

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
American Ethane Co., LLC)
John Houghtaling)
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)
Bold Strategies, LLC)
Kyle Ruckert)
Konstantin Nikolaev)

MUR: 7491

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

19 We recommend that the Commission: (1) authorize pre-probable cause conciliation with
20 American Ethane Co., LLC and John Houghtaling in connection with violations of 52 U.S.C.
21 §§ 30118(a) and 30121; (2) dismiss the allegations as to Bold Strategies, LLC; Kyle Ruckert;
22 Conservative Louisiana and Charles R. Spies in his official capacity as treasurer; Mike Johnson
23 for Louisiana and William Vanderbrook in his official capacity as treasurer; and Konstantin
24 Nikolaev; (3) approve the attached proposed conciliation agreement; and (4) close the file as to
25 Bold Strategies, LLC; Kyle Ruckert; Conservative Louisiana and Charles R. Spies in his official
26 capacity as treasurer; Mike Johnson for Louisiana and William Vanderbrook in his official
27 capacity as treasurer; and Konstantin Nikolaev.

II. BACKGROUND

29 This matter arose from a complaint alleging that American Ethane, LLC violated the
30 Federal Election Campaign Act of 1971, as amended (the “Act”), by making prohibited foreign

MUR 7491 (American Ethane)
Second General Counsel's Report
Page 2 of 25

1 national contributions to federal political committees.¹ The Complaint alleged that American
2 Ethane, a U.S. corporation, and its American CEO, John Houghtaling, used funds from
3 American Ethane's foreign national principal shareholders, including respondent Konstantin
4 Nikolaev, a Russian national and the controlling shareholder of American Ethane, to make
5 contributions to Conservative Louisiana and Charles Spies in his official capacity as treasurer
6 ("Conservative Louisiana"), an independent-expenditure only political committee ("IEOPC"),
7 and Mike Johnson for Louisiana and William Vanderbrook in his official capacity as treasurer
8 (the "Johnson Committee") in 2018.² Commission disclosure reports revealed that American
9 Ethane also made additional federal political contributions.

10 In its Response to the Complaint, American Ethane denied that that it used foreign funds
11 to make contributions and instead asserted that the funds were "derived through a loan secured
12 by Houghtaling Enterprises, now referred to as H Ventures, a corporate entity in which
13 Houghtaling held a 100% ownership interest."³ American Ethane's Response did not explain the
14 details of the loan further but stated that Houghtaling, and not American Ethane's foreign
15 national partners, was the only company official involved in the decision to make the
16 contributions.⁴

17 The Commission found reason to believe that American Ethane and Houghtaling violated
18 52 U.S.C. § 30121(a)(1)(A) by making prohibited foreign national contributions, or, in the

¹ Compl. at 1 (Aug. 30, 2018).

² *Id.*

³ American Ethane and John Houghtaling Resp. at 4 (Oct. 30, 2018).

⁴ *Id.* at 4, Houghtaling Decl. ¶ 5.

1 alternative, that American Ethane and Houghtaling violated 52 U.S.C. § 30118(a) by making
 2 prohibited corporate contributions.⁵ Additionally, the Commission took no action at that time as
 3 to the allegation that American Ethane and Houghtaling violated 52 U.S.C. § 30122 by making
 4 contributions in the name of another, and took no action at that time as to the other respondents.⁶
 5 The subsequent investigation sought to determine American Ethane's tax status; the source of
 6 funds used to make the contributions, including the role of the "loan secured by Houghtaling
 7 Enterprises" described in American Ethane's response; and the circumstances surrounding the
 8 decisions to make contributions.

9 For the reasons set forth below, we recommend that the Commission authorize pre-
 10 probable cause conciliation with American Ethane and Houghtaling for making and consenting
 11 to make prohibited foreign national and corporate contributions

12 We further recommend that the Commission dismiss the allegations as to lobbyists
 13 Bold Strategies and Kyle Ruckert, Conservative Louisiana and Charles R. Spies in his official
 14 capacity as treasurer, Mike Johnson for Louisiana and William Vanderbrook in his official
 15 capacity as treasurer, and Konstantin Nikolaev, and close the file as to them.

16 **III. RESULTS OF THE INVESTIGATION**

17 During the investigation, we interviewed Houghtaling and Ruckert, owner of Bold
 18 Strategies and American Ethane's lobbyist at the time of the contributions. We also reviewed

⁵ See Certification at 1 (July 25, 2019) ("Cert.").

⁶ *Id.* The wording of American Ethane's Response to the Complaint suggested that the contributions might have been made in the name of another, and thus prohibited under 52 U.S.C. § 30122. Therefore, the Commission's Certification also instructed OGC to include a footnote in the Factual & Legal Analysis ("F&LA") alerting American Ethane to the possibility that information regarding making contributions in the name of another could be sought. See Cert. at 2; F&LA at 4. American Ethane's later responses, however, satisfactorily rebutted that theory of liability, and we recommend that the Commission dismiss the potential § 30122 violation.

1 financial records for American Ethane as well as written responses and documents provided in
2 response to the Commission's requests for information.

3 The investigation revealed that American Ethane is taxed as a corporation; thus, the
4 evidence establishes that American Ethane violated 52 U.S.C. § 30118(a) by making \$36,200 in
5 prohibited corporate contributions.

