FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 7512
DATE COMPLAINT FILED: Oct. 12, 2018
DATE OF AMENDMENT: Nov. 5, 2018
DATE OF LAST NOTIFICATION: Nov. 13, 2018
DATE OF LAST RESPONSE: Mar. 25, 2019
DATE ACTIVATED: Feb. 12, 2019

EXPIRATION OF SOL: Apr. 10, 2017 – Oct. 16, 2023[1]
ELECTION CYCLES: 2012, 2016, 2018

COMPLAINANT: Wim de Vriend

RESPONDENTS: 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.
Jordan Cove LNG LLC PAC and Allison Murray in her official capacity as treasurer
Save Coos Jobs Committee
ChamberPAC; Coos County Alliance for Progress; Oregon Business & Industry Candidate PAC; Oregonians to Maintain Community Standards; and 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; and Werner for Oregon
Knute for Governor

[1] The earliest statute of limitations dates expired in 2017 for $3,000 and in 2020 for $5,000 of the approximately $850,000 in donations at issue in this matter. In 2021, another $1,000 becomes time-barred on May 24, 2021, $5,500 on October 6, 2021, and $10,050 on November 1, 2021. The statute of limitations begins to run on the remaining $831,160 after February 16, 2022, with the largest donations becoming time-barred between March and May 2022. *See* Attach. 1 (Jordan Cove Corporate Donations) [hereinafter Jordan Cove Donations Chart].

RELEVANT STATUTES AND REGULATIONS: 52 U.S.C. § 30121
11 C.F.R. § 110.20

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED:

OTHER AGENCIES CHECKED:

I. INTRODUCTION

The Complaint alleges that Pembina Pipeline Corporation, a Canadian corporation, its U.S. domestic subsidiaries 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" or "Jordan Cove entities"), and Jordan Cove LNG LLC PAC ("Jordan Cove PAC"), an associated separate segregated fund ("SSF"), made foreign national donations to Oregon state and local candidate committees and other non-federal committees (collectively, the "Recipient Committees"), and Save Coos Jobs Committee, a ballot measure committee, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.

For the reasons discussed below, we recommend that the Commission: (1) find reason to believe 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 the Recipient Committees; (2) find reason to believe 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 the Recipient Committees; (3) find reason to believe that Jordan Cove PAC violated 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) by making prohibited foreign national donations; (4) take no action at this time regarding the allegations that the Recipient Committees, with the exception of Knute for Governor, knowingly accepted or received prohibited foreign national donations; (5) dismiss the allegation that Knute for Governor 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; (6) dismiss 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; (7) dismiss the allegation 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; (8) dismiss 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; and (9) approve the use of compulsory process.

II. FACTUAL BACKGROUND

Jordan Cove is a family of corporate entities focused on construction and administration of a liquefied natural gas ("LNG") terminal in Coos Bay, Oregon, and the related Pacific Connector Gas Pipeline.[2] Pembina Pipeline Corporation is a Canadian corporation and the ultimate parent corporation of Fort Chicago Holdings, II US, LLC, Jordan Cove Energy Project

[2] Compl. at 2-3 (Oct. 12, 2018); 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 2 (Jan. 8, 2019) [hereinafter Jordan Cove Resp.]. The Jordan Cove LNG export terminal is owned by Jordan Cove Energy Project L.P. Compl., Attach. 8 ¶ 1.

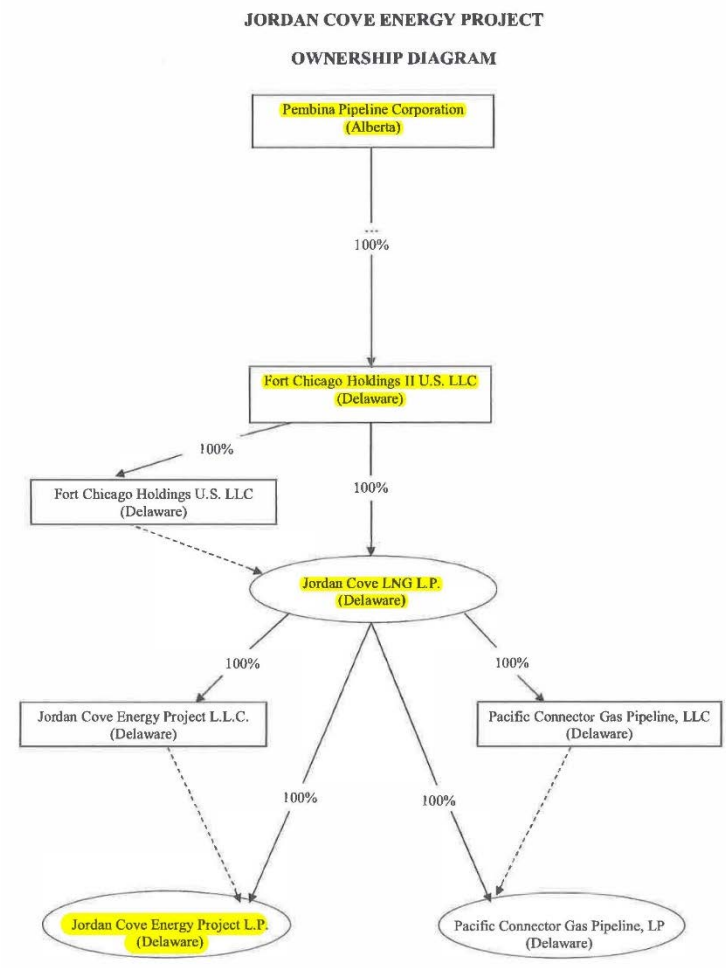
L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P.[3] Fort Chicago Holdings, II US, LLC, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P., are domestic subsidiaries registered in the state of Delaware.[4] Jordan Cove PAC is an SSF connected with Pembina U.S. Corporation that registered with the Commission on October 21, 2015.[5] The Jordan Cove corporate family is partially portrayed in the diagram below:[6]

[3] Compl. at 5, Attach. 7 (attaching Canadian Press, *Canadian Firm Applies to Build $10-Billion Jordan Cove LNG Project in Oregon*, FIN. POST (Sept. 22, 2017) [hereinafter Canadian Press Article], https://financialpost.com/pmn/business-pmn/canadian-firm-applies-to-build-10-billion-jordan-cove-lng-project-in-oregon); *id.*, Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram); Jordan Cove Resp. at 1. Veresen Inc. was the original foreign parent corporation of the Jordan Cove corporate family, but Pembina Pipeline Corporation purchased Veresen in 2017 in a deal worth $9.7 billion. Compl. at 5-6, Attachs. 3, 9-10; Jordan Cove Resp. at 1-2 & n.1.

[4] *See* Jordan Cove Resp. at 1-2; Am. Compl. at 1, Attach. 1 (Nov. 5, 2018) (attaching Oregon Corporation Division Annual Reports for Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. showing Delaware domicile); Compl., Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram).

