

MUR 7491 (American Ethane Co., LLC, *et al.*)

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1 prohibited contributions to two federal political committees.³ The Complaint alleges that
 2 American Ethane used funds from its foreign national principal shareholders, including
 3 Konstantin Nikolaev, a Russian national who is the controlling shareholder of American Ethane,
 4 to make contributions to Conservative Louisiana and Charles Spies in his official capacity as
 5 treasurer (“Conservative Louisiana”), an independent-expenditure only political committee
 6 (“IEOPC”), and Mike Johnson for Louisiana and William Vanderbrook in his official capacity as
 7 treasurer (the “Johnson Committee”) in 2018, and suggests that the company’s American CEO,
 8 John Houghtaling, was aware the contributions were made using foreign funds. American
 9 Ethane’s Response asserts that the contributions were made with U.S. funds loaned to American
 10 Ethane by H Ventures, a company solely owned by Houghtaling, and that Houghtaling made the
 11 contribution decisions, not American Ethane’s foreign national owners.⁴

12 Based on the available information, we recommend that the Commission find reason to
 13 believe that American Ethane Co., LLC and John Houghtaling violated 52 U.S.C. § 30122 by
 14 making contributions in the name of another or allowing their names to be used to effectuate a
 15 contribution, and approve the use of compulsory process. We further recommend that the
 16 Commission take no action at this time as to the foreign national contribution allegations and
 17 other respondents, pending an investigation into the source of the funds used to make the
 18 contribution.

³ The Complaint incorporates a news article about AEC’s foreign ownership and contributions, *Six Degrees of [Louisiana]* by Lamar White, Jr., Aug. 2, 2018, available at <https://www.bayoubrief.com/2018/08/02/six-degrees-of-%D0%BB%D1%83%D0%B8%D0%B7%D0%B8%D0%B0%D0%BD%D0%B0/>.

⁴ The Complaint, which alleges prohibited foreign national contributions, did not name Houghtaling Enterprises or H Ventures, and they are not currently respondents. Should evidence from the proposed investigation support it, they may be named as respondents in the future.

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1 **II. FACTUAL BACKGROUND**

2 American Ethane is an energy company founded in New Orleans in 2014 but now
 3 headquartered in Houston, Texas. According to its website, its business is the exportation of
 4 ethane, primarily to China.⁵ Houghtaling and three Russian nationals started the company,⁶ and
 5 Houghtaling is its President and CEO.⁷ At the time of the contributions in question, according to
 6 American Ethane's Lobbying Disclosure Act reports, three Russian nationals owned the other
 7 88% of the company.⁸ Currently, two Russian nationals own about 87% of American Ethane,
 8 including Nikolaev, a 33% owner, as disclosed in American Ethane's most recent lobbying
 9 disclosure form.⁹ American Ethane and Houghtaling state that Houghtaling is a part owner of
 10 the company.¹⁰

11 Houghtaling is also the sole owner of H Ventures LLC, a Louisiana corporation that
 12 Houghtaling founded in 2006 and operated under the name Houghtaling Enterprises until 2016.¹¹

⁵ See www.americanethane.com.

⁶ See David Hammer, Lily Dobrovolskaya, *U.S. gas exporter's lobbyists failed to disclose Russian interests*, available at <https://www.wwltv.com/article/news/investigations/us-gas-exporters-lobbyists-failed-to-disclose-russian-interests/289-579381269> (cited in article incorporated in the Complaint).

⁷ American Ethane and Houghtaling Response (Oct. 30, 2018) ("American Ethane Resp."), Attach., Declaration of John Houghtaling ¶ 5 (Oct. 29, 2018).

⁸ See AEC Lobbying Disclosure Form (July 20, 2018), available at <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=3DCA47BB-284A-4DD0-A9F0-2B2F65104999&filingTypeID=2>.

⁹ See AEC Lobbying Disclosure Form (Jan. 9, 2019), available at <http://disclosures.house.gov/lxmlrelease/2019/RR/301020474.xml>.

¹⁰ American Ethane Resp. at 2.

¹¹ American Ethane Resp. at 4 (Oct. 30, 2018) and Declaration of John Houghtaling ¶ 6 (Oct. 29, 2018). See State of Louisiana, Secretary of State, H Ventures LLC, available at https://coraweb.sos.la.gov/commercialsearch/CommercialSearchDetails.aspx?CharterID=738564_E6B5E57F9A.