6 The investigation also revealed that the funds American Ethane used to make the
7 contributions were derived from loans from foreign entities to Amshale Energy, LLC, a part-
8 owner of American Ethane, four years before the contributions; and the evidence further
9 establishes that American Ethane had no domestic funds available to make those contributions.
10 Thus, the investigation, which required extensive fact-gathering and research, has established
11 that American Ethane made \$66,200 in prohibited foreign national contributions — the \$36,200
12 in contributions mentioned above, plus a \$15,000 donation to a state political action committee
13 and a \$15,000 contribution to an IEOPC. Further, while the evidence could support proceeding
14 against Ruckert and Bold Strategies for knowingly providing substantial assistance in the
15 solicitation, making, acceptance, or receipt of the foreign national contributions, we recommend
16 the Commission exercise its discretion and dismiss the potential violations. Finally, the evidence
17 does not support proceeding against any of the other respondents.

18 **A. The Source of Funds Used to Make American Ethane's Contributions**

19 In 2014, Houghtaling established American Ethane in Louisiana as a business to liquefy
20 and export ethane.⁸ American Ethane and Houghtaling confirmed that American Ethane is taxed

⁸ John Houghtaling Report of Investigation, Jan. 14, 2020 ("Houghtaling ROI"); *see also* Louisiana Secretary of State,

1 as a corporation. Houghtaling sought investors, and through his Russian wife, met interested
 2 Russian investors.¹⁰ Through an entity called Amshale Energy, LLC, Houghtaling and three
 3 Russian investors, Andrey Kunatbaev, Mikhail Yuriev, and Konstantin Nikolaev, borrowed
 4 funds to purchase 47.5% of the outstanding shares of American Ethane.¹¹ (Houghtaling, using
 5 his solely owned corporation HE Ventures, indirectly owned 7.125% of American Ethane via his
 6 interest in Amshale Energy.) The remaining 52.5% of American Ethane's shares were owned by
 7 a Russian individual, Alexander Voloshin, (2.500002%) and another LLC owned by Russians,
 8 primarily Roman Abramovich (49.999998%).¹²

9 To purchase its 47.5% interest in American Ethane, Amshale Energy first borrowed
 10 \$18,750,000 from Eucla Investments Ltd. of the British Virgin Islands ("BVI") in a transaction
 11 secured by the shares of American Ethane.¹³ Then, in an unsecured transaction, Amshale Energy
 12 borrowed an additional \$5,000,000 from Bluebell Investments, another BVI corporation, to buy
 13 additional shares.¹⁴ Both Eucla Investments and Bluebell Investments are partly owned by some

https://coraweb.sos.la.gov/commercialsearch/CommercialSearchDetails.aspx?CharterID=1072386_B78D188165
 (American Ethane incorporation registration).

¹⁰ Houghtaling ROI at 1.

¹¹ American Ethane and Houghtaling Supp. Resp. at 2 (Oct. 29, 2019) (Chart of American Ethane shares by ownership).

¹² *Id.*

¹³ American Ethane and Houghtaling Second Supp. Resp. at 3 (March 2, 2020) (Chart of American Ethane loans); Original Eucla Loan and Guaranty Agreement at 5 (bates stamped AEC001002).

¹⁴ Second Supp., Attach. (Bluebell loan documents).

1 of American Ethane's Russian owners.¹⁵ American Ethane's initial capitalization is shown in the
 2 chart below:

3 **American Ethane Initial Capitalization**

Owner	% interest	Subowners	Nationality	Source of Funds
Amshale Energy LLC	47.5%	HE Ventures (Houghtaling) 7.125% Foreign investors 40.375%	American Russian	Loan from Eucla Investments (\$18,750,000) (foreign) Loan from Bluebell Investments (\$5,000,000) (foreign)
Alexander Voloshin	2.500002%	N/A	Russian	Unknown
Alternative LLC	49.999998%	Roman Abramovich, <i>et al.</i>	Russian	Unknown

4
 5 In 2016, Houghtaling, as managing member of Amshale Energy, filed for Chapter 11
 6 bankruptcy on behalf of Amshale Energy to prevent investor Roman Abramovich from
 7 foreclosing on the Eucla Investments loan that Amshale Energy used to purchase its initial shares
 8 of American Ethane.¹⁶ On April 17, 2017, the bankruptcy court accepted a settlement agreement
 9 between Amshale Energy and Eucla Investments and dismissed the case.¹⁷ After the bankruptcy

¹⁵ See Second Supp. Attach. (Eucla and Bluebell loan documents); Houghtaling ROI at 2.

¹⁶ Supp. Resp. at 9; Houghtaling ROI at 1; *see also In re Amshale Energy, LLC*, No. 16-33754 (Bankr. N.D. Tex., Dallas Div. 2016).

¹⁷ Supp. Resp. at 9-11, Attach. 24.

MUR 7491 (American Ethane)
 Second General Counsel's Report
 Page 7 of 25

1 settlement and at the time of the 2018 contributions at issue, Houghtaling's share of American
 2 Ethane had increased from 7.125% to 11.125%.¹⁸

3 At all times relevant to this matter, American Ethane had never generated income, had
 4 only its original investment funds to spend, and some of these funds were used to make the
 5 political contributions at issue.¹⁹ The original investment funds were used to operate the
 6 company since its inception, including development of its facilities in Houston, Texas.²⁰
 7 Although American Ethane has entered into agreements to construct ships²¹ and a pipeline, as
 8 well as agreements to export ethane to China in the future,²² the company did not move beyond
 9 the business development stage and had not made any sales of ethane in either its domestic or
 10 overseas operations.²³ Accordingly, at the time of the contributions at issue, American Ethane

¹⁸ Supp. Resp., Attach. (Chart of American Ethane shares by ownership).