[5] Jordan Cove LNG LLC PAC, Statement of Organization (Oct. 12, 2015), https://docquery.fec.gov/pdf/870/201510210300029870/201510210300029870.pdf (listing Veresen U.S. Power Inc. as connected organization); Jordan Cove LNG LLC PAC, Amended Statement of Organization (July 8, 2020), https://docquery.fec.gov/pdf/557/202007089244369557/202007089244369557.pdf (reflecting Pembina U.S. Corporation as connected organization); *see* Jordan Cove Resp. at 1; ChamberPAC Resp. at 2 (Dec. 19, 2018). Jordan Cove LNG, LLC, identified Pembina U.S. Corporation, apparently another domestic subsidiary of Pembina Pipeline Corporation, as its sole member in a 2018 filing with the Oregon Secretary of State. *See* Am. Compl., Attach. 1.

[6] *See* Compl., Attach. 8 ¶ 24; *id.*, Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram); Am. Compl. at 1, Attach. 1; Jordan Cove Resp. at 1-2. The Complaint attached this diagram that was originally included in one of Jordan Cove's submissions to the Federal Energy Regulatory Commission ("FERC") related to its application for the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline projects. Compl., Attach. 10. This reproduction includes highlighting added by the Office of General Counsel to note which of the entities depicted are listed as Respondents in this matter. Respondents Jordan Cove LNG, LLC, and Jordan Cove PAC do not appear on this diagram.



Critics of the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline sponsored a ballot measure ("Measure 6-162") that appeared on the May 16, 2017, ballot in Coos County, Oregon, which allegedly would have effectively banned the Jordan Cove LNG project.[7] Two state-registered ballot measure committees were associated with Measure 6-162: Yes on Measure 6-162, in support thereof, and Save Coos Jobs Committee, in opposition thereto.[8]

[7] Compl. at 2, Attach. 3. Measure 6-162 was defeated in the election. *See* FINAL CERTIFIED CANVASS OF VOTES, SPECIAL DISTRICT ELECTION, MAY 16, 2017 at 130, COOS COUNTY, OREGON ELECTIONS OFFICE (June 2, 2017), http://www.co.coos.or.us/Portals/0/County%20Clerk/Elections/Election%202017/canvassofvotes.pdf?ver=2017-06-02-102955-237 (showing 75.85% voting against Measure 6-162).

[8] 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; Yes on Measure 6-162, Amended Statement of Organization for Political Action Committee (May 5, 2017),

The Complaint and the Amended Complaint identify $855,710 in aggregate donations made by the Jordan Cove entities and Jordan Cove PAC:[9] $101,000 to state and local candidate committees,[10] $158,555 to other state and local committees,[11] and $596,155 to Save Coos Jobs

https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=82119&OWASP_CSRFTOKEN=21VM-2P57-PDSR-5R96-8P6W-XMKR-ZT57-5C8L. In Oregon, committees registered as ballot measure committees are not permitted to contribute to candidates, political parties, or other committees, and must re-register as miscellaneous political committees if they desire to do so. 2018 CAMPAIGN FINANCE MANUAL, OR. SEC'Y OF STATE 81 (June 17, 2018).

[9] The Complaint includes screenshots of the Oregon Secretary of State Election Division's campaign finance system ("OreStar"). Compl. at 1-2, Attachs. 1-2; Am. Compl. at 1-2, Attachs. 2-3; *see Search for Campaign Finance Information*, OR. SEC'Y OF STATE, https://sos.oregon.gov/elections/Pages/campaignfinance.aspx. The Amended Complaint attached a screenshot that compiles all of Jordan Cove's donations as reported through Orestar. Am. Compl., Attach. 2; *see also 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 "Contributor/Payee Information" field for "Jordan Cove") (last visited May 5, 2021). We have attached to this Report a chart compiling Jordan Cove's donations reported to the state of Oregon as well as the applicable statute of limitations dates. *See* Jordan Cove Donations Chart. OreStar lists some of the relevant donations as associated with a number of variations on the Jordan Cove entities' official names: "Jordan Cove," "Jordan Cove & Pacific Connector," "Jordan Cove Energy," "Jordan Cove Energy Project," "Jordan Cove Enervendor Pm," and "Jordan Cove LNG." *See id.* For purposes of this analysis, we consider these donations of the Jordan Cove entities. Many of the entries for these donations disclosed addresses that are identical to multiple other Jordan Cove entities' disclosed addresses, *see id.*, and Jordan Cove does not deny it made any of the donations identified in the Complaint, *see* Jordan Cove Resp. at 1-2. We intend to confirm the circumstances of those donations and the appropriate Jordan Cove entity to which they are attributable during the proposed investigation.

[10] Jordan Cove entities donated: $50,000 to Committee to Elect John Sweet; $10,000 to Caddy McKeown for Representative; $5,000 to Friends of Gary Leif; $5,000 to Friends of Tim Freeman; $5,000 to Peter Courtney for State Senate; $2,500 to Gomberg for State Rep; $2,500 to Werner for Oregon; $2,500 to Friends of Duane Stark; $2,000 to Friends of David Brock Smith; $2,000 to Committee to Elect Betsy Johnson; $2,000 to Brad Witt for State Representative; $500 to Friends of Dallas Heard; and $500 to Citizens to Elect Carl Wilson. *See* Jordan Cove Donations Chart. Jordan Cove PAC contributed an additional $5,000 to Caddy McKeown for Representative; $5,000 to Friends of Val Hoyle; $1,000 to Friends of Tobias Read; and $500 to Friends of Ray Lister. *See id.* The $1,000 donation to Friends of Tobias Read is attributed to "Jordan Cove LNG LLC," but it appears to be a donation from Jordan Cove PAC because the disclosed address is the same as Jordan Cove PAC's, and Jordan Cove PAC reported a $1,000 disbursement to the same recipient the same month to the Commission. *See id.*; FEC Form 3X, Jordan Cove LNG LLC PAC, Amended 2016 July Quarterly Report at 8 (Oct. 11, 2016) [hereinafter Jordan Cove PAC Amended 2016 July Quarterly Report], http://docquery.fec.gov/cgi-bin/paper_forms/C00590265/1092865/sb/22 (listing $1,000 donation to Friends of Tobias Read on May 16, 2016).

[11] Jordan Cove entities donated: $80,050 to ChamberPAC; $40,000 to Oregonians to Maintain Community Standards; $15,505 to Oregon Business & Industry Candidate PAC ("OBI PAC"); $15,000 to The Roseburg Area Chamber Political Action Committee; and $3,000 to Coos County Alliance for Progress. *See* Jordan Cove Donations Chart. Jordan Cove PAC contributed an additional $5,000 to ChamberPAC. *See id.* The donations to Coos County Alliance for Progress were made in 2012 and are therefore beyond the five-year statute of limitations.

