



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Pembina Pipeline Corporation, *et al.*) MUR 7512
)

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR III**

This Matter arose from a Complaint alleging that Pembina Pipeline Corporation, a Canadian corporation, and its U.S.-based subsidiaries (the “Jordan Cove Entities”)¹ violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by making prohibited foreign national contributions to various Oregon state and local candidates and PACs and an Oregon state ballot measure committee.²

The U.S.-based Jordan Cove Entities responded by affirming their domestic status and contending that the Complaint does not allege sufficient facts describing a violation of the Act.³ For their part, the recipient state and local committees that provided Responses to the Commission deny knowingly receiving alleged foreign national contributions.⁴ Several Respondents specifically cite an assurance letter signed by a Jordan Cove representative

¹ These subsidiaries include Jordan Cove Energy Project L.P.; Jordan Cove LNG, LLC and its separate segregated fund Jordan Cove LNG, LLC PAC; Jordan Cove LNG, L.P.; and Fort Chicago Holdings, II US, LLC. Together with Pembina Pipeline Corporation itself, these companies are involved in efforts to build and administer a liquid natural gas terminal and pipeline in Coos Bay, Oregon.

² For the purposes of this Statement of Reasons, the Respondents include various Oregon state and local candidate committees and state PACs, including ChamberPAC, Coos County Alliance for Progress, Oregon Business & Industry Candidate PAC, Oregonians to Maintain Community Standards, The Roseburg Area Chamber PAC, Brad Witt for State Representative, Caddy McKeown for Representative, Citizens to Elect Carl Wilson, Committee to Elect Betsy Johnson, Committee to Elect John Sweet, Friends of Dallas Heard, Friends of David Brock Smith, Friends of Duane Stark, Friends of Gary Leif, Friends of Ray Lister, Friends of Tim Freeman, Friends of Tobias Read, Friends of Val Hoyle, Gomberg for State Rep, Peter Courtney for State Senate, Werner for Oregon, and Knute for Governor.

³ Jordan Cove Resp. at 1–2.

⁴ *See, e.g.*, OB&I PAC Resp. at 2–3; ChamberPAC Resp. at 1–2; Friends of Val Hoyle Resp. at 1–2 (Dec. 21, 2018).

stating that the contributions in question came from domestic funds, and that decisions regarding those contributions were made by U.S. citizens.⁵

We joined with one of our colleagues in dismissing the Complaint’s allegations that the Jordan Cove Entities made or assisted in making prohibited foreign national donations to the Oregon state ballot measure committee (Save Coos Jobs Committee) and that the state ballot measure committee knowingly accepted or received such contributions.⁶ However, we write separately to explain our reasons for declining to find reason to believe that Pembina Pipeline Corporation and the Jordan Cove Entities made or assisted in making, and the remaining state and local candidate and committee Respondents in this matter received, prohibited foreign national contributions.⁷

As a preliminary point, the Complaint in this Matter—which, with respect to the Jordan Cove Entities, misinterprets the corporate term “foreign” to mean “based outside the United States,” as opposed to “incorporated in another state”—does not provide sufficient evidence leading to the reasonable inference that foreign nationals in fact participated in the Jordan Cove Entities’ election-related decision-making, or that the Jordan Cove Entities’ contributions were funded with foreign earnings or subsidized by the foreign parent, Pembina Pipeline. And the analysis provided by our Office of General Counsel (“OGC”) appears to engage in a form of burden-shifting that would create a standard where the Commission could find reason to believe a violation of the Act occurred and open an investigation in nearly any case where the domestic subsidiary of a foreign corporation engages in U.S. political activity. In our view, this expansive interpretation of the foreign national ban runs counter to Congressional intent.⁸

⁵ This letter, which was forwarded to the recipient committees by counsel for Jordan Cove in at least one case, states that the donations derived from funds that “are generated in the U.S., stay in the U.S., are made from a U.S. domestic company, and are drawn from the project’s U.S. bank account,” and that “[a]ll decisions regarding the contributions are made by U.S. citizens.” The letters were dated after the Complaint was filed and the Recipient Committees were first notified by the Commission on October 19, 2018. *See, e.g.*, ChamberPAC Resp. at 2, Ex. 1 (letter dated Nov. 1, 2018); Friends of Val Hoyle Resp. at 1–2 (letter dated Dec. 21, 2018).

⁶ Certification, MUR 7512 (Pembina Pipeline Corporation, *et al.*) (July 13, 2021); *see generally* Factual & Legal Analysis, MUR 7512. As the F&LA explains, the Act regulates only those contributions and expenditures made “in connection with” elections, and the decision to adopt or reject a particular ballot initiative is not an “election” within the meaning of the Act. *Accord* Statement of Reasons of Vice Chairman Matthew S. Petersen & Comm’rs Caroline C. Hunter and Lee E. Goodman, MUR 6678 (MindGeek, *et al.*) (“[A]ctivities in connection with elections of candidates fall under the Act’s purview, but activities in connection with votes on ballot initiatives do not.”); Advisory Op. 1984-62 (B.A.D. Campaigns) at 1 n.2 (“[C]ontributions or expenditures exclusively to influence ballot referenda issues are not subject to the Act.”); Advisory Op. 1980-95 (First Nat’l Bank of Fla.) at 2 (contributions to promote or adopt amendments to a state constitution via a ballot referendum do not fall within the purview of the Act); Concurring Op. of Vice Chairman Michael E. Toner & Comm’r David M. Mason, Advisory Op. 2005-10 (Berman/Doolittle) at 1 (“Commission regulations ... define election as limited to candidate elections”).

⁷ Certification, MUR 7512 (July 13, 2021).

⁸ *See infra* n.12 and accompanying text.