¹⁹ In an interview, Houghtaling told this Office that American Ethane's operating account was composed of funds from the original investment in American Ethane and that the company did not have any other source of funds other than the investments. Houghtaling ROI at 2; *see also* Supp. Resp. at 9 ("John Houghtaling, through Houghtaling Enterprises, guaranteed the funds that were invested into the company, which were later minimally used for contributions through the general operating account."). American Ethane stated that the funds from the general operating account were part of the approved bankruptcy restructuring and that "[a]ll political contributions by American Ethane" were made from this operating account. Supp. Resp. at 11; *see also* Resp. at 4 ("[a]ll political contributions by American Ethane were made . . . from this operational account subject to the reorganization").

²⁰ Supp. Resp. at 8. American Ethane states that the loans were used to fund the design and development of infrastructure in the U.S., to allow the transport and sale of ethane, and that the company has a "burn rate" of more than \$350,000 per month in operational expenses. *Id.*

²¹ *See ABS, AEC collaborate on ultra large ethane carriers*, SAFETY4SEA (Sept. 19, 2019), <https://safety4sea.com/abs-aec-collaborate-on-ultra-large-ethane-carriers/>.

²² In November 2017, Houghtaling and Chinese officials participated in a "signing ceremony" in China to celebrate American Ethane's export contract. *See Local Attorney and CEO of American Ethane Signs \$26 Billion Gas Deal with China As Trump Watches*, BIZ NEW ORLEANS (Nov. 9, 2017), <https://www.bizneworleans.com/local-attorney-and-ceo-of-american-ethane-signs-26-billion-gas-deal-with-china-as-trump-watches/>.

²³ Houghtaling ROI at 1. American Ethane's website portrays a company still in a developmental stage with "conditional binding contracts" to supply ethane to China. *See* <https://www.americanethane.com/about-us/>. Its "latest news" is more than a year old. *See* <https://www.americanethane.com/blog/>.

1 had not generated any income from its business activities and was funding its business operations
2 solely through the funds in its operating account, which funded both the company's business
3 operations and the contributions at issue.

4 **B. How the Contributions Were Made**

5 Shortly after signing ethane export contracts with officials in China in November 2017,
6 Houghtaling contacted Kyle Ruckert of Bold Strategies, American Ethane's Washington
7 lobbyist, and told Ruckert that American Ethane was interested in making approximately
8 \$75,000 in political contributions.²⁴ As emails provided by American Ethane show, after this
9 initial discussion, Ruckert began communicating with Houghtaling; Raymond Ballard, American
10 Ethane's comptroller and treasurer; Melissa Pierce, Houghtaling's executive assistant; and two
11 outside attorneys about recommended contribution recipients and amounts.²⁵ The emails, which
12 date from December 7, 2017, to April 2, 2018, show that Ruckert and Ballard communicated
13 most frequently regarding the timing and amount of the contributions.²⁶ The emails also show
14 that when approving the contributions suggested by Ruckert, Houghtaling specified that the
15 checks would be from American Ethane.²⁷ Houghtaling and American Ethane stated that all
16 individuals on the emails are U.S. citizens and that, other than Daniel Davillier, American
17 Ethane's outside General Counsel, and Charline Gipson, an associate attorney, no other persons

²⁴ Houghtaling ROI at 2.

²⁵ See Supp. Resp. at 3-5.

²⁶ *Id.*

²⁷ *Id.* at 5-6.

1 were involved in the discussions or decisions concerning the contributions.²⁸ Ruckert also stated
 2 that he dealt directly with Houghtaling, Pierce, and Ballard in connection with the contributions
 3 and identified only one occasion when Houghtaling asked him to meet with one of the Russian
 4 investors.²⁹ Ruckert stated that he could not recall the name of the Russian investor, and they
 5 did not discuss any contributions during that meeting.³⁰ The emails provided by American
 6 Ethane show only that Houghtaling, Ruckert, Ballard, and Pierce wrote or received them, and
 7 there is no evidence that any of American Ethane's foreign national investors played a role in the
 8 decision to make the contributions. Additionally, Houghtaling states that he did not need
 9 American Ethane's Board to approve specific contributions because the funds used to make the
 10 contribution were part of his general Board-approved budget.³¹

11 American Ethane, at Houghtaling's direction, made the following contributions:

Recipient	Date Issued	Amount
Bill Cassidy for US Senate	Jan. 29, 2018 ³²	\$1,000
	Mar. 31, 2018 ³³ (reported)	\$600
John Kennedy for US	April 3, 2018 ³⁴	\$8,100 (3 checks)

²⁸ *Id.* at 3.

²⁹ Kyle Ruckert Report of Investigation at 1 (April 13, 2020) ("Ruckert ROI").

³⁰ *Id.*

³¹ Houghtaling ROI at 2. Houghtaling states that the American Ethane Board of Directors approved an initial operating budget in 2015, and he did not need Board approval in subsequent years for payments if they were within the parameters of the budget agreement. *Id.*

³² See Cassidy for US Senate 2018 April Quarterly Report at 104, <https://docquery.fec.gov/pdf/141/201804200200346141/201804200200346141.pdf#navpanes=0>.

³³ *Id.* at 105.

³⁴ See Kennedy for US 2018 July Quarterly Report at 7-9, <https://docquery.fec.gov/pdf/392/201807180200573392/201807180200573392.pdf#navpanes=0>.

Recipient	Date Issued	Amount
Pelican PAC (Leadership PAC)	April 3, 2018 ³⁵	\$5,000
Conservative Louisiana (IEOPC)	April 3, 2018 ³⁶	\$15,000
Louisiana Citizens for Job Creators (state PAC supporting Jeff Landry)	April 3, 2018	\$15,000
Mike Johnson for Congress	April 3, 2018 ³⁸	\$6,100 (3 checks)
Garrett Graves for Congress	April 3, 2018 ³⁹	\$5,400
Scalise Leadership Fund	July 19, 2018 (reported)	\$10,000 ⁴⁰
Total		\$66,200

1

2 American Ethane attempted to make more political contributions, but those recipient committees

3 never deposited American Ethane's checks.