Committee.[12]

Jordan Cove Donations by Recipient and Donor Categories		
Recipient Category	**Amount of Donations**	**Donor**
State and Local Candidate Recipient Committees	$89,500	Jordan Cove Entities
	$11,500	Jordan Cove PAC
Sub-Total	**$101,000**	
Non-Federal, Non-Ballot Measure Recipient Committees	$153,555	Jordan Cove Entities
	$5,000	Jordan Cove PAC
Sub-Total	**$158,555**	
Save Coos Jobs Committee	$596,155	Jordan Cove Entities
	$0	Jordan Cove PAC
Sub-Total	**$596,155**	
TOTAL	**$855,710**[13]	

The Complaint alleges that the Jordan Cove entities are foreign corporations; it acknowledges that the donating entities are registered in Delaware but emphasizes that these entities are wholly owned by Canadian corporation Pembina Pipeline Corporation and were

[12] Compl. at 2; *see id.*, Attachs. 1-2. These donations by "Jordan Cove LNG" ($265,155) and Jordan Cove Energy Project L.P. ($331,000) accounted for approximately 97% of the $615,155 Save Coos Jobs Committee received in donations for the May 2017 election. *OreStar Transactions: Filtered Results*, ORE. SEC'Y OF STATE, https://secure.sos.state.or.us/orestar/cneSearch.do?cneSearchButtonName=search&cneSearchFilerCommitteeId=18452&OWASP_CSRFTOKEN=V42M-8WK8-STK4-KQBX-7X8O-78CB-HUHM-C6F0 (last visited May 5, 2021) (showing cash and in-kind contributions to Save Coos Jobs Committee).

[13] After the Complaint but before the Amended Complaint, on October 19, 2018, Jordan Cove LNG, LLC, and Jordan Cove Energy Project L.P. each made an additional $1,000 donation to non-Respondent state candidate committees. *Transaction Detail*, OR. SEC'Y OF STATE (Oct. 26, 2018, 11:31 PM), https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=3035255&OWASP_CSRFTOKEN=91FV-T9I2-KU5S-YK9C-LSQ1-THOM-UYB3-47MD ($1,000 cash contribution made on October 19, 2018, to Friends of Christine Drazan); *Transaction Detail*, OR. SEC'Y OF STATE (Nov. 7, 2018, 4:51 PM) [hereinafter Jeff Barker Donation], https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=3073097&OWASP_CSRFTOKEN=91FV-T9I2-KU5S-YK9C-LSQ1-THOM-UYB3-47MD ($1,000 cash contribution made on October 19, 2018, to Friends of Jeff Barker). On June 11, 2019, "Jordan Cove LNG" donated an additional $505 to the Oregon Business & Industry Candidate PAC. *Transaction Detail*, OR. SEC'Y OF STATE (June 24, 2019, 2:06 PM), https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=3198114&OWASP_CSRFTOKEN=64AI-ODSI-7YUU-HVLD-JBY4-LLLR-2RKY-B4VJ ($505 cash contribution made on June 11, 2019 to OBI PAC).

previously owned by another Canadian corporation Veresen, Inc.[14] The Complaint alleges that Jordan Cove was "run by foreign individuals" and therefore violated the Act by making prohibited foreign national donations, and the Recipient Committees and Save Coos Jobs Committee violated the Act by accepting or receiving prohibited foreign national donations.[15]

Jordan Cove asserts that all the Jordan Cove entities are domestic entities, except for foreign parent Pembina Pipeline Corporation, and that the Complaint does not sufficiently allege that any donations were made with foreign funds or that foreign nationals were involved in decision-making regarding the donations.[16] Save Coos Jobs Committee and the Recipient Committees that responded assert that the Jordan Cove entities that made the donations are all domestic subsidiaries, registered in the United States, of a foreign parent and are permitted to make the donations at issue.[17] Furthermore, they dispute that any allegedly foreign national donations were accepted knowingly, particularly because Jordan Cove provided letters to the Recipient Committees and 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

14 Compl. at 5-6; *see id.*, Attach. 7.

15 *Id.* at 1-2, 5.

16 Jordan Cove. Resp. at 3-4.

17 *E.g.*, OBI PAC Resp. at 2-3 (Nov. 30, 2018) (citing Jordan Cove entities' corporate filings); ChamberPAC Resp. at 1-2, Ex. 1(same); Save Coos Jobs Committee, Brad Witt for State Representative, Caddy McKeown for Representative, Committee to Elect Betsy Johnson, Friends of Ray Lister, Friends of Tobias Read, Gomberg for State Rep, and Oregonians to Maintain Community Standards Resp. at 9-10 (Dec. 19, 2018) [hereinafter Save Coos Jobs Comm., *et al.*, Resp.] (same); Citizens to Elect Carl Wilson, Friends of Dallas Heard, Friends of David Brock Smith, Friends of Duane Stark, Friends of Gary Leif, Friends of Tim Freeman, and Knute for Governor Resp. at 15-16 (Dec. 21, 2018) [hereinafter Citizens to Elect Carl Wilson, *et al.*, Resp.] (same). Only one Recipient Committee, Werner for Oregon, did not submit a Response.

by U.S. citizens.[18]

III. LEGAL ANALYSIS

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.[19] The Act's definition of "foreign national" includes any 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."[20]

In the Bipartisan Campaign Reform Act of 2002 ("BCRA"),[21] Congress expanded the Act's foreign national prohibition to expressly prohibit "donations" in addition to contributions.

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[18] *See, e.g.*, OBI PAC Resp. at 2-3; ChamberPAC Resp. at 1-2; Citizens to Elect Carl Wilson, *et al.*, Resp. at 1; Friends of Val Hoyle Resp. at 1-2 (Dec. 21, 2018). Several Recipient Committees submitted letters provided to them by Jordan Cove stating 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." ChamberPAC Resp. at 2, Ex. 1; *see also* Peter Courtney for State Senate Resp. at 1 (Nov. 21, 2018) (stating the donating Jordan Cove entity "has an office in Portland, which is where the check was issued form [sic]"). 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); Save Coos Jobs Comm., *et al.*, Resp. at 3-8 (letters dated Oct. 31, 2018, and Dec. 4, 2018); Citizens to Elect Carl Wilson, *et al.*, Resp. at 9-14 (letters dated Nov. 26, 2018, and Dec. 4, 2018); Friends of Val Hoyle Resp. at 1-2 (letter dated Dec. 21, 2018). The letter provided by Peter Courtney for State Senate pre-dates the Complaint, but is not addressed to that Respondent. *See* Peter Courtney for State Senate Resp. at 2 (letter dated Oct. 4, 2018, and addressed to an unrelated state committee).

[19] 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (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* 565 U.S. 1104 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

[20] 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

[21] Pub. Law 107-155, 116 Stat. 81 (Mar. 27, 2002).

It also codified the Commission's longstanding interpretation of the prohibition, expressly applying it to state and local elections as well as to federal elections.[22]

Commission regulations implementing the Act's foreign national prohibition provide:

> A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation . . . with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.[23]

The Commission has found that not all participation by foreign nationals in the election-related activities of others will violate the Act. In MUR 6959, for example, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, such as online research and translations, during a one month-long internship with a party committee.[24] Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to perform at a campaign fundraiser and agreeing to let the political committee use his name and

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[22] *See* 52 U.S.C. § 30121(a); Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,940 (Nov. 19, 2002) ("Prohibitions E&J"); *see also* Advisory Op. 1999-28 (Bacardi-Martini USA) at 2 (quoting *United States v. Kanchanalak*, 192 F.3d 1037 (D.C. Cir. 1999) (recognizing that the Commission had "consistently interpreted . . . since 1976" the foreign national prohibition to extend to state and local elections)).

