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March 15, 2019

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

VIA EMAIL: cela@fec.gov

Re: MUR 7491: Response to Complaint from Mike Johnson for Louisiana et al.

Dear Mr. Jordan:

We are writing this letter on behalf of Mike Johnson for Louisiana and William Vanderbrook in his official capacity as treasurer (the “Committee”) in response to the Complaint filed in the above-referenced matter by William Rodney Allen. There are no facts alleged in the Complaint that the funds were derived from a foreign source or directed by a foreign principal, and/or that the Committee had knowledge of either. Thus, the Federal Election Commission (the “Commission”) should either dismiss the Complaint on its face, or find no reason to believe a violation of the Federal Election Campaign Act of 1971 (the “Act”) or the Commission’s regulations occurred with respect to the Committee.

The Commission may find “reason to believe” only if a Complaint sets forth sufficient, specific facts, which, if proven true, would constitute a violation of the Act.¹ Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true.² Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence.³ As explained in more detail below, the allegations made in the Complaint here do not support a reason to believe finding in this matter. The Complaint should be immediately dismissed.

¹ See 11 C.F.R. § 111.4(a), (d).

² See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001).

³ See *id.*

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The Complaint

The Complaint centers on an article in a local Louisiana blog called, *The Bayou Brief*, and apparently attempts to contend that a foreign national and potentially foreign-owned or controlled entity contributed to the Committee. Neither the Complaint nor the article set forth specific facts indicating that a prohibited contribution was made, much less that the Committee knowingly accepted such contribution.

Legal Analysis

The Committee had no reason to believe that the Texas based company, AEC, made contributions that were funded or directed by foreign nationals, and the Complaint does not assert or set forth any theory or evidence that the Committee “knowingly” accepted or facilitated such contributions.

The Act and Commission regulations prohibit the making of, or knowing acceptance of, contributions from foreign nationals.⁴ A foreign national is an individual who is not a U.S. citizen and who is “not lawfully admitted for permanent residence.”⁵ The term also includes a foreign government, political party, or business entity.⁶ Commission regulations further provide that foreign nationals “shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person,” with regard to that person’s election-related activities.⁷ This includes decisions concerning the making of contributions, donations, expenditures or disbursements.⁸ Thus, a domestic subsidiary of a foreign corporation may not make contributions in connection with an election if the donations are derived from foreign funds and if a foreign national held the decision-making authority concerning the making of the contribution.⁹

The ban on accepting foreign national contributions does not apply a strict liability standard, but instead, as noted, requires “knowing acceptance.”¹⁰ FEC regulations define “knowingly” as having actual knowledge or having awareness “of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national” or being “aware of facts that would lead a

⁴ See 52 U.S.C. 30121(a); 11 C.F.R. § 110.20; see also Advisory Opinion 2006-15 (TransCanada Corp.).

⁵ See 52 U.S.C. 30121(b); 22 § U.S.C. 611(b).

⁶ See *id.*

⁷ See 11 C.F.R. § 110.20(i).

⁸ See *id.*

⁹ See *id.* at § 110.20(h).

¹⁰ See 67 Fed. Reg. 69928, 69941 (Nov. 19, 2002).

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reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national” but failing to inquire.¹¹

Here, the Committee did not “knowingly” accept a foreign contribution. There was no reason to believe the funds were from foreign sources, or that they were directed by a foreign principal. Furthermore, even if hypothetically AEC violated the Act and Commission regulations, the Committee could not have violated the ban on foreign national contributions simply by accepting the contribution, since the Complaint does not assert, much less set forth any theory or evidence, that the Committee “knowingly” accepted or such contributions. *Again, the Committee had no knowledge, and no reason to think, that the contribution from AEC may have been problematic, and the Complaint has set forth no fact alleging otherwise.* Moreover, as soon as the Committee became aware through news reports that the contribution was even *potentially* problematic, which the Committee does not concede and has yet to be determined, out of an abundance of caution, it immediately refunded the contribution to AEC.¹² The refund occurred before the Complaint was filed, and almost eight months before the Commission belatedly caught its purported “administrative oversight” and sent the Committee the notification letter for this matter.¹³ It strains the imagination to contemplate what more could be expected of a committee under these circumstances.

Conclusion

In attenuated and unsubstantiated arguments, Mr. Allen failed to demonstrate that the Committee violated the Act’s ban on foreign national contributions. There are no facts alleged in the Complaint that the funds were derived from a foreign source or directed by a foreign principal, and especially that the Committee had knowledge of either. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your prompt consideration of this matter, and please do not hesitate to contact us directly at (202) 572-8663 with any questions.

¹¹ See 11 C.F.R. § 110.20(a)(4).

¹² See 2018 October Quarterly Report, Mike Johnson for Louisiana.

¹³ In this instance, “administrative oversight” seems to mean “decided to loop more respondents into an enforcement matter despite the Complaint not setting forth a set of facts and circumstances under which those respondents could have violated the Act.”

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles R. Spies". The signature is written in a cursive style with a large initial "C".

Charles R. Spies
Derek H. Ross
Sloane S. Carlough
Counsel to Mike Johnson for Louisiana