³⁵ See Pelican PAC 2018 July Quarterly Report at 6,
<http://docquery.fec.gov/pdf/365/201807139115402365/201807139115402365.pdf>.

³⁶ See Conservative Louisiana July 2018 Quarterly Report at 6,
<http://docquery.fec.gov/pdf/860/201807139115433860/201807139115433860.pdf>.

³⁸ See Johnson Committee 2018 July Quarterly Report at 20,
<http://docquery.fec.gov/pdf/746/201807099115254746/201807099115254746.pdf>. The Johnson Committee refunded the contributions on August 7, 2018. See Committee 2018 Amended October Quarterly Report at 103,
<http://docquery.fec.gov/pdf/583/201903129145678583/201903129145678583.pdf>.

³⁹ See Garret Graves for Congress 2018 Amended Pre-Primary Report at 5,
<http://docquery.fec.gov/pdf/365/201807139115402365/201807139115402365.pdf> (also indicating that the contribution was refunded on June 1, 2018).

⁴⁰ See Scalise Leadership Fund 2018 October Quarterly Report at 12, <https://docquery.fec.gov/cgi-bin/fecimg/?201810159124938824> (also indicating that the contribution was refunded on August 2, 2018).

MUR 7491 (American Ethane)
Second General Counsel's Report
Page 11 of 25

1 American Ethane's contribution checks stated on their face, "American Ethane Company,
2 LLC" and listed a Houston, Texas address. Ruckert stated that he assumed American Ethane
3 was a partnership and suggested to American Ethane contribution amounts consistent with those
4 limits.⁴³ Ruckert acknowledged that some committees questioned American Ethane's corporate
5 structure after receiving a contribution check, but he did not want to speculate why some
6 committees did not deposit American Ethane's checks.⁴⁴

7 IV. LEGAL ANALYSIS

A. American Ethane Made, and Houghtaling Consented to the Making of, Prohibited Corporate Contributions

11 The Act and Commission regulations prohibit corporations from making contributions to
12 political committees (other than an IEOPC), in connection with a federal election.⁴⁵ In addition,
13 no officer or director of a corporation may consent to a corporate contribution to a federal
14 candidate or their campaign.⁴⁶ A corporation that is also a Limited Liability Company (“LLC”)
15 and elects to be treated as a corporation by the Internal Revenue Service shall be considered a
16 corporation under the Commission’s regulations.⁴⁷

17 American Ethane chose to be taxed as a corporation, and it admits that it made prohibited
18 corporate contributions and Houghtaling, as American Ethane's CEO, consented to the

43 Ruckert ROI at 1.

44

⁴⁵ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b); Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

46 52 U.S.C. § 30118(a).

47 11 C.F.R. § 110.1(g)(3).

1 contributions. Houghtaling explained that when he and Ruckert discussed American Ethane
2 making political contributions, Houghtaling did not consider that American Ethane, although a
3 partnership, chose to be taxed as a corporation and was barred from making most direct
4 contributions.⁴⁹ According to Ruckert, no one at American Ethane told him that American
5 Ethane could not make contributions because it was taxed as a corporation.⁵⁰ American Ethane
6 says the mistake was inadvertent and requests pre-probable cause conciliation to resolve this
7 violation.

8 Accordingly, we recommend that the Commission authorize pre-probable cause
9 conciliation with American Ethane Co., LLC and John Houghtaling on the ground that American
10 Ethane made, and Houghtaling consented to making, \$36,200 in prohibited corporate
11 contributions.⁵²

12 **B. American Ethane and Houghtaling Made Prohibited Foreign National
13 Contributions**

14 This matter also presents the question whether American Ethane, a domestic corporation
15 majority-owned by foreign nationals, and its U.S. citizen CEO can make political contributions
16 or donations with funds obtained through loans from foreign sources when American Ethane has

49 Houghtaling ROI at 2.

50 *See* Ruckert ROI at 1.

52 American and Ethane and Houghtaling suggest that the amount in violation is \$16,500, which appears to be a mathematical error on their part and perhaps does not include contributions that were refunded to American Ethane. However, the evidence developed during the investigation shows that the total amount of prohibited corporate contributions is \$36,200.

1 never generated domestic income. Under the Commission's precedents, these contributions and
 2 donations violate the foreign national prohibition.

3 The Act prohibits any "foreign national" from directly or indirectly making a contribution
 4 or donation of money or other thing of value in connection with a federal, state, or local election,
 5 making a contribution or donation to a committee of a political party, or making an
 6 expenditure.⁵³ The Act's definition of "foreign national" includes an individual who is not a
 7 citizen or national of the United States and who is not lawfully admitted for permanent residence
 8 as well as a "foreign principal" as defined in 22 U.S.C. § 611(b), which, in turn, includes a
 9 "partnership, association, corporation, organization, or other combination of persons organized
 10 under the laws of or having its principal place of business in a foreign country."⁵⁴

11 Commission regulations also prohibit any person from knowingly soliciting, accepting, or
 12 receiving a contribution from a foreign national⁵⁵ and provide that "[n]o person shall knowingly
 13 provide substantial assistance in the solicitation, making, acceptance, or receipt of a contribution
 14 or donation prohibited by" 11 C.F.R. § 110.20(b)-(d) and (g).⁵⁶ The Commission has said that
 15 substantial assistance "means active involvement in the solicitation, making, receipt or
 16 acceptance of a foreign national contribution or donation with an intent to facilitate successful

⁵³ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f).

