLC, *et al.*) and MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (Sept. 13, 2018) at 2, 5 (stating that “the Commission’s existing attribution regulations at 11 C.F.R § 110.1(g) apply to the reporting” of contributions by LLCs that are not taxed as corporations and that, “[b]y operation of the Commission’s attribution rules, MMWP12’s contributions should have been attributed to K2M and each of its owners, Mark and Megan Kvamme. Similarly, Children of Israel’s contributions should have been attributed to Saul Fox.”); Statement of Reasons of Vice Chair Ellen L. Weintraub, MUR 6969 (MMWP12, LLC, *et al.*) and MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (July 13, 2018) at 2 (“Under Commission regulations, contributions from LLCs that are disregarded entities are not considered corporate contributions, but partnership contributions.”) (citing 11 C.F.R. §§ 110.1(g)(2) and (4)).

<sup>14</sup> See 52 U.S.C. §§ 30116(a)(1), 30118(a); Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,398 – 37,399 (July 12, 1999) (“LLC E&J”) (discussing role of LLC attribution rules in identifying prohibited contributions from foreign national or government contractor sources, concerns that apply to all LLC contributions, including contributions to IEOPCs).

1 Commission has recognized that LLCs must affirmatively provide attribution information when  
2 making political contributions so that the recipient committees can accurately disclose those  
3 contributions.<sup>15</sup>

4 2. DefendArizona Did Not Properly Attribute the Contributions from Blue  
5 Magnolia and Highway 76

6 As an LLC that has not elected corporate federal tax treatment and has a single natural  
7 person member, Blue Magnolia's \$100,000 contribution to DefendArizona must be attributed  
8 only to its single member, Van Tuyl. However, DefendArizona attributed the contribution only  
9 to Blue Magnolia, and did not identify Van Tuyl in its disclosure report.<sup>16</sup> After receiving notice  
10 of the Complaint, and after Blue Magnolia provided the information required by 11 C.F.R. §  
11 110(g)(5), DefendArizona properly reported the Blue Magnolia contribution by attributing it to  
12 Van Tuyl. DefendArizona's Response indicates that Blue Magnolia's contribution did not raise  
13 any questions and was therefore accepted, but does not clarify why the committee did not seek  
14 information regarding the proper attribution of an LLC contribution when Blue Magnolia failed  
15 to provide any such information.<sup>17</sup>

16 Based on the available information, it appears that DefendArizona did not seek  
17 attribution information when Blue Magnolia failed to provide any such information, and  
18 consequently failed to properly attribute the Blue Magnolia contribution to the LLC's single  
19 natural-person member, Van Tuyl, as required under 11 C.F.R. § 110.1(g)(4). The Commission

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<sup>15</sup> LLC E&J at 37,399 ("The Commission further notes that the recipient committee would have no way of knowing how to attribute a contribution made by an eligible multi-member or single member LLC, unless that information was provided.").

<sup>16</sup> See 11 C.F.R. §§ 104.3(a)(4), 110.1(g)(4).

<sup>17</sup> DefendArizona Resp. at 1; see also 11 C.F.R. §§ 103.3(b)(1) and 104.7(a).

1 therefore finds reason to believe that DefendArizona violated 52 U.S.C. § 30104(b) and  
2 11 C.F.R. § 110.1(g)(4) in connection with the reporting of this contribution.

3 Highway 76 is a tax-disregarded LLC whose single member is another tax-disregarded  
4 LLC (LLC 2), whose single member in turn is an LLC taxed as a partnership (LLC 3) that has  
5 two living trusts as its members, Trust 1 and Trust 2. Under Commission regulations, Highway  
6 76's contribution must therefore be attributed to both Highway 76 and LLC 2; LLC 2's  
7 contributions must in turn be attributed to LLC 2 and LLC 3; and LLC 3's contributions must in  
8 turn be attributed to LLC 3 and its partners, Trust 1 and Trust 2, in proportion to the partners'  
9 ownership of LLC 3.<sup>18</sup> The two trusts must each, in turn, attribute their share of the contribution  
10 to their trustees as the true contributors, per the trustees' ownership share of the trusts.<sup>19</sup>

11 In short, any Highway 76 contribution must be attributed to each of the intermediary  
12 holding companies and to the trustees of Trust 1 and Trust 2, which did not happen; Highway  
13 76's \$100,000 contribution to DefendArizona was attributed only to Highway 76.

14 Although the sworn statement of Michael Bidwill states that an agent of DefendArizona  
15 was informed that Highway 76 is one of Mr. Bidwell's family businesses, there is no indication  
16 that Highway 76 provided any further information, including the information required by 11  
17 C.F.R. § 110(g)(5).<sup>20</sup> Nevertheless, DefendArizona did not seek any attribution information for  
18 the LLC contribution from Highway 76 and consequently failed to properly report the

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<sup>18</sup> 11 C.F.R. §§ 110.1(e), (g)(2).

<sup>19</sup> Advisory Op. 1999-19 at 2 (Chris Cohen for Congress) (Aug. 25, 1999) ("The Commission concludes that a contribution made from your *inter vivos* trust to the Committee is permissible and would be considered a contribution from you, rather than from the trust.").

<sup>20</sup> Highway 76 Resp., Attach. 1, ¶ 11.



1 contribution under 11 C.F.R. § 110.1(g)(2).<sup>21</sup> The Commission therefore finds reason to believe  
2 DefendArizona violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 110.1(g)(2) in connection with  
3 the reporting of this contribution.

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<sup>21</sup> DefendArizona did not inquire whether Highway 76 was eligible to make a contribution or seek information regarding the proper attribution of that contribution, and although it reported refunding the full amount on August 29, 2018, it did not make that refund within thirty days of receiving the contribution. *See* 11 C.F.R. §§ 103.3(b)(1) and 104.7(a). DefendArizona also did not amend its reports to properly attribute the contribution. *See* DefendArizona Resp. at 2; DefendArizona Oct. 2018 Quarterly Report at 35.