[23] 11 C.F.R. § 110.20(i). The Commission has explained that this provision also bars foreign nationals from "involvement in the management of a political committee." Prohibitions E&J, 67 Fed. Reg. at 69,946; *see also* Advisory Op. 2004-26 (Weller) at 2-3 (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees' activities as a volunteer without making a prohibited contribution, she "must not participate in [the candidate's] decisions regarding his campaign activities" and "must refrain from managing or participating in the decisions of the Committees.").

[24] Factual & Legal Analysis ("F&LA") at 4-5, MUR 6959 (Cindy Nava, *et al.*) (noting that the available information, which was based on two press reports that did not detail the foreign national's activities, did not indicate that the foreign national participated in any political committee's decision-making process). The Commission also found that a $3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

likeness in its emails promoting the concert and soliciting support, where the record did not indicate that the foreign national had been involved in the committee's decision-making process in connection with the making of contributions, donations, expenditures, or disbursements.[25] By contrast, 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 in the management of its separate segregated fund,[26] 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.[27]

The regulations also provide that no person shall "knowingly provide substantial assistance" in the solicitation, making, acceptance, or receipt of a prohibited foreign national contribution or donation, or the making of a prohibited foreign national expenditure, independent

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[25] F&LA at 6-9, MURs 5987, 5995, 6015 (Sir Elton John); *see also* F&LA at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller) at 2-3.

[26] *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);

The Commission has specifically determined that "no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions." Advisory Op. 1989-20 (Kuilima) at 2.

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

expenditure, or disbursement.[28] The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.[29]

A. Prohibited Foreign National Donations to the Recipient Committees

1. The Commission Should Find Reason to Believe That the Jordan Cove Entities Made Prohibited Foreign National Donations

The Complaints and Oregon campaign finance reports indicate that Jordan Cove entities donated $89,500 to state and local candidate committees and $153,555 to non-candidate, non-ballot measure state and local committees.[30] Each of the donating Jordan Cove entities — Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. — is a domestic subsidiary of Pembina Pipeline Corporation, which as a Canadian corporation is a foreign national.[31] As set forth below, the available information raises a reasonable inference that some or all of the donations made by the Jordan Cove entities were made with foreign national officers' or directors' participation in the decision-making process, or were either funded by their foreign parent or were made at the foreign parent's direction. Therefore, we recommend that the Commission find reason to believe that Pembina Pipeline Corporation,

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[28] 11 C.F.R. § 110.20(h). The Commission has explained that substantial assistance "means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction." Prohibitions E&J, 67 Fed. Reg. at 66,945. Moreover, substantial assistance "covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations." *Id.*

[29] 52 U.S.C. § 30121(a)(2). The Commission's regulations employ a "knowingly" standard. 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. *Id.* § 110.20(a)(4).

[30] *See* Compl., Attachs. 1-2; Am. Compl., Attach. 2; Jordan Cove Donations Chart; *supra* notes 10-11.

[31] Jordan Cove Resp. at 1-2; *see supra* note 4. It does not appear that Fort Chicago Holdings, II US, LLC, made any direct donations; however, the available information and the corporate structure of Jordan Cove suggest that it may have acted as a conduit or intermediary for the donation funds between Pembina Pipeline Corporation and Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P.

Jordan Cove Energy Project L.P, Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P., made foreign national donations in violation of the Act and Commission regulations and that Fort Chicago Holdings, II US, LLC, provided substantial assistance to the making of prohibited foreign national donations.

The attendant circumstances suggest that the donating Jordan Cove entities may have relied upon funding, subsidies, and/or loans from its foreign parents Veresen or Pembina to finance the donations. According to Jordan Cove's own reported estimates, the LNG project will cost $10 billion — up from initial estimates of $7.5 billion.[32] As of 2018, Pembina was budgeting and spending approximately $10 million per month on the project in permitting, development costs, and other expenses.[33] As of April 22, 2021, Jordan Cove had not yet begun construction of the LNG terminal in Coos Bay, Oregon, and paused development of the project as a result of certain denials of required regulatory authorizations.[34]

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[32] Compl., Attach. 7 (attaching Canadian Press Article).

[33] *Id.* at 7, Attach. 5 (attaching Dennis Webb, *Geopolitical Case for Jordan Cove*, DAILY SENTINEL (Sept. 12, 2018), https://www.gjsentinel.com/news/western_colorado/geopolitical-case-for-jordan-cove/article_cd728716-b64a-11e8-9ed7-10604b9f7e7c.html); *id.*, Attach. 15 (attaching Ted Sickinger, *Jordan Cove LNG Campaign Contributions Raise Questions*, OREGONIAN (Jan. 29, 2019) [hereinafter Oregonian Article], https://www.oregonlive.com/politics/2018/09/jordan_cove_campaigns_contribu.html (quoting Jordan Cove spokesperson)).

[34] *See* Motion of Respondent-Intervenors to Suspend Merits Briefing Schedule & Hold Cases in Abeyance at 4, *Evans v. FERC*, No. 20-1161 (D.C. Cir. Apr. 22, 2021) [hereinafter Jordan Cove Abeyance Motion]. On March 19, 2020, FERC authorized the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline project, subject to a number of additional requirements, including certain regulatory approvals issued by the state of Oregon. FERC Authorization Order, 170 FERC ¶ 61,202, Mar. 19, 2020, FERC Docket CP17-495, Accession No. 20200319-3077, https://www.oregon.gov/energy/facilities-safety/facilities/Documents/JCEP-PCGP/2020-FERC-Order.pdf [hereinafter FERC Authorization Order]. On January 19, 2021, FERC declined to override the Oregon Department of Environmental Quality's denial of the required water quality certification. Order Denying Petition for Declaratory Order, 174 FERC ¶ 61,057 (Jan. 19, 2021), FERC Docket CP17-494-003, CP17-495,003, https://www.ferc.gov/sites/default/files/2021-01/C-16-CP17-494-003.pdf. On February 8, 2021, the National Oceanic and Atmospheric Administration ("NOAA") upheld the Oregon Department of Land Conservation and Development's objection to the required federal consistency determination. Decisions and Findings in the Consistency Appeal of Jordan Cove Energy Project, L.P., and Pacific Connector Gas Pipeline, L.P., from an objection by the Or. Dep't of Land Conservation and Dev. (Sec'y of Commerce Feb. 8, 2021), https://coast.noaa.gov/data/czm/consistency/appeals/fcappealdecisions/mediadecisions/jordancove.pdf. The FERC Authorization Order requires those two approvals, amongst others, before Jordan Cove begins construction on the

The record does not contain any information that the donating Jordan Cove entities were conducting active business unrelated to the Jordan Cove LNG pipeline and facility at the time of the donations nor since.

Importantly, here, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P., do not have any evident domestic revenue stream to account for their combined $243,055 in donations to the Recipient Committees: their primary business will be the transport and export of liquefied natural gas, but the feeder pipeline and terminal facility are not yet built.