⁵⁴ 52 U.S.C. § 30121(b)(2); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

⁵⁵ 11 C.F.R. § 110.20(g); *see also* 52 U.S.C. § 30121(a)(2) (not including the "knowingly" standard). To solicit means "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value." 11 C.F.R. § 110.20(a)(6) (citing 11 C.F.R. § 300.2(m)).

⁵⁶ 11 C.F.R. § 110.20(h)(1).

1 completion of the transaction.”⁵⁷ The Act defines “contribution” as “any gift, subscription, loan,
 2 advance, or deposit of money or anything of value made by any person for the purpose of
 3 influencing any election for Federal office.”⁵⁸ Commission regulations define “knowingly” as
 4 (i) having actual knowledge that funds originated from a foreign national, (ii) being aware of
 5 facts that would lead a reasonable person to conclude that there is a substantial probability that
 6 the source of the funds is a foreign national, or (iii) being aware of facts that would lead a
 7 reasonable person to inquire whether the source of the funds is a foreign national but failed to
 8 conduct a reasonable inquiry.⁵⁹

9 Commission regulations implementing the Act’s foreign national prohibition further
 10 provide:

11 A foreign national shall not direct, dictate, control, or directly or indirectly
 12 participate in the decision-making process of any person, such as a corporation,
 13 labor organization, political committee, or political organization with regard to
 14 such person’s Federal or non-Federal election-related activities, such as decisions
 15 concerning the making of contributions, donations, expenditures, or
 16 disbursements . . . or decisions concerning the administration of a political
 17 committee.⁶⁰

18 Moreover, a domestic subsidiary or affiliate of a foreign national corporation is permitted
 19 to make contributions (when corporate contributions are otherwise permitted) if the funds are
 20

⁵⁷ Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,945 (Nov. 19, 2002) (“Contributions E&J”).

⁵⁸ 52 U.S.C. § 30101(8)(A)(i).

⁵⁹ 11 C.F.R. § 110.20(a)(4); *see also* Contributions E&J at 69,941 (“The formal rules at 11 C.F.R. § 110.20(a)(4) . . . contain three standards of knowledge [which] focus on the source of the funds at issue.”).

⁶⁰ 11 C.F.R. § 110.20(i); *see* Factual and Legal Analysis at 6, MUR 7122 (American Pacific Int’l Capital, Inc.) (finding reason to believe foreign nationals “violated 52 U.S.C. § 30121(a)(1)(A) by participating in decisions involving election-related activities”).

1 generated solely by their domestic operations⁶¹ and if no foreign nationals are involved in the
 2 decision to make the contribution.⁶²

3 The evidence developed during the investigation demonstrates that all of American
 4 Ethane's contributions and donations violated the Act's prohibited foreign national prohibition.
 5 In MUR 2892, the Commission conciliated under similar facts.⁶³ Respondent Y.Y. Valley Corp.
 6 and its wholly owned property, the Royal Hawaiian Country Club ("RHCC"), were U.S.
 7 corporations incorporated in Hawaii but majority-owned by foreign nationals.⁶⁴ When the
 8 corporations made political contributions, neither corporation was generating income, so their
 9 operating funds, including those used for its contributions, were from either capital contributions
 10 and/or loans from Y.Y. Valley's owners, four out of five of whom were foreign nationals.⁶⁵
 11 Another respondent in that matter, West Beach Estates, was also an American corporation
 12 majority-owned by foreign nationals and used proceeds from a foreign loan to make political
 13 contributions.⁶⁶

14 To determine whether the contributions by these U.S. corporations constituted prohibited
 15 foreign national contributions, the Commission specifically adopted the law developed for

⁶¹ See Advisory Op. 2006-15 (TransCanada); Advisory Op. 1992-16 (Nansay); Advisory Op. 1989-20 (Kuilima).

⁶² See 11 C.F.R. § 110.20(i); Advisory Op. 2006-15; *see, e.g.*, MUR 6093 (Transurban Grp.), F&LA at 3-4.

⁶³ MUR 2892 involved more than 100 respondents, including many foreign national corporations and individuals who had made contributions in elections in Hawaii. *See* FEC Press Release, Aug. 3, 1994, https://www.fec.gov/resources/news_releases/1994/19940803_MURs1.pdf.

⁶⁴ Gen. Counsel's Report, MUR 2982 at 4 ("RHCC Report") (available in the Voting Ballot Matters folder, as are all cited documents in MUR 2982).

⁶⁵ Conciliation Agreement, MUR 2892 (RHCC) at ¶6.

⁶⁶ Conciliation Agreement, MUR 2892 (West Beach Estates) at ¶6.

1 foreign-owned, domestic subsidiary contributions, determining that it represented “a parallel
 2 situation.”⁶⁷ Specifically, the Commission considered the source of the funds and the
 3 nationalities of the decision-makers in concluding that the funds at issue represented foreign
 4 national contributions. The Commission entered into conciliation with Y.Y. Valley, RHCC, and
 5 West Beach Estates on the theory that these American corporations used foreign funds to make
 6 political contributions in Hawaii.⁶⁸

7 Like Y.Y. Valley and RHCC, American Ethane, a U.S. corporation majority-owned by
 8 foreign nationals, had no domestically generated income and made political contributions using
 9 funds obtained through loans to shareholders for the purpose of capitalizing American Ethane.⁶⁹
 10 Moreover, the entities loaning the funds to Amshale Energy, the initial partnership created to
 11 purchase shares of American Ethane, are themselves foreign and owned by foreign nationals.⁷⁰
 12 Thus, the funds American Ethane used to make contributions and donations were not generated
 13 from domestic operations and instead originated from foreign sources, in violation of the Act.