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1 The available information does not establish whether H Ventures elected to be taxed as a
 2 corporation.

3 The Complaint relies on an August 2018 news article that discusses American Ethane's
 4 Russian ownership in connection with Respondent Kyle Ruckert, American Ethane's lobbyist,¹²
 5 and the company's alleged failure for more than three years to disclose its foreign ownership on
 6 federal lobbying forms, as required by the Lobbying Disclosure Act of 1995.¹³ The article also
 7 describes American Ethane's 2018 political contributions to Louisiana candidates and
 8 committees, which form the basis for the Complaint's allegations that these were prohibited
 9 foreign national contributions.

10 Specifically, on April 16, 2018, American Ethane made a \$15,000 contribution to
 11 Conservative Louisiana.¹⁴ On April 25, 2018, American Ethane made three contributions to the
 12 Johnson Committee, the 2018 authorized committee for Johnson's election to the House: two for
 13 \$2,700 and one for \$700, for a total of \$6,100.¹⁵ The Complaint alleges, and the Commission's
 14 records reflect, that American Ethane reportedly also made other political contributions: \$5,000
 15 on April 30, 2018, to Pelican PAC, a Leadership PAC associated with Senator John Kennedy of

¹² Ruckert's lobbying firm is Respondent Bold Strategies.

¹³ See Compl. at 9; *see also* 2 U.S.C. § 1601.

¹⁴ See Conservative Louisiana July 2018 Quarterly Report at 6, available at
<http://docquery.fec.gov/pdf/860/201807139115433860/201807139115433860.pdf>.

¹⁵ See Committee 2018 July Quarterly Report at 20, available at
<http://docquery.fec.gov/pdf/746/201807099115254746/201807099115254746.pdf>. The Committee refunded the contributions on August 7, 2018. See Committee 2018 Amended October Quarterly Report at 103, available at
<http://docquery.fec.gov/pdf/583/201903129145678583/201903129145678583.pdf>.

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1 Louisiana,¹⁶ and \$5,400 on May 10, 2018, to Garret Graves, a Louisiana candidate for the 2018

2 House.¹⁷

3 In their Response and in a declaration by Houghtaling, American Ethane and
 4 Houghtaling assert that American Ethane is a domestic company and that the funds for the
 5 contributions were domestic, “derived through a loan secured by Houghtaling Enterprises, now
 6 referred to as H Ventures, a corporate entity in which Mr. Houghtaling has a 100% ownership
 7 interest.”¹⁸ They also state that the “all decisions regarding AEC’s political contributions,
 8 including amount and recipient, are made solely by Mr. Houghtaling.”¹⁹ American Ethane does
 9 not further explain the circumstances of the loan or any of its terms or whether it has repaid the
 10 loan to H Ventures.

11 Both Conservative Louisiana and the Johnson Committee deny knowingly accepting a
 12 contribution from an alleged foreign national and assert they had no reason to believe the
 13 contributions at issue were problematic.²⁰ The Johnson Committee further states that it refunded
 14 the American Ethane contribution “out of an abundance of caution” before the Complaint was
 15 filed.²¹ Respondents Bold Strategies and Kyle Ruckert assert that the Complaint does not make

¹⁶ See Pelican PAC 2018 July Quarterly Report at 6, available at <http://docquery.fec.gov/pdf/365/201807139115402365/201807139115402365.pdf>. Pelican PAC and the Committee have the same treasurer.

¹⁷ See Garret Graves for Congress 2018 Amended Pre-Primary Report at 5 (also indicating that the contribution was refunded on June 1, 2018), available at <http://docquery.fec.gov/pdf/365/201807139115402365/201807139115402365.pdf>.

¹⁸ American Ethane Resp. at 4 (Oct. 30, 2018) and Declaration of John Houghtaling ¶ 6 (Oct. 29, 2018).

¹⁹ American Ethane Resp. at 2.

²⁰ Conservative Louisiana Response at 3 (October 1, 2018), Mike Johnson for Louisiana (“Committee”) Response at 3 (March 15, 2019).

²¹ Committee Response at 3; *see* n.15. The refund was made five days after publication of the August 2 news article incorporated in the Complaint.