LNG terminal. *See* FERC Authorization Order at 1-2 (McNamee, Comm'r, concurring) (listing water quality certification and federal consistency determination as two of the "many federal permits that [Jordan Cove] must receive to begin construction"); *see also* Jordan Cove Abeyance Motion at 2-4 ("Project construction has not and cannot commence until Jordan Cove and Pacific Connector secure the necessary authorizations under the Clean Water Act and the Coastal Zone Management Act.").

A press account cited in the Complaint quotes a Jordan Cove spokesperson stating that the donated funds derived from Pembina Pipeline Corporation's "U.S. assets" and "are generated in the U.S."[37] In unsworn letters addressed to the Recipient Committees and Save Coos Jobs Committee sent after the Complaint was filed, Jordan Cove also denied that its donations were derived from foreign funds and that foreign nationals were involved in the donation decision-making.[38] Jordan Cove did not, however, make those denials in response to the Complaint or otherwise provide those unsworn letters to the Commission. Instead, Jordan Cove argues that the Complaint alleges violations regarding "facially lawful non[-]federal political contributions" and asserts that "no documented or credible allegation that any non[-]federal contribution was made with non-domestic funds, nor that any foreign national engaged in any prohibited decision-making regarding the contributions."[39]

In light of the overall circumstances, including the lack of any asserted or otherwise evident revenue streams that the domestic subsidiaries could have used to fund the donations in question, the foregoing assertions do not overcome the more likely scenario that the funds used to make the donations were from the only source indicated by the available record — namely, the capital supplied by Pembina Pipeline Corporation.[40]

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[37] *See* Oregonian Article (quoting Jordan Cove spokesman on September 21, 2018, that "all the political contributions are direct from Jordan Cove Energy Project L.P., a domestic company registered in Delaware"); Compl., Attach. 15 (attaching Oregonian Article).

[38] The letters from Jordan Cove represent that "[t]he funds for Jordan Cove's political donations 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." *See supra* note 18. All but one of the letters to the Recipient Committees were dated after the Complaint was filed on October 9, 2018, and that letter was not addressed to the Respondent that attached it in its Response to the Complaint. *See id.*; Peter Courtney for State Senate Resp. at 2.

[39] Jordan Cove Resp. at 3-4.

[40] *Cf.* Advisory Op. 1992-16 (Nansay Hawaii) at 3 (articulating "certain conditions" for domestic subsidiaries' political contributions, including the subsidiary's ability to demonstrate sufficient domestic funds in its

The available information also suggests that at least one Jordan Cove entity had a primary place of business in, operated from, and made donations from, Canada during the relevant time period. While the Amended Complaint attached copies of various Jordan Cove entities' Annual Reports that disclose domestic mailing addresses, domestic primary places of businesses, and domestic addresses for members and partners,[41] Annual Reports from prior years (including years in which donations were made by the relevant entities) disclose Canadian addresses.[42] Save Coos Jobs Committee reported two donations — $216,000 on March 20, 2017, and $115,000 on April 10, 2017 — from Jordan Cove Energy Project L.P. that list a Canadian address.[43] Moreover, the Annual Reports and those two donations reference the same Canadian address: 222 Third Ave. SW, Suite 900, Calgary, Alberta, Canada.[44] That certain Jordan Cove entities disclosed foreign primary places of business and mailing addresses and two of Jordan Cove's largest donations — amounting to $331,000 — were reported with foreign addresses is

account, beyond funds or loans from the foreign parent, through a reasonable accounting method, and the foreign parent's subsidies or capitalization cannot replenish any portion of the subsidiary's contributions).

[41] Am. Compl., Attach. 1.

[42] *See, e.g.*, Amended Annual Report, Jordan Cove Energy Project L.P. (July 26, 2017) [hereinafter JCEP 2017 Am. Annual Report], http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/5442257 (listing Canadian mailing address, primary place of business, and address for "General Partner" Jordan Cove Energy Project LLC); Amended Annual Report, Jordan Cove Energy Project L.P. (Aug. 9, 2016) [hereinafter JCEP 2016 Am. Annual Report], http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/4736005 (same); Amended Annual Report, Jordan Cove Energy Project L.P. (Aug. 5, 2015) [hereinafter JCEP 2015 Am. Annual Report], http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/4077591 (same).

[43] *See Transaction Detail*, OR. SEC'Y OF STATE (Apr. 11, 2017, 11:59 PM) [hereinafter JCEP Mar. 20, 2017 Donation], https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=2516478&OWASP_CSRFTOKEN=Z7DW-C58T-GDV8-SG3O-9IQ0-4ZD4-45LX-HZD8 ($216,000 cash contribution made on March 20, 2017 to Save Coos Jobs Committee); *Transaction Detail*, OR. SEC'Y OF STATE (Apr. 17, 2017, 11:59 PM) [hereinafter JCEP Apr. 10, 2017 Donation], https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=2529302&OWASP_CSRFTOKEN=OPPM-WQA9-LES3-QNZA-DCI9-SY3V-BNXJ-2D9O ($115,000 cash contribution made on April 10, 2017 to Save Coos Jobs Committee).

[44] *Compare* JCEP 2017 Am. Annual Report, JCEP 2016 Am. Annual Report, *and* JCEP 2015 Am. Annual Report, *with* JCEP Mar. 20, 2017 Donation, *and* JCEP Apr. 10, 2017 Donation.

indicative of both foreign national decision-making and foreign-generated funds.[45] Moreover, Jordan Cove Energy Project L.P., the same Jordan Cove entity that reported the foreign addresses for the two donations to Save Coos Jobs Committee totaling $331,000, made at least nine other donations to at least five other non-federal candidate and non-ballot committees totaling at least $126,550, using domestic addresses in Oregon and Texas, raising questions regarding the decision-making and funding of those donations.[46]

Jordan Cove did not provide specific information regarding the circumstances of the donations, such as details of the decision-making process, the individual(s) involved therein, and the nationalities of those individuals, or the source of funds used to make the donations. In similar circumstances, the Commission has found reason to believe the respondents made prohibited foreign national contributions or donations where the respondent has failed to provide

[45] The Commission has previously indicated that information that a contribution or donation is received from a foreign address or foreign bank is pertinent, although not dispositive, information when assessing a contributor's nationality. *See, e.g.*, F&LA at 2, MURs 7430, 7444, 7445 (Unknown Respondent) (acknowledging payment processing forms stating the contributions came from Italy but dismissing because *de minimis* amount in violation); F&LA at 2-3, MUR 6944 (Jose E. Farias, *et al.*) (dismissing allegations related to a contribution received from a foreign address of a domestically registered corporation because of *de minimis* amount in violation); F&LA at 2, 5-6, MURs 6401, 6432 (TransCanada Keystone Pipeline, GP, LLC) (noting contribution with a Canadian address, but finding no reason to believe where contributor demonstrated domestic funding, domestic decision-makers, and context of foreign address appearing on envelope); F&LA at 2-3, 6, MUR 6099 (Waverly Glen Systems Ltd.) (same); F&LA at 14, 18, MURs 6078, 6090, 6108, 6139, 6142, 6214 (Obama for America) (noting contributions listed foreign addresses but ultimately dismissing because contributions were limited and there was insufficient information that recipient acted unreasonably in relying upon contributors' affirmations of U.S. citizenship); *cf.* 11 C.F.R. § 110.20(a)(5)(ii) (including contributor's or donor's use of a foreign address among "pertinent facts" relevant to "knowing" solicitation, receipt, or acceptance of foreign national contribution or donation).