14 In response, American Ethane and Houghtaling argue that because they have guaranteed
 15 the loans used to fund American Ethane, those funds it used to make the contributions are
 16 domestic.⁷¹ They assert that American Ethane and Houghtaling are 100% liable if American

⁶⁷ RHCC Report at 8.

⁶⁸ *Id.* at 7-8; Cert., MUR 2892, Jan. 11, 1994 (authorizing conciliation with Y.Y. Valley and RHCC on foreign national prohibition violation); Conciliation Agreement, July 21, 1994; *see also* MUR 2892, Conciliation Agreement (West Beach Estates), March 15, 1994.

⁶⁹ *See* Houghtaling ROI at 2; *see also* Supp. Resp. at 9, 11.

⁷⁰ *See* Second Supp., Attach. (Eucla and Bluebell loan documents); Houghtaling ROI at 2.

⁷¹ Supp. Resp. at 9.

1 Ethane defaults on the loans used to initially capitalize the company.⁷² They also argue that
 2 Houghtaling has not been paid by American Ethane but has put in “sweat equity,” that is, his
 3 foregone income represents domestic funds.⁷³ None of these arguments are persuasive.

4 Houghtaling’s loan guarantee does not affect the character of the funds actually
 5 contributed or donated. Furthermore, the loan documents are clear that all of the borrowers,
 6 including the foreign national owners of Amshale Energy, guaranteed the loans, not just
 7 Houghtaling and HE Ventures, pursuant to joint-and-several liability.⁷⁴ American Ethane has
 8 also argued that the bankruptcy proceeding “restructured and re-collateralized” the loans, which
 9 somehow caused the funds to change character and become domestic.⁷⁵ They point to the
 10 Bankruptcy Court’s apparent acceptance of American Ethane’s valuation based on its future
 11 construction plans and export contracts.⁷⁶ But whether a Bankruptcy Court accepts a valuation
 12 based on future contracts does not change the initial source of the company’s funds and does not
 13 make the corporation’s current funds domestic under the Act.⁷⁷

⁷² *Id.*

⁷³ Supp. Resp. at 12. Houghtaling’s primary occupation is heading the Gauthier, Murphy, and Houghtaling Law Firm in Louisiana. See <https://gmhatlaw.com/>.

⁷⁴ See American Ethane loan documents, Original – Eighth Amended Agreement, attached to March 2020 response: (“THIS LOAN AGREEMENT (as it may be amended, supplemented or otherwise modified from time to time, this “Agreement”) is entered into ... by and between Amshale Energy, LLC, a Texas limited liability company (“Borrower”), Houghtaling Enterprises, LLC, a Louisiana limited liability company (the “Houghtaling Guarantor”), M.Z. Yuriev, Konstantin Nikolaev and A.K. Kunatbaev (collectively, the “Guarantors,” each, a “Guarantor” and, together with Borrower, the “Loan Parties” and each, a “Loan Party” and Eucla Investments Limited, a company duly incorporated under the laws of the British Virgin Islands (“Lender”).... Section 1.5 Guaranty (a) To induce Lender to make the Loan, each Guarantor hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the full and punctual payment when due, whether at stated maturity or earlier ...”).

⁷⁵ Supp. Resp. at 9.

⁷⁶ *Id.* at 9-10.

⁷⁷ American Ethane and Houghtaling do not elaborate on their argument that Houghtaling’s “sweat equity”

MUR 7491 (American Ethane)
 Second General Counsel's Report
 Page 18 of 25

1 American Ethane and Houghtaling cite to Advisory Opinion 2000-17 (Extendicare) to
 2 argue that because only Houghtaling made decisions about the contributions and no foreign
 3 national participated in the decision-making, the contributions are permissible.⁷⁸ That AO,
 4 however, concerns the administration and formation of a domestic subsidiary's separate
 5 segregated fund and not whether domestic funds will be used to make contributions.⁷⁹ More on
 6 point are the Commission's precedents involving domestic subsidiaries, which separately
 7 analyze both the nationalities of the decision-makers of the subsidiary's election-related
 8 spending decisions *and* the source of the funds used to make contributions.⁸⁰

9 American Ethane and Houghtaling acknowledge that the \$66,200 in political
 10 contributions came from the funds that were originally invested in American Ethane.⁸¹ And
 11 because American Ethane had never generated any income, there is no amount of domestic funds
 12 that could cover the contributed amounts.⁸² Although the available information does not suggest
 13 that American Ethane intended to inject foreign funds into American elections, American Ethane

constitutes American Ethane's domestic funds, nor are we aware of any authority that would support that argument.

⁷⁸ Compl. Resp. at 3.

⁷⁹ *See* Advisory Op. 2000-17 (Extendicare).

⁸⁰ "Thus, in order for a domestic subsidiary of a foreign national to make donations or disbursements in connection with a State or local election, the donations or disbursements may not be derived from the foreign national's funds and no foreign national may have any decision-making authority concerning the making of donations or disbursements." Advisory Op. 2006-15 at 2-3 (TransCanada); Advisory Op. 1992-16 (Nansay Hawaii, Inc.) (U.S. subsidiary of foreign corporation had domestically generated income from which to make contributions); *Cf.* F&LA at 7, MUR 7141 (Beverly Hills Residents and Businesses to Preserve our City) (finding no foreign national contribution violation but relying on fact that U.S. subsidiary of foreign corporation borrowed funds from U.S. lender to make contributions).

