FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 5, 2021

BY ELECTRONIC MAIL ONLY
j.green@c-esystems.com

Save Coos Jobs Committee
Jef A. Green, Treasurer
P.O. Box 42307
Portland, OR 97242

RE: MUR 7512

Dear Mr. Green:

On August 3, 2021, we notified you that the Commission, on July 13, 2021, voted to dismiss the allegations that Save Coos Jobs Committee violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly accepting or receiving prohibited foreign national donations. On September 2, 2021, we notified you that the Commission voted to reopen the matter for further consideration. On September 28, 2021, the Commission approved the enclosed Factual and Legal Analysis, which more fully explains the Commission's decision on July 13, 2021. Additionally, on September 28, 2021, the Commission closed its file in the matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Thaddeus H. Ewald, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Pembina Pipeline Corporation
Fort Chicago Holdings, II US, LLC
Jordan Cove Energy Project L.P.
Jordan Cove LNG, LLC
Jordan Cove LNG, L.P.
Save Coos Jobs Committee

MUR: 7512

I. INTRODUCTION

This matter involves allegations that Pembina Pipeline Corporation, Fort Chicago Holdings, II US, LLC, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. (collectively, "Jordan Cove"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by making prohibited foreign national donations to Save Coos Jobs Committee, a "measure committee" in Oregon opposing a local ballot measure that would have effectively prohibited the development of a liquified natural gas export terminal and associated pipeline.[1] The Complaint further alleges that Save Coos Jobs Committee violated the Act by knowingly accepting or receiving such donations.[2]

Respondents do not dispute that Jordan Cove made donations to Save Coos Jobs Committee. Rather, Respondents argue that the donating Jordan Cove entities are domestic entities, except for foreign parent Pembina Pipeline Corporation, and that the Complaint does not allege the latter made contributions.[3] Jordan Cove further contends that the Complaint does not sufficiently allege that any donations were made with foreign funds or that foreign nationals

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[1] Compl. at 1-2, Attach. 3 (Oct. 12, 2018). Ballot measures are also sometimes called ballot initiatives, propositions, or referendum. For purposes of this Factual and Legal Analysis, the Commission uses the terms interchangeably to include all questions put to the voters on a ballot other than the election of a candidate for office.

[2] *Id.*

[3] Jordan Cove Energy Project L.P., Jordan Cove LNG LLC PAC, Jordan Cove LNG, L.P., Jordan Cove LNG LLC, Fort Chicago Holdings II U.S. LLC, and Pembina Pipeline Corp. Resp. at 3-4 (Jan. 8, 2019) [hereinafter Jordan Cove Resp.]; Save Coos Jobs Comm., *et al.*, Resp. at 9-10 (Dec. 19, 2018).

were involved in decision-making regarding the donations.[4] Save Coos Jobs Committee disputes that any allegedly foreign national donations were accepted knowingly, particularly because Jordan Cove provided a letter to Save Coos Jobs Committee, after the Complaint was filed, stating that the donations came from domestic funds and that decisions regarding those donations were made by U.S. citizens.[5]

For the reasons set forth below, the Commission dismisses the allegations that Pembina Pipeline Corporation, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. made prohibited foreign national donations to Save Coos Jobs Committee and the allegation that Save Coos Jobs Committee knowingly accepted or received prohibited foreign national donations from Jordan Cove.

II. FACTUAL BACKGROUND

The May 16, 2017, special district election ballot in Coos County, Oregon, included Measure 6-162, a ballot measure that the Complaint asserts would have "endangered [Jordan Cove's] plans to build an LNG export terminal" in Coos Bay, Oregon.[6] In the three months leading up to the election, Jordan Cove, a family of domestic subsidiaries of a Canadian company, Pembina Pipeline Corporation,[7] made $596,155 in donations to Save Coos Jobs Committee,[8] an Oregon "measure committee" established for the purpose of opposing Measure

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4 Jordan Cove Resp. at 3-4.

5 Save Coos Jobs Comm., *et al.*, Resp. at 1, 5.

6 Compl. at 2; *see also id.*, Attach. 3.

7 *Id*. at 1-2, 5-6.

8 *Id.* at 2, Attach. 1; Am. Compl., Attach. 2 (Nov. 5, 2018); *Search Transactions*, OR. SEC'Y OF STATE, https://secure.sos.state.or.us/orestar/gotoPublicTransactionSearch.do?OWASP_CSRFTOKEN=OPPM-WQA9-LES3-QNZA-DCI9-SY3V-BNXJ-2D9O (search in "Filer/Committee Name" field for "Save Coos Jobs Committee" and in "Contributor/Payee Information" field for "Jordan Cove") (last visited Aug. 24, 2021).