[46] *See* Jordan Cove Donations Chart at 1-4; Jeff Barker Donation.

contextual information necessary to assess the decision-makers' nationalities[47] or failed to demonstrate they had sufficient domestically generated funds to make the challenged contributions or donations.[48] Alternatively, the Commission has found no reason to believe respondents violated the Act's foreign national prohibition where the respondent has credibly identified the persons involved in the decision-making process as U.S. citizens or permanent residents,[49] or credibly demonstrated that the relevant contributions or donations derived from

47 F&LA at 10-11, MUR 2892 (Jet Hawaii, Inc.) (finding reason to believe where the response did not provide information regarding the nationality of individuals making the contribution decisions); F&LA at 11, MUR 2892 (Hawaii Omori Corp.) (finding reason to believe where the respondent listed individuals participating in contribution decision-making, but not specifying their nationalities); *see also, e.g.*, F&LA at 11, MUR 2892 (The Westin Kauai) (finding reason to believe where the response did not identify the nationality of the individuals making the contribution decisions and the information indicated a limited partner owning 16% of the contributing entity was owned indirectly by foreign citizens); F&LA at 11, MUR 2892 (Horita Corp.) (finding reason to believe where respondent did not submit a response, even though a different respondent provided information that owners were U.S. citizens, because the Commission could not "question th[e] entity directly").

48 F&LA at 11, MUR 2892 (Daiei (USA) Inc.) (finding reason to believe where the respondent did not provide information on the source of the contribution funds); F&LA at 11, MUR 2892 (The Westin Kauai) (finding reason to believe where the respondent only provided the bank account name and number for its contributions but no other information about the source thereof).

49 *See, e.g.*, F&LA at 6-8, MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*) (identifying U.S. permanent resident as sole decision-maker); F&LA at 6, MUR 6099 (Waverly Glen Systems Ltd.) (identifying sole person with decision-making authority or involved in decision-making process with supporting affidavit).

domestically generated revenues.[50]

The key issue is not whether a U.S. citizen or national was *the* decision maker as to a donation — *i.e.*, had final decision-making authority or final say regarding the making of a donation — but whether any foreign national directed, dictated, controlled, or directly or indirectly participated in the decision-making *process* in connection with election-related spending. Indeed, the Act's prohibition on foreign nationals directly or indirectly making contributions or donations, as implemented by the Commission, requires that "no director or officer of the company or its parent who is a foreign national may participate in *any way* in the decision-making process with regard to making . . . contributions."[52]

[50] *See, e.g.*, F&LA at 5, MUR 6099 (Waverly Glen Systems Ltd.) (reviewing bank statements provided by domestic subsidiary showing sufficient account balance to make contribution and sufficient revenue from a U.S. customer); F&LA at 7, MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*) (reviewing loan agreement between a domestic subsidiary and a U.S. lender that provided funds for contributions from bank's U.S. revenues and required to be repaid with subsidiary's U.S. revenues); *see also* F&LA at 5-6, MUR 7122 (APIC) (highlighting affidavit from domestic subsidiary's CFO averring use of domestically generated funds and separate ledger account for political contributions, including identification of specific revenue-generating sale that provided funds for the contribution, but finding reason to believe corporation violated foreign national prohibition through foreign national's participation in decision-making process to make contributions); F&LA at 2-3, MUR 6184 (Skyway Concession Company, LLC, *et al.*) (relying upon evidence that revenues from domestic business were deposited into a U.S.-based expense account from which contributions were made, but finding reason to believe corporation violated foreign national prohibition through foreign national's participation in decision-making process to make donations). The Commission has also advised a domestic subsidiary that it "must be able to demonstrate through a reasonable accounting method that it has sufficient funds in its account, other than funds given or loaned by its foreign national parent, from which the contribution is made." Advisory Op. 1992-16 (Nansay Hawaii) at 3. Furthermore, the Commission instructed the foreign parent to "consider the political contributions of its subsidiary when granting further subsidies to or further capitalization of the subsidiary." *Id.*

[52] Advisory Op. 1989-20 (Kuilima) at 3 (emphasis added).

Even if the Commission were to credit the assertion in the *post hoc*, unsworn letters provided by Jordan Cove to the Recipient Committees that "[a]ll decisions regarding the contributions are made by U.S. citizens,"[54]

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These circumstances — Jordan Cove's apparent lack of a domestic revenue stream, annual reports indicating Canadian primary places of business and mailing addresses, donations disclosed from a Jordan Cove entity at a Canadian address, and Jordan Cove's lack of a substantive response providing a basis to assess the decision-making process for and funding of the donations — support a reasonable inference that foreign nationals were involved in the decision-making process regarding the donations and the funds Jordan Cove used to make the donations originated from a foreign national source.[56] Therefore, we recommend the Commission find reason to believe 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.

[54] *See supra* note 18.

[56] *Cf.* F&LA at 6, MUR 6184 (Skyway Concession Company, LLC, *et al.*).

§ 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) by making prohibited foreign national donations to the Recipient Committees 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 the Recipient Committees.

2. The Commission Should Find Reason to Believe That Jordan Cove PAC Made Prohibited Foreign National Donations

Jordan Cove PAC is an SSF registered with the Commission and associated with Pembina U.S. Corporation.[57] Jordan Cove PAC reported an aggregate $59,500 in receipts and an aggregate $45,380 in disbursements to the Commission during the two relevant election cycles in which it was active: 2015-2016 and 2017-2018.[58] However, it appears that Jordan Cove PAC only reported $11,000 of the $16,500 it donated to state and local committees that are reflected in

[57] Jordan Cove LNG LLC PAC, Amended Statement of Organization (July 8, 2020), https://docquery.fec.gov/pdf/557/202007089244369557/202007089244369557.pdf; *see* Jordan Cove Resp. at 1; ChamberPAC Resp. at 2; *supra* note 5. Commission records indicate that there was another SSF, Jordan Cove Energy Project, L.P. PAC, associated with Jordan Cove Energy Project L.P. Jordan Cove Energy Project L.P. PAC, Statement of Organization at 1-2 (May 20, 2014), https://docquery.fec.gov/pdf/718/14031240718/14031240718.pdf. Shortly after its formation, the Reports Analysis Division sent a Request for Additional Information notifying this SSF that, because its connected organization was a partnership, "most forms of support received by a committee from such an organization are considered contributions and subject to the" Act. Jordan Cove Energy Project L.P. PAC, Request for Additional Info. at 1 (June 3, 2014), https://docquery.fec.gov/pdf/231/14330053231/14330053231.pdf. Jordan Cove Energy Project, L.P. PAC filed a Termination Report on August 10, 2016, explaining that it was never active and it mistakenly reported activity in 2016. FEC Form 3X, Jordan Cove Energy Project L.P. PAC, Termination Report at 1 (Aug. 10, 2016), https://docquery.fec.gov/pdf/399/201608100300094399/201608100300094399.pdf.