The Act provides, and the Commission has previously concluded, that an entity that is wholly or partially owned or controlled by a foreign national is not itself a “foreign national” provided the subsidiary entity is (1) organized under the laws of a U.S. jurisdiction, and (2) has its principal place of business within the United States.⁹ In other words, if the domestic subsidiary of a non-U.S. corporation satisfies these two criteria, there is no presumption that the subsidiary itself is a “foreign national.” Accordingly, the Jordan Cove Entities are not presumptively foreign nationals: each is organized and domesticated in the state of Delaware.¹⁰ Domestic subsidiary corporations of non-U.S. parents, like the Jordan Cove Entities, are governed by a regulatory provision stating that such corporations may make non-Federal contributions or disbursements so long as no foreign nationals are involved in the domestic subsidiary’s election-related decision-making and the subsidiary uses only its own funds, with no replenishment, subsidization, or offsets from the foreign national parent, to make the contributions.¹¹

The Commission’s regulations prohibiting foreign nationals from funding, directing, dictating, controlling, or “directly or indirectly” participating in the decision-making of any entity with regard to that entity’s election-related activities were promulgated in 2002 during implementation of the Bipartisan Campaign Reform Act (“BCRA”), and the Commission solicited comments at that time regarding whether the term “indirectly” prohibited U.S. subsidiaries of foreign national corporations from making non-federal contributions of corporate treasury funds in states where such contributions are permitted under state law. Ultimately, we agreed with the many commenters who strongly urged that we not extend the foreign national ban to the activities of foreign-owned U.S. subsidiaries, basing our decision upon “the lack of Congressional intent to broaden the prohibition on foreign national involvement in U.S. elections to cover such entities, and upon the substantial policy reasons set forth in the long line of Commission advisory opinions that have permitted U.S. subsidiaries to administer separate segregated funds and to make corporate donations for State and local elections where they are allowed to do so by State law.”¹²

In this Matter, with respect to the “foreign funding” aspect of its analysis, OGC’s conclusions largely rest on the contention that, because the terminal and pipeline have not yet been constructed, there is no evidence that the Jordan Cove Entities had any domestic revenue stream or were conducting active business during or after the contributions in

⁹ See 52 U.S.C. § 30121(b) (citing 22 U.S.C. § 611(b)); *see also, e.g.*, Advisory Op. 2006-15 (TransCanada); Advisory Op. 2009-14 (Mercedes-Benz USA/Sterling); Statement of Reasons of Vice Chair Allen Dickerson & Comm’rs Sean J. Cooksey and James E. “Trey” Trainor III, MUR 7243 (Citgo Petroleum Corporation, *et al.*)

¹⁰ According to information available via the Delaware Secretary of State Division of Corporations’ website, Jordan Cove LNG L.P. was incorporated in that state on August 6, 2003; Jordan Cove Energy Project L.P. was incorporated on July 12, 2005; Fort Chicago Holdings II U.S. LLC was incorporated on December 29, 2008; and Jordan Cove LNG LLC was incorporated on August 24, 2012.

¹¹ 11 C.F.R. § 100.20(i); *see also* Advisory Op. 2006-15 (TransCanada).

¹² Contribution Limitations and Prohibitions, 67 Fed. Reg. 69928, 69943–44 (Nov. 19, 2002).

question.¹³ This is, in our view, a faulty presumption. With respect to the “foreign control” aspect of the analysis, the allegations in the Complaint incorrectly center on the idea that the Jordan Cove Entities themselves are “foreign nationals,”¹⁴ and OGC appears to take these allegations at face value. Given that the Jordan Cove Entities themselves are not, in fact, considered “foreign nationals,” the Complaint fails to satisfy the most basic standard for a complaint to be considered complete and proper: that the allegations be based on either the complainant’s personal knowledge, or information and belief.¹⁵ Further, by accepting the Complaint’s flawed assumption as fact, OGC unacceptably shifts the burden onto the Jordan Cove Entity Respondents, effectively forcing them to respond to allegations that are based upon a false premise.

Simply put, the Complaint provides no information or evidence leading to the reasonable inference that a foreign national participated in the decision-making process in connection with the Jordan Cove Entities’ election-related spending. We do not believe the Commission should set a precedent of shifting the burden to Respondents in matters like the instant one, where the allegations ultimately center on the mistaken presumption that the Jordan Cove Entities are foreign nationals as defined by the Act,¹⁶ a notion that is credibly rebutted in the Response.

For the foregoing reasons, we declined to find reason to believe that Pembina Pipeline Corporation and the Jordan Cove Entities made or provided substantial assistance in making, and the remaining state and local candidate and committee Respondents in this matter received, prohibited foreign national contributions, in violation of (respectively) 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) and (h); and 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g).



September 28, 2021

Allen Dickerson
 Vice Chair

¹³ To support its contention that a lack of clarity regarding the source of a domestic subsidiary’s funds leads to the inference that the Commission should find reason to believe a violation of the Act occurred, OGC’s sole authority is a citation to a single enforcement matter—which has not yet been made public. *See* First Gen. Counsel’s Rep. at 14, MUR 7512.

¹⁴ *See* Amend. Compl. at 1, MUR 7512.

¹⁵ *See, e.g.*, FED. ELECTION COMM’N, GUIDEBOOK FOR COMPLAINANTS AND RESPONDENTS ON THE FEC ENFORCEMENT PROCESS (May 2012), *available at* https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf.

¹⁶ Compl. at 5, MUR 7512; Supp. Compl. at 1, MUR 7512; Amend. Comp. at 1, MUR 7512.

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Sean J. Cooksey
Commissioner

September 28, 2021



James E. "Trey" Trainor III
Commissioner