⁸¹ Supp. Resp. at 9.

⁸² *See supra* n.22; *see also* AO 1992-16 (Nansay Hawaii, Inc.) (U.S. subsidiary of foreign corporation had domestically generated income from which to make contributions); F&LA at 7, MUR 7141 (Beverly Hills Residents and Businesses to Preserve our City) (finding no foreign national contribution violation but relying on fact that U.S.

1 has done just that. Therefore, American Ethane and Houghtaling made \$66,200 in prohibited
 2 foreign national contributions, and we recommend that the Commission authorize pre-probable
 3 cause conciliation.

4 **C. Bold Strategies and Kyle Ruckert**

5 As the government relations consultant to American Ethane and Houghtaling, Ruckert
 6 suggested contribution recipients and amounts and handled the transmission of American
 7 Ethane's checks to the committees.⁸³ He states that he assumed American Ethane was a
 8 partnership and thus allowed to make political contributions, and that he suggested contribution
 9 amounts based on that assumption.⁸⁴ Ruckert states that he was never told by Houghtaling that
 10 American Ethane was not a partnership.⁸⁵ He also said that he knew American Ethane had
 11 Russian investors and met one.⁸⁶ Ruckert said he stopped working for American Ethane and
 12 Houghtaling when news about American Ethane's majority Russian ownership emerged.⁸⁷

13 Despite Ruckert's knowledge that American Ethane had at least some foreign national
 14 ownership, we recommend that the Commission exercise its discretion and not make findings as
 15 to Ruckert or Bold Strategies for "knowingly provid[ing] substantial assistance in the

subsidiary of foreign corporation borrowed funds from U.S. lender to make contributions).

⁸³ Houghtaling ROI at 2; Ruckert ROI at 1.

⁸⁴ Ruckert ROI at 1.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*; see also Lobbying Disclosure Act Form, August 13, 2018, <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=D7C7ADC0-C720-4B17-AD66-FC6499BFCE45&filingTypeID=71> (termination report filed by Bold Strategies for American Ethane representation). Neither of American Ethane's prior lobbying firms disclosed the company's foreign owners.

1 solicitation, making, acceptance, or receipt" of a foreign national contribution.⁸⁸ Given his
 2 knowledge of American Ethane's foreign investors and his position as a lobbyist, Ruckert should
 3 have made inquiries to ensure that the contributions he recommended did not violate the Act's
 4 prohibitions on foreign national contributions.⁸⁹ On the other hand, Ruckert's primary contact at
 5 American Ethane was Houghtaling, the company's American CEO, and Ruckert forwarded
 6 American Ethane's contribution checks, which were drawn on a U.S. bank and imprinted with
 7 American Ethane's Houston, Texas, address.

8 Additionally, as discussed above in connection with our recommendation as to American
 9 Ethane itself, the totality of the circumstances indicates that American Ethane was notably
 10 unclear about its own status as a corporation, as well as the role of its foreign national investors,
 11 when it expressed an interest to Ruckert in making political contributions. While the evidence
 12 suggests that the Commission could conclude that Ruckert's role in recommending the
 13 contributions amounted to substantial assistance in the making of American Ethane's foreign
 14 contributions, in light of the overall circumstances of the matter as well as prudential concerns,⁹¹

⁸⁸ See 11 C.F.R. § 110.20(h). "Substantial assistance" is "active participation in the solicitation . . . of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction." Contributions E&J at 69,945; *see also* Advisory Op. 2016-10 (Parker) at 3. Therefore, in defining "substantial assistance," the Commission has explicitly added another intent-based standard on top of the "knowingly" requirement.

⁸⁹ See 11 C.F.R. § 110.20(a)(4).

⁹¹ See Contributions E&J at 69,945. The Commission has found reason to believe for assisting in the making of a foreign national contribution where a respondent had more knowledge and activity than demonstrated by Ruckert. See Factual and Legal Analysis at 5-6, MUR 6528 (Michael Grimm for Congress, *et al.*) (finding reason to believe that respondent violated regulation where respondent provided foreign national's name to intermediary; requested that intermediary solicit foreign national for contribution; and informed foreign national that he could not contribute unless he used intermediary to conceal source of contribution); MUR 4530 (Hogan and Hartson) (pre-regulation, Commission found RTB and conciliated with law firm and two employees for their role in facilitating foreign national contributions, including filing U.S. incorporation documents for the purpose of making political contributions, opening a U.S. checking account, using a check with no name or address imprinted, and knowing that

1 proceeding to conciliation with American Ethane and Houghtaling on the foreign national
 2 contribution violations would appropriately vindicate the Commission's interests. Thus, we
 3 recommend that the Commission dismiss the allegations that Bold Strategies, LLC or Kyle
 4 Ruckert violated the Act or regulations in connection with the foreign national contributions by
 5 American Ethane but caution them to make inquiries under similar circumstances in the future.⁹²

6 **D. Conservative Louisiana and Charles Spies and Mike Johnson for Louisiana**
 7 **and William Vanderbrook**

8 The Act further prohibits persons from soliciting, accepting, or receiving a contribution
 9 or donation from a foreign national.⁹³ The Commission's regulations employ a "knowingly"
 10 standard.⁹⁴ A person knowingly accepts a prohibited foreign national contribution or donation if
 11 that person has actual knowledge that funds originated from a foreign national, is aware of facts
 12 that would lead a reasonable person to conclude that there is a substantial probability that the
 13 funds originated from a foreign national, or is aware of facts that would lead a reasonable person
 14 to inquire whether the funds originated from a foreign national but failed to conduct a reasonable
 15 inquiry.⁹⁵ The Commission considers pertinent facts in such an inquiry to be, in relevant part, a
 16 foreign address or a check written on a foreign bank.⁹⁶

foreign funds were transferred to that bank account and drawn on for political contributions.); *see also* MUR 4530 (Arter & Hadden) (Commission found RTB that law firm solicited foreign national contribution from client corporation known to be owned by foreign nationals; Commission later took no further action).