[58] FEC Form 3X, Jordan Cove LNG LLC PAC, 2015 Year-End Report at 2 (Jan. 29, 2016) [hereinafter Jordan Cove PAC 2015 Year-End Report], https://docquery.fec.gov/pdf/493/201601290300043493/201601290300043493.pdf (disclosing $15,000 in total receipts and $5,000 in total disbursements for 2015); FEC Form 3X, Jordan Cove LNG LLC PAC, 2016 Year-End Report at 2 (Jan. 30, 2017), https://docquery.fec.gov/pdf/224/201701300300136224/201701300300136224.pdf (disclosing $20,000 in total receipts and $22,500 in total disbursements for 2016); FEC Form 3X, Jordan Cove LNG LLC PAC, 2017 Year-End Report at 2 (Jan. 30, 2018) [hereinafter Jordan Cove PAC 2017 Year-End Report], https://docquery.fec.gov/pdf/791/201801300300189791/201801300300189791.pdf (disclosing $7,500 in total receipts and $12,730 in total disbursements in 2017); FEC Form 3X, Jordan Cove LNG LLC PAC, 2018 Year-End Report at 2 (Jan. 30, 2019), https://docquery.fec.gov/pdf/980/201901300300260980/201901300300260980.pdf (disclosing $17,000 in total receipts and $5,150 in total disbursements in 2018).

Oregon campaign finance reports to the Commission as disbursements.[59] Thus, it appears that either some of the donations are mistakenly attributed to Jordan Cove PAC in disclosures to the state of Oregon,[60] or that Jordan Cove PAC failed to report all of its disbursements to the Commission.

A domestic subsidiary of a foreign national corporation is permitted to establish and administer an SSF if it is a discrete entity whose principal place of business is in the United States and if those exercising decision-making authority over the SSF are not foreign nationals.[61] Jordan Cove did not explain or identify those who participated in Jordan Cove PAC's decision-making process regarding its donations, like it did not identify those involved with regards to the other Jordan Cove entities' donations, or in the management of Jordan Cove PAC itself.[62]

Nor did Jordan Cove PAC explain whether its administrative expenses were paid with domestic funds. It appears that all of the individuals who contributed to Jordan Cove PAC during the relevant time periods listed Jordan Cove LNG, LLC, or Veresen, Inc., as their employer, and none of the contributions appear to exceed the $5,000 annual limit on

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[59] *See* Jordan Cove PAC 2015 Year-End Report at 7 (disclosing $5,000 donation to Friends of Val Hoyle on December 11, 2015); Jordan Cove PAC Amended 2016 July Quarterly Report at 8 (listing $1,000 donation to Friends of Tobias Read on May 16, 2016); Jordan Cove PAC 2017 Year-End Report at 8 (disclosing $5,000 donation to Caddy McKeown for State Representative on September 11, 2017).

[60] There is some information available that supports this explanation: the Jordan Cove spokesperson quoted in a press account stated that "all the political contributions are direct from Jordan Cove Energy Project L.P." *See* Oregonian Article; Compl., Attach. 15 (attaching Oregonian Article).

[61] Advisory Op. 2009-14 (Mercedes-Benz USA/Sterling) at 3; Advisory Op. 2000-17 (Extendicare) at 4-6; Advisory Op. 1999-28 (Bacardi-Martini) at 3; *see also* Prohibitions E&J, 67 Fed. Reg. at 69,943; Advisory Op. 2006-15 (TransCanada Corp.) at 2-6.

[62] *See* Jordan Cove Resp.

contributions from individuals to PACs.[63] However, Jordan Cove PAC reported one contribution from Don Althoff, President and CEO of Veresen, Inc., with a Canadian address.[64] It does not appear that Jordan Cove PAC responded to the Commission's Reports Analysis Division's Request for Additional Information about that contribution by amending the 2015 Year-End Report or submitting a Form 99 Misc Text, but subsequent contributions reported from Althoff reflect a domestic address.[65]

For the same reasons articulated above with regards to the Jordan Cove entities,[66] we recommend that the Commission find reason to believe that Jordan Cove LNG LLC PAC and Allison Murray in her official capacity as treasurer violated 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) by making prohibited foreign national donations to the Recipient Committees.

3. The Commission Should Take No Action at This Time Regarding the Recipient Committees' Acceptance or Receipt of Prohibited Foreign National Donations

The Complaints and Oregon campaign finance reports indicate that all of the Recipient Committees, with the exception of Knute for Governor, accepted or received donations from one

63 52 U.S.C. § 30116(a)(2); *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?cycle=2016&data_type=processed&committee_id=C00590265&two_year_transaction_period=2016&two_year_transaction_period=2018&line_number=F3X-11AI (last visited May 5, 2021) (reflecting individual contributions to Jordan Cove PAC during the 2016 and 2018 election cycles).

64 Jordan Cove PAC 2015 Year-End Report at 6 (listing $5,000 contribution from Don Althoff in Calgary, Alberta, Canada on October 22, 2015).

65 *See* Jordan Cove LNG LLC PAC, Request for Additional Info. at 1-2 (Apr. 21, 2016), https://docquery.fec.gov/pdf/018/201604210300042018/201604210300042018.pdf; *see, e.g.*, Jordan Cove PAC Amended 2016 July Quarterly Report at 6 (listing $3,000 contribution from Don Althoff in Chicago, IL on June 21, 2016).

66 *See supra* Section III.A.1.

or more of the Jordan Cove entities or Jordan Cove PAC.[67] The Commission's regulations employ a "knowingly" standard, whereby a person knowingly accepts or receives 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.[68]

Nearly all of the Recipient Committees attached to their Responses post-Complaint correspondence from Jordan Cove personnel representing that the donations were made by a U.S. company, sourced from domestic funds, drawn from a domestic bank account, and that all donation decisions were made by U.S. citizens.[69] The record demonstrates all the Jordan Cove entities are incorporated domestically in Delaware and Jordan Cove PAC is an SSF duly registered with the Commission.[70] Furthermore, all of the relevant donations to the Recipient Committees were reported to the state of Oregon listing domestic addresses for the corresponding donor.[71] Therefore, the available information does not support a finding of reason to believe that the Recipient Committees were aware of any "pertinent facts" that would trigger

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[67] *See* Compl., Attachs. 1-2; Am. Compl., Attach. 2; Jordan Cove Donations Chart; *supra* notes 10-11.

[68] 11 C.F.R. § 110.20(a)(4); *see also* 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

[69] *See supra* notes 18, 38.

[70] *See supra* notes 4-6, 17.

[71] *See* Jordan Cove Donations Chart. The Save Coos Jobs Committee, as a ballot measure committee, is addressed in further detail below. *See infra* Section III.B.3.

their "knowing" acceptance or receipt of a prohibited donation.[72]

Because the proposed investigation of Jordan Cove may uncover additional information regarding the Recipient Committees' knowledge, or lack thereof, of Jordan Cove's alleged foreign national status, we recommend the Commission take no action at this time regarding the allegations that the Recipient Committees, with the exception of Knute for Governor, knowingly accepted or received prohibited foreign national donations pending that investigation.