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1 allegations against them.²² They further assert that Ruckert, who is also a director of
 2 Conservative Louisiana, had no reason to believe that American Ethane's contribution to
 3 Conservative Louisiana was made by foreign nationals and that even if he did, he would not have
 4 liability as a director.²³ Respondent Konstantin Nikolaev did not respond to the Complaint.

5 **III. LEGAL ANALYSIS**

6 The Act provides that a contribution includes "any gift, subscription, loan, advance, or
 7 deposit of money or anything of value made by any person for the purpose of influencing any
 8 election for Federal office."²⁴ The term "person" for purposes of the Act and Commission
 9 regulations includes partnerships, corporations, and "any other organization or group of
 10 persons."²⁵

11 The Act prohibits any "foreign national" from directly or indirectly making a contribution
 12 or donation of money or other thing of value, or an expenditure, in connection with a federal,
 13 state, or local election.²⁶ The Act's definition of "foreign national" includes an individual who is
 14 not a citizen or national of the United States and who is not lawfully admitted for permanent
 15 residence, as well as a "foreign principal" as defined at 22 U.S.C. § 611(b), which, in turn,
 16 includes a "partnership, association, corporation, organization, or other combination of persons

²² Bold Strategies and Kyle Ruckert Response (Sept. 25, 2018) at 2.

²³ *Id.* at 3.

²⁴ 52 U.S.C. § 30101(8)(A).

²⁵ *Id.* § 30101(11); 11 C.F.R. § 100.10.

²⁶ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012).

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1 organized under the laws of or having its principal place of business in a foreign country.”²⁷

2 Commission regulations implementing the Act’s foreign national prohibition provide:

3 A foreign national shall not direct, dictate, control, or directly or indirectly
 4 participate in the decision-making process of any person, such as a corporation,
 5 labor organization, political committee, or political organization with regard to
 6 such person’s Federal or non-Federal election-related activities, such as decisions
 7 concerning the making of contributions, donations, expenditures, or
 8 disbursements . . . or decisions concerning the administration of a political
 9 committee.²⁸

10

11 The Act further prohibits persons from soliciting, accepting, or receiving a contribution or
 12 donation from a foreign national.²⁹

13 The Act also prohibits a person from making a contribution in the name of another
 14 person, knowingly permitting his or her name to be used to effect such a contribution, or
 15 knowingly accepting such a contribution.³⁰ The Commission has included in its regulations
 16 illustrations of activities that constitute making a contribution in the name of another, including

17 Giving money or anything of value, all or part of which was provided to the
 18 contributor by another person (the true contributor) without disclosing the
 19 source of money or the thing of value to the recipient candidate or committee
 20 at the time the contribution is made . . .³¹

²⁷ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

²⁸ 11 C.F.R. § 110.20(i).

²⁹ 52 U.S.C. § 30121(a)(2). The Commission’s regulations employ a “knowingly” standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

³⁰ 52 U.S.C. § 30122.

³¹ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

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1 The Act and the Commission's implementing regulations provide, and the Courts have upheld,
 2 that a person who furnishes another with funds for the purpose of contributing to a candidate or
 3 committee "makes" the resulting contribution.³²

4 Although the Complaint alleges that American Ethane made prohibited contributions
 5 using foreign national funds, or made those contributions at the direction of the company's
 6 foreign national owners, the Response from American Ethane and Houghtaling states
 7 unequivocally that American Ethane did *not* use its own funds to make the contributions and that
 8 H Ventures, Houghtaling's corporation, is the true source of the contributions. The Response
 9 explains that the funds were "derived through a loan secured by Houghtaling Enterprises, now
 10 referred to as H Ventures, a corporate entity in which Houghtaling has a 100% ownership
 11 interest."³³ American Ethane and Houghtaling do not explain what they mean by "derived
 12 through a loan," do not disclose when H Ventures made the loan, or whether the loan's purpose
 13 was to make political contributions or was a general loan to the corporation, and do not describe
 14 the terms of the loan, including any repayment schedule. The Response also does not address
 15 whether the foreign owners of American Ethane participated in the decision-making process to
 16 make the loan or the political contributions. American Ethane vaguely states that it has
 17 "considerable domestic funds,"³⁴ but does not explain why those funds were not used for the
 18 contributions.