⁹² Because Ruckert was not an officer of American Ethane, he would not have liability for the corporate contributions by American Ethane.

⁹³ 52 U.S.C. § 30121(a)(2).

⁹⁴ 11 C.F.R. § 110.20(g).

⁹⁵ *Id.* § 110.20(a)(4).

⁹⁶ *Id.* § 110.20(a)(5).

1 These committees, one an IEOPC and the other a candidate committee, received
 2 prohibited contributions from American Ethane. Both committees assert that they had no reason
 3 to question the legality of American Ethane's contribution.⁹⁷ The available facts indicate that
 4 there was no foreign address or foreign bank to alert recipients regarding the possibility of a
 5 foreign national contributor or contribution.⁹⁸ On its face, American Ethane was a U.S.
 6 partnership with an American CEO, and had a U.S. address imprinted on the contribution checks.
 7 Moreover, according to lobbyist Ruckert, he suggested candidates and committees to American
 8 Ethane for contributions; there is no information that the contributions were solicited by the
 9 recipient committees. Thus, there is no information that the Johnson Committee knowingly
 10 received a prohibited foreign national contribution. Because Ruckert is a director at
 11 Conservative Louisiana, however, as well as American Ethane's lobbyist, he had reason to know
 12 that the contribution from American Ethane may have included foreign national funds. But for
 13 the same reasons as those regarding his role in assisting American Ethane's contributions, we do
 14 not recommend proceeding on this theory as proceeding only against American Ethane and
 15 Houghtaling appropriately vindicates the Commission's authority under these facts.

16 Regarding the potential corporate contribution violation, Conservative Louisiana, as an
 17 IEOPC, was permitted to accept a corporate contribution, but the Johnson Committee, a
 18 candidate committee, was not. The Johnson Committee deposited American Ethane's checks

⁹⁷ See Conservative Louisiana Resp. at 3 (Mar. 15, 2019); Johnson Comm. Resp. at 3 (Mar. 15, 2019).

⁹⁸ See Factual & Legal Analysis at 3, MURs 6931/6933 (Laffen 4 Senate) (Canadian address indicated foreign national contributions); dismissing allegation, however, based on timely refunding of contributions); Factual & Legal Analysis at 14, MURs 6078, *et al.* (Obama for America) (Dismissing allegations because potential foreign national contributions were limited in scope and amount, and there was insufficient information that the Committee acted irresponsibly).

1 totaling \$6,100, noting on their Commission disclosure reports that they were from a
 2 partnership.⁹⁹ The Johnson Committee refunded the contributions a few months after receiving
 3 them following news reports suggesting that the contributions may have violated the ban on
 4 contributions from foreign nationals.¹⁰⁰ Under these circumstances, we recommend that the
 5 Commission dismiss the allegations that Conservative Louisiana and Charles Spies in his official
 6 capacity as treasurer and Mike Johnson for Louisiana and William Vanderbrook in his official
 7 capacity as treasurer violated the Act.

8 **E. Konstantin Nikolaev**

9 Nikolaev, a Russian national and one of American Ethane's owners, did not respond to
 10 the Complaint. Nevertheless, the investigation has not revealed any information that he
 11 participated in the decision-making regarding American Ethane's political contributions.
 12 Therefore, we recommend that the Commission dismiss the allegation that Konstantin Nikolaev
 13 violated the Act.

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⁹⁹ According to American Ethane and Houghtaling, the Johnson Committee did not seek further information about the contribution from American Ethane, an LLC. The Commission requires LLC contributors, however, to provide information to recipient committees as to how the contribution is to be attributed among the LLC's members and to affirm to the recipient committee that it is permitted to make the contribution. 11 C.F.R. § 110.1(g)(5). It does not appear that American Ethane or Ruckert provided such information to the Johnson Committee.

¹⁰⁰ Johnson Comm. Resp. at 3 (Mar. 15, 2019)

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5 **VI. RECOMMENDATIONS**

6 1. Authorize pre-probable cause conciliation with American Ethane Co., LLC and
7 John Houghtaling and approve the attached conciliation agreement;
8
9 2. Dismiss the allegations that Bold Strategies LLC and Kyle Ruckert violated the
10 Act and issue a letter of caution;
11
12 3. Dismiss the allegations that Conservative Louisiana and Charles Spies in his
13 official capacity as treasurer, Mike Johnson for Congress and William
14 Vanderbrook in his official capacity as treasurer, and Konstantin Nikolaev
15 violated the Act;

¹⁰¹ See MUR 7122 (Right to Rise).

¹⁰² See MUR 7374 (Wright 2016)

¹⁰³ See MUR 6129 (ARDA-ROC PAC) (calculating separate corporate and foreign national opening settlement offers).

MUR 7491 (American Ethane)
Second General Counsel's Report
Page 25 of 25

4. Dismiss the allegation that American Ethane Co., LLC, and John Houghtaling violated 52 U.S.C. § 30122 by making contributions in the name of another;
5. Close the file as to Bold Strategies LLC and Kyle Ruckert, Conservative Louisiana and Charles Spies in his official capacity as treasurer, Mike Johnson for Congress and William Vanderbrook in his official capacity as treasurer, and Konstantin Nikolaev; and
6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for
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02.11.21
Date

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