6-162.[9] The Complaint alleges that Jordan Cove is a "purely Canadian enterprise" and a "foreign corporation . . . run by foreign individuals," and thus Jordan Cove's donations to Oregon state and local candidates and a ballot measure committee are a violation of the Act's foreign national prohibition.[10]

III. LEGAL BACKGROUND

The Act and Commission regulations prohibit any "foreign national" from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election.[11] The Act's definition of "foreign national" includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence as well as a "foreign principal" as defined at 22 U.S.C. § 611(b), which, in turn, includes a "partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."[12] The Commission has consistently found a violation of the foreign national prohibition where foreign national officers or directors of a U.S. company participated in the company's decisions to make contributions or

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[9] Compl., Attach 3; Save Coos Jobs Committee, Statement of Organization for Political Action Committee (Feb. 16, 2017), https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=81350&OWASP_CSRFTOKEN=M1KW-VZCD-5N7B-K95U-QCR1-LBX8-20L1-T9Y7. Under Oregon law, a "measure committee" is a political action committee that "exclusively supports or opposes one or more measures that are certified to the ballot." 2018 CAMPAIGN FINANCE MANUAL, OR. SEC'Y OF STATE 81 (June 17, 2018), https://digital.osl.state.or.us/islandora/object/osl%3A103738. A measure committee may not, *inter alia*, contribute to candidates, political parties, or fund independent expenditures in support of or in opposition to candidates, unless it amends its status to become a miscellaneous political committee. *Id.*

[10] Compl. at 1-2, 4-5.

[11] 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f).

[12] 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

in the management of its separate segregated fund,[13] or where foreign funds were used by a U.S. subsidiary of a foreign corporation to make contributions or donations in connection with U.S. elections.[14] The Act also prohibits any person from soliciting, accepting, or receiving a contribution or donation from a foreign national.[15]

The Act defines "election" to mean "a general, special, primary, or runoff election" as well as "a convention or caucus of a political party which has authority to nominate a candidate."[16] Commission regulations further specify that "[e]lection means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office."[17] The United States Supreme Court has long recognized that the Act "regulates

[13] *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, *et al.*) (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 non-federal 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).

[14] *See* Conciliation Agreement, MUR 6203 (Itinere North America, LLC, *et al.*).

[15] 52 U.S.C. § 30121(a)(2). Commission regulations employ a "knowingly" standard. 11 C.F.R. § 110.20(g). A person knowingly solicits, accepts, or receives 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).

[16] 52 U.S.C. § 30101(1).

[17] 11 C.F.R. § 100.2(a) (emphasis added).

only candidate elections, not referenda or other issue-based ballot measures."[18] Consistent with the Act and court precedents, the Commission has observed that spending relating only to ballot initiatives is generally outside the purview of the Act because such spending is not "in connection with" elections.[19]

In Advisory Opinion 1989-32, the Commission considered whether a ballot initiative committee could accept funds from a foreign national. In that instance, a state candidate organized and controlled a committee that sought to qualify and pass a state ballot measure sponsored and promoted by the candidate, and both the ballot measure and the state candidate would be on the ballot in November 1990. Given this relationship between the candidate and the ballot initiative committee, the Commission determined that two were "inextricably linked" such that the activities of the committee should be viewed as campaign-related.[20] Thus, the

[18] *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 356 (1995) (citing *Buckley v. Valeo*, 424 U.S. 1, 80 (1976)); *see also First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765 (1978) ("Referenda are held on issues, not candidates for public office."). In *Bluman v. FEC*, a three-judge district court upheld the constitutionality of the foreign national prohibition. 800 F. Supp. 2d 281 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012). In doing so, the court explained, in dicta, that the foreign national prohibition is closely tied to candidate advocacy and does not ban foreign nationals from engaging in issue advocacy. *See id.* ("§ [30121] as we interpret it . . . does not restrain foreign nationals from speaking out about issues or spending money to advocate their views about issues. It restrains them only from a certain form of expressive activity closely tied to the voting process — providing money for a candidate or political party or spending money in order to expressly advocate for or against the election of a candidate.).

[19] Advisory Op. 1989-32 (McCarthy) ("AO 1989-32"); *see also* AO 1984-62 (B.A.D. Campaigns) at 1 n.2 ("The Commission has previously held that contributions or expenditures exclusively to influence ballot referenda issues are not subject to the Act"); AO 1984-41 (National Conservative Foundation) at 1-2; AO 1982-10 (Syntex) at 2-3.

[20] AO 1989-32 at 3-6 (detailing ways in which a candidate and a ballot initiative committee seeking to accept foreign national funds were "inextricably linked," including through overlapping staff between candidate and ballot initiative committee, linking the name of the candidate and committee in public communications, the candidate soliciting for the committee, and appearance of candidate and initiative on same ballot, concluding that because of these links the activities of the ballot initiative committee were campaign-related and thus the foreign national prohibition applied to the ballot initiative committee).