³² See *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) ("The key issue is the source of the funds, regardless of the status of the funds under state property law at the time of the donation."); *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011) (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); *accord United States v. O'Donnell*, 608 F.3d 546, 555 (9th Cir. 2010).

³³ American Ethane Resp. at 4; Declaration of John Houghtaling ¶ 6.

³⁴ American Ethane Resp. at 2.

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1 Based on American Ethane's own statements, it used funds solely obtained from H
 2 Ventures to make the political contributions at issue, thus making H Ventures or Houghtaling the
 3 true source of the funds used for those contributions.³⁵ In addition, it allowed its own name to be
 4 used to make the contributions. More information is needed, however, to determine the timing
 5 and purpose of the H Ventures loan and whether the loan was made for the purpose of making
 6 federal political contributions. Accordingly, we recommend that the Commission find reason to
 7 believe that American Ethane and John Houghtaling violated the Act by making contributions in
 8 the name of another.

9 The information in the record is unclear regarding the extent to which American Ethane's
 10 foreign national owners were involved in these activities. As alleged in the Complaint, the
 11 company's contributions may also have violated the prohibition on foreign national contributions
 12 if any foreign nationals participated in the decision-making process with respect to making
 13 contributions, including whether to receive a loan from H Ventures to make the contributions.
 14 The Commission has consistently found a violation of the foreign national prohibition where
 15 foreign national officers or directors of a U.S. company participated in the company's decisions
 16 to make contributions or in the management of its separate segregated fund.³⁶ Although the

³⁵ In MUR 7081 (Floridians for a Strong Middle Class), the Commission considered whether Chic Boutique, an LLC, used its own funds to make political contributions or whether the true source of the funds were the LLC's managers, among other possibilities. There, because the LLC was an active business entity, a reasonable inference could not be made that the funds came from the individuals. F&LA at 12, MUR 7081. In this matter, the purported contributor has admitted that the funds came from another entity.

³⁶ See, e.g., Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

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1 American Ethane Response states that the “entire decision-making process was solely
2 controlled” by Houghtaling,” and Houghtaling’s declaration states that he was “solely
3 responsible,” the Response and declaration do not describe the circumstances of the decision to
4 make and accept the loan from H Ventures, or whether American Ethane’s foreign national
5 majority shareholders participated in the decision-making process with respect to American
6 Ethane’s contributions.

7 Given the lack of information on whether there was foreign national involvement in
8 American Ethane’s decision to make the contributions, we recommend that the Commission take
9 no action at this time as to the allegation that American Ethane violated the ban on foreign
10 national contributions pending an investigation into the source of funds for the contribution. An
11 investigation into the circumstances behind the loan to American Ethane and whether it was
12 made for the purpose of making political contributions may yield additional information as to
13 whether Nikolaev or any other foreign nationals participated in the decision-making process with
14 respect to contributions to Conservative Louisiana and the Johnson Committee or in the decision
15 to receive loaned funds from H Ventures to make the contributions. Accordingly, we
16 recommend that the Commission take no action at this time as to the allegations that American
17 Ethane violated the ban on foreign national contributions pending an investigation into the
18 source of funds for the contribution.

19 **IV. INVESTIGATION**

20 The investigation would seek to learn when H Ventures made the loan to American
21 Ethane and for what purpose. We also intend to obtain information about the participation of
22 American Ethane’s controlling partners in the making of the loan and the contributions.

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- 1 Although we plan to begin by using informal investigative methods, we recommend that the
- 2 Commission authorize the use of compulsory process.

3 V. RECOMMENDATIONS

1. Find reason to believe that American Ethane Co., LLC and John Houghtaling violated 52 U.S.C. § 30122 by making a contribution in the name of another;
2. Approve the use of compulsory process;
3. Take no action at this time as to the allegation that American Ethane Co., LLC and John Houghtaling violated 52 U.S.C. § 30121(a)(1)(A);
4. Take no action at this time as to Conservative Louisiana and Charles R. Spies in his official capacity as treasurer, Mike Johnson for Louisiana and William Vanderbrook in his official capacity as treasurer, Konstantin Nikolaev; Bold Strategies, LLC, and Kyle Ruckert;
5. Approve the attached Factual and Legal Analysis; and
6. Approve the appropriate letters;

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for
Enforcement

6.13.19

Date

Stephen Gura
Deputy Associate General Counsel for
Enforcement

Lynn Y. Tran
Lynn Y. Tran
Assistant General Counsel

Elena Paoli
Elena Paoli
Attorney

Attachment: Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: American Ethane Co., LLC MUR 7491
John Houghtaling

I. INTRODUCTION

8 This matter was generated by a complaint filed with the Federal Election Commission
9 (“Commission”) by William Rodney Allen. *See* 52 U.S.C. § 30109(a)(1). The complaint alleges
10 that American Ethane Co., LLC (“American Ethane”), which is majority-owned by Russian
11 nationals, and its CEO John Houghtaling made prohibited foreign national contributions to two
12 political committees in 2018. Based on the responses submitted by American Ethane and
13 Houghtaling, the Commission finds reason to believe that American Ethane and John
14 Houghtaling violated 52 U.S.C. § 30122 by making contributions in the name of another.

15 II. FACTUAL BACKGROUND

16 American Ethane is an energy company founded in New Orleans in 2014 but now
17 headquartered in Houston, Texas. According to its website, its business is the exportation of
18 ethane, primarily to China.¹ Houghtaling and three Russian nationals started the company,² and
19 Houghtaling is its President and CEO.³ At the time of the contributions in question, according to
20 American Ethane's Lobbying Disclosure Act reports, three Russian nationals owned 88% of the

¹ See www.americanethane.com.

² See David Hammer, Lily Dobrovolskaya, *U.S. gas exporter's lobbyists failed to disclose Russian interests*, available at <https://www.wwltv.com/article/news/investigations/us-gas-exporters-lobbyists-failed-to-disclose-russian-interests/289-579381269> (cited in article incorporated in the Complaint).

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1 company.⁴ Currently, two Russian nationals own about 87% of American Ethane, including
 2 Nikolaev, a 33% owner, as disclosed in American Ethane's most recent lobbying disclosure
 3 form.⁵ American Ethane and Houghtaling state that Houghtaling is a part owner of the
 4 company.⁶

5 Houghtaling is also the sole owner of H Ventures LLC, a Louisiana corporation that
 6 Houghtaling founded in 2006 and operated under the name Houghtaling Enterprises until 2016.⁷
 7 The available information does not establish whether H Ventures elected to be taxed as a
 8 corporation.

9 The Complaint relies on an August 2018 news article that discusses American Ethane's
 10 Russian ownership in connection with the company's alleged failure for more than three years to
 11 disclose its foreign ownership on federal lobbying forms, as required by the Lobbying Disclosure
 12 Act of 1995.⁸ The article also describes American Ethane's 2018 political contributions to
 13 Louisiana candidates and committees, which form the basis for the Complaint's allegations that
 14 these were prohibited foreign national contributions.

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⁶ American Ethane Resp. at 2.

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1 Specifically, on April 16, 2018, American Ethane made a \$15,000 contribution to
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 3 Johnson Committee, the 2018 authorized committee for Mike Johnson's election to the House:
 4 two for \$2,700 and one for \$700, for a total of \$6,100.¹⁰ The Complaint alleges, and the
 5 Commission's records reflect, that American Ethane reportedly also made other political
 6 contributions: \$5,000 on April 30, 2018, to Pelican PAC, a Leadership PAC associated with
 7 Senator John Kennedy of Louisiana,¹¹ and \$5,400 on May 10, 2018, to Garret Graves, a
 8 Louisiana candidate for the 2018 House.¹²

9 In their Response and in a declaration by Houghtaling, American Ethane and
 10 Houghtaling assert that American Ethane is a domestic company and that the funds for the
 11 contributions were domestic, "derived through a loan secured by Houghtaling Enterprises, now
 12 referred to as H Ventures, a corporate entity in which Mr. Houghtaling has a 100% ownership
 13 interest."¹³ They also state that the "all decisions regarding AEC's political contributions,
 14 including amount and recipient, are made solely by Mr. Houghtaling."¹⁴ American Ethane does

⁹ See Conservative Louisiana July 2018 Quarterly Report at 6, available at <http://docquery.fec.gov/pdf/860/201807139115433860/201807139115433860.pdf>.

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1 not further explain the circumstances of the loan or any of its terms or whether it has repaid the
 2 loan to H Ventures.