Commission found that the committee was prohibited from accepting contributions from a foreign national.[21]

In MUR 6678 (MindGeek), the Commission considered, in the enforcement context, whether the foreign national prohibition applied to pure ballot initiative activity. The Office of General Counsel recommended that the Commission exercise its prosecutorial discretion and dismiss the allegations as a result of the "lack of information in the current record suggesting that the Ballot Measure Committee's activity was inextricably linked with the election of any candidate" and "the lack of clear legal guidance on whether the foreign national prohibition extends to pure ballot initiative activity."[22] The Commission ultimately split on whether to pursue the allegations in MUR 6678, and Commissioners issued four statements of reasons supporting various views on the scope of the foreign national contribution ban.[23]

IV. LEGAL ANALYSIS

Similar to MUR 6678, the available information in this matter is insufficient to demonstrate that Save Coos Jobs Committee was inextricably linked to any federal, state, or

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[21] Although the Commission considered Advisory Opinion 1989-32 under 52 U.S.C. § 30121(b)'s predecessor, 2 U.S.C. § 441e(a), which at the time prohibited foreign national contributions "in connection with an election to any political office," there has been no intervening change in the law — including enactment of the Bipartisan Campaign Reform Act of 2002 ("BCRA") — that has altered the longstanding distinction between elections and ballot initiative activity. To be sure, Congress amended the Act with BCRA to "clarify current provisions of law regarding donations from foreign nationals." 147 CONG. REC. S2773 (daily ed. Mar. 22, 2001) (statement of Sen. Thompson); *see also* 148 CONG. REC. S1994 (daily ed. Mar. 18, 2002) (statement of Sen. Feingold); 147 CONG. REC. S2428 2001 (daily ed. Mar. 19, 2001) (statement of Sen. Specter). Further, after Congress enacted BCRA, not only did the Commission describe this revised statute as a clarification in its rules, *see* Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,944 (Nov. 19, 2002), it also continued to advise the public that ballot measure activity was "nonelection activity" that foreign nationals may lawfully engage in so long as it is not connected to a candidate's campaign. FEC, FOREIGN NATIONALS 3 (July 2003), https://transition.fec.gov/pages/brochures/foreign_nat_brochure.pdf.

[22] First Gen. Counsel's Rpt., MUR 6678 (MindGeek USA, Inc., et al.) at 19-20.

[23] *See* Certification (Mar. 18, 2015), MUR 6678; Statement of Reasons, Comm'r. Ravel, MUR 6678; Statement of Reasons, Comm'r. Weintraub, MUR 6678; Statement of Reasons, Comm'rs. Petersen, Hunter & Goodman, MUR 6678; Supp. Statement of Reasons, Comm'r Goodman, MUR 6678.

local candidate for election. Pembina Pipeline Corporation is a foreign national, as defined in the Act and Commission regulations, and assuming, *arguendo*, that the funds for Jordan Cove's donations originated with its foreign parent or that foreign nationals were involved in the decision-making regarding Jordan Cove's donations, Jordan Cove made $596,155 in donations to Save Coos Jobs Committee, a ballot measure committee organized under Oregon law.

Here, the Complaint's allegations and the available information do not rise to the level that Measure 6-162 and Save Coos Jobs Committee were "inextricably linked" to a candidate to be considered "in connection with" that candidate's election akin to the circumstances the Commission considered in Advisory Opinion 1989-32. Although news reports alleged that Coos Bay Mayor Joe Benetti was involved with Save Coos Jobs Committee to some extent as a committee member and he was facing election to the Coos County Airport Commission on the same ballot on which the voters considered Measure 6-162,[24] the Commission is not aware of any information that Benetti's name was linked to Save Coos Jobs Committee in public communications, that Benetti solicited donations to Save Coos Jobs Committee, that Benetti's election effort shared overlapping staff with Save Coos Jobs Committee, or that Benetti otherwise linked his candidacy to the passage or failure of Measure 6-162, akin to the circumstances the Commission considered in Advisory Opinion 1989-32.[25]

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[24] *See* Compl., Attach 3 (attaching Spencer Cole, *Measure Opponents Exceed $1 Million in Combined Donations and Spending*, THE WORLD (May 15, 2017), https://theworldlink.com/news/local/govt-and-politics/measure-opponents-exceed-1-million-in-combined-donations-and-spending/article_ebd14cc0-9194-59b4-9fa0-8740e9090684.html).

[25] *Cf.* AO 1989-32 at 3-6. Furthermore, the Commission is not aware of any information indicating that any Coos County Commissioners were involved with Save Coos Jobs Committee, shared overlapping staff with Save Coos Jobs Committee, were linked by name to Save Coos Jobs Committee in public communications, solicited money on behalf of Save Coos Jobs Committee, or appeared on the same ballot as Measure 6-162. *Cf. id.*

Under these circumstances and consistent with the relevant court and agency precedents construing the foreign national prohibition, the Commission declines to further pursue the allegations regarding Jordan Cove's donations to Save Coos Jobs Committee. Accordingly, the Commission dismisses the allegations that Pembina Pipeline Corporation, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. violated 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) by making prohibited foreign national donations to Save Coos Jobs Committee, and that Fort Chicago Holdings, II US, LLC, violated 11 C.F.R. § 110.20(h) by providing substantial assistance to the making of prohibited foreign national donations to Save Coos Jobs Committee. Similarly, the Commission dismisses the allegation that Save Coos Jobs Committee violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly accepting or receiving prohibited foreign national donations.