3 **III. LEGAL ANALYSIS**

4 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
 5 deposit of money or anything of value made by any person for the purpose of influencing any
 6 election for Federal office.”¹⁵ The term “person” for purposes of the Act and Commission
 7 regulations includes partnerships, corporations, and “any other organization or group of
 8 persons.”¹⁶

9 The Act prohibits any “foreign national” from directly or indirectly making a contribution
 10 or donation of money or other thing of value, or an expenditure, in connection with a federal,
 11 state, or local election.¹⁷ The Act’s definition of “foreign national” includes an individual who is
 12 not a citizen or national of the United States and who is not lawfully admitted for permanent
 13 residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn,
 14 includes a “partnership, association, corporation, organization, or other combination of persons
 15 organized under the laws of or having its principal place of business in a foreign country.”¹⁸
 16 Commission regulations implementing the Act’s foreign national prohibition provide:

17 A foreign national shall not direct, dictate, control, or directly or indirectly
 18 participate in the decision-making process of any person, such as a corporation,
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¹⁵ 52 U.S.C. § 30101(8)(A).

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¹⁷ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

¹⁸ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

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1 such person's Federal or non-Federal election-related activities, such as decisions
 2 concerning the making of contributions, donations, expenditures, or
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 4 committee.¹⁹

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12 Giving money or anything of value, all or part of which was provided to the
 13 contributor by another person (the true contributor) without disclosing the
 14 source of money or the thing of value to the recipient candidate or committee
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16 The Act and the Commission's implementing regulations provide, and the Courts have upheld,
 17 that a person who furnishes another with funds for the purpose of contributing to a candidate or
 18 committee "makes" the resulting contribution.²³

¹⁹ 11 C.F.R. § 110.20(i).

²⁰ 52 U.S.C. § 30121(a)(2). The Commission's regulations employ a "knowingly" standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

²¹ 52 U.S.C. § 30122.

²² 11 C.F.R. § 110.4(b)(2)(i)–(ii).

²³ See *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) ("The key issue is the source of the funds, regardless of the status of the funds under state property law at the time of the donation."); *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011) (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); accord *United States v. O'Donnell*, 608 F.3d 546, 555 (9th Cir. 2010).

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1 Although the Complaint alleges that American Ethane made prohibited contributions
 2 using foreign national funds, or made those contributions at the direction of the company's
 3 foreign national owners, the Response from American Ethane and Houghtaling states
 4 unequivocally that American Ethane did *not* use its own funds to make the contributions and that
 5 H Ventures, Houghtaling's corporation, is the true source of the contributions. The Response
 6 explains that the funds were "derived through a loan secured by Houghtaling Enterprises, now
 7 referred to as H Ventures, a corporate entity in which Houghtaling has a 100% ownership
 8 interest."²⁴ American Ethane and Houghtaling do not explain what they mean by "derived
 9 through a loan," do not disclose when H Ventures made the loan, or whether the loan's purpose
 10 was to make political contributions or was a general loan to the corporation, and do not describe
 11 the terms of the loan, including any repayment schedule. The Response also does not address
 12 whether the foreign owners of American Ethane participated in the decision-making process to
 13 make the loan or the political contributions. American Ethane vaguely states that it has
 14 "considerable domestic funds,"²⁵ but does not explain why those funds were not used for the
 15 contributions.

16 Based on American Ethane's own statements, it used funds solely obtained from
 17 H Ventures to make the political contributions at issue, thus making H Ventures or Houghtaling
 18 the true source of the funds used for those contributions.²⁶ In addition, it allowed its own name

²⁴ American Ethane Resp. at 4; Declaration of John Houghtaling ¶ 6.

²⁵ American Ethane Resp. at 2.

²⁶ In MUR 7081 (Floridians for a Strong Middle Class), the Commission considered whether Chic Boutique, an LLC, used its own funds to make political contributions or whether the true source of the funds were the LLC's managers, among other possibilities. There, because the LLC was an active business entity, a reasonable inference could not be made that the funds came from the individuals. F&LA at 12, MUR 7081. In this matter, the purported contributor has admitted that the funds came from another entity.

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- 1 to be used to make the contributions. Therefore, the Commission finds reason to believe that
- 2 American Ethane and John Houghtaling violated 52 U.S.C. § 30122 by making contributions in
- 3 the name of another.