4. The Commission Should Dismiss the Allegation That Knute for Governor Knowingly Accepted or Received Prohibited Foreign National Donations

Neither the Complaints nor Oregon campaign finance reports indicate that Knute for Governor accepted or received any donations directly from one or more of the Jordan Cove entities or Jordan Cove PAC.[73] It appears that the Amended Complaint's allegation against Knute for Governor is premised on the Jordan Cove entities' and Jordan Cove PAC's donations to ChamberPAC, which itself made a donation to Knute for Governor.[74] Knute for Governor asserts that it never received any donations from Jordan Cove, which Oregon campaign finance reports appear to confirm.[75] There is no information available to indicate that the Jordan Cove donations specifically funded ChamberPAC's donation to Knute for Governor, were made for that purpose, or, assuming, *arguendo*, there was such evidence, no information that Knute for

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[72] *See* 11 C.F.R. § 110.20(a)(5).

[73] *See* Compl., Attachs. 1-2; Am. Compl., Attach. 3; Jordan Cove Donations Chart; *supra* notes 10-11.

[74] *See* Am. Compl. at 1, Attach. 3.

[75] Citizens to Elect Carl Wilson, *et al.*, Resp.; *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 "Knute for Governor" and "Contributor/Payee Information" field for "Jordan Cove", returning zero results) (last visited May 5, 2021).

Governor was aware that the donation derived from Jordan Cove. Therefore, we recommend that the Commission dismiss the allegation that Knute for Governor 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.

B. Alleged Foreign National Donations to Save Coos Jobs Committee

1. The Foreign National Prohibition's Application to Ballot Measure Activity

The Act and Commission regulations prohibit any foreign national from making a contribution or donation "in connection with a Federal, State, or local election."[76] In affirming the constitutionality of the Act's ban on foreign national contributions, the court in *Bluman v. FEC* held:

> It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.[77]

The Commission has explained that "[s]uch exclusion 'is part of the sovereign's obligation to preserve the basic conception of a political community.'"[78]

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

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[76] 52 U.S.C. § 30121(a)(1)(A).

[77] 800 F. Supp. 2d 281, 287 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012); *see also United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019); Advisory Op. 2018-12 (Defending Digital Campaigns, Inc.) at 7.

[78] Advisory Op. 2018-12 (Defending Digital Campaigns, Inc.) at 7 (quoting *Bluman*, 800 F. Supp. 2d at 287).

candidate."[79] 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*."[80] Section 30121 states that "[i]t shall be unlawful for" a foreign national, directly or indirectly, to make "a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election."[81] By expressly including state and local elections within its prohibition on contributions or donations by foreign nationals, section 30121 on its face applies beyond the context of the Commission's general regulatory definition of elections, which makes reference both to "individuals" and the pursuit of "*Federal* office."[82] The text of section 30121 thus raises the question whether the state or local elections to which it applies includes elections, such as one at issue in this matter, in which a local ballot measure is put to voters.

Prior to Congress's enactment of BCRA, the Act prohibited foreign national contributions "in connection with an election *to any political office*."[83] Accordingly, before BCRA, the Commission treated foreign national donations relating only to ballot initiatives as generally outside the purview of the Act on the basis that ballot initiative elections generally are not in connection with elections for political office.[84] Nonetheless, in pre-BCRA Advisory Opinion 1989-32 (McCarthy), the Commission described circumstances in which a ballot initiative "inextricably linked" to a candidate would be "in connection with" that candidate's

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79 52 U.S.C. § 30101(1).

80 11 C.F.R. § 100.2(a) (emphasis added).

81 52 U.S.C. § 30121(a)(1)(A).

82 *Id.* (emphasis added).

83 *See* 2 U.S.C. § 441e(a) (2000) (emphasis added).

84 *See* Advisory Op. 1989-32 (McCarthy) ("AO 1989-32").

election to political office and, therefore, a committee supporting such a ballot initiative would be prohibited from accepting funds from a foreign national.[85]

In enacting BCRA, Congress amended the Act's foreign national section to prohibit foreign national contributions or donations "in connection with a Federal, State, or local election."[86] In the course of issuing implementing regulations to correspond with the revised statutory provision, the Commission concluded that the deletion of the phrase "election to any public office" and the substitution of the "broader phrase 'Federal, State, or local election'" was meant to clarify congressional intent "to prohibit foreign national support of candidates and their committees and political organizations and foreign national activities in connection with all Federal, State, and local elections."[87]

Shortly after the passage of BCRA, in Advisory Opinion 2003-37 (Americans for a Better Country), the Commission addressed whether a political committee's non-federal account could raise and spend funds from foreign nationals for voter registration and mobilization activities on behalf of federal candidates.[88] In framing its analysis, the Commission began by generally explaining the foreign national prohibition and specifically explaining that its application is not limited to "elections for political office":

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85 *Id.* 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).

86 *Compare* 2 U.S.C. § 441e(a) (2000), *with* 2 U.S.C. § 441e(a)(1)(A) (2002) (codified at 52 U.S.C. § 30121(a)(1)(A)).

87 Prohibitions E&J, 67 Fed. Reg. at 69,944.

88 Advisory Op. 2003-37 (Americans for a Better Country) at 20-21 ("AO 2003-37").

> The Act, as amended by BCRA, prohibits foreign nationals from, among other things, directly or indirectly making a contribution or donation of money or other thing of value, or to expressly or impliedly promise to make a contribution or donation, in connection with a Federal, State, or local election (*this prohibition is not limited to elections for political office*).[89]

This language from AO 2003-37, which was not prepared in connection with an analysis of ballot initiatives, remains the only Commission-approved interpretation of the meaning of the Act's post-BCRA foreign national prohibition's use of "election" with respect to non-candidate elections. Nonetheless, the Commission has addressed the scope of the term "election" in a number of advisory opinions considering whether ballot measure activities are "in connection with" an election as that term is used in BCRA's "soft money" provision now codified at 52 U.S.C. § 30125(e). Like the pre-BCRA foreign national provision, BCRA's soft money provision refers to elections *for office*, prohibiting federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by them, or acting on their behalf, from raising or spending non-federal funds "in connection with an election for Federal office" and "in connection with any election other than an election for Federal office."[90]

The first of the post-BCRA soft money ballot initiative advisory opinions, Advisory Opinion 2003-12 (Flake), was considered shortly before AO 2003-37 interpreted the foreign national provision as discussed above. In AO 2003-12, the Commission was asked whether, under the soft money rules, a ballot initiative committee's activities were in connection with

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[89] AO 2003-37 at 20 (emphasis added), *superseded on other grounds*, Political Committee Status & Definition of Contribution, 69 Fed. Reg. 68,056, 68,063 (Nov. 23, 2004) (promulgating rules on the spending of federal and non-federal funds for voter drives, but not contradicting or otherwise addressing AO 2003-37's analysis of the foreign national contribution ban).

[90] 52 U.S.C. § 30125(e).

"any election other than an election for Federal office."[91] The Commission determined that they were, once the initiative qualified for the ballot.[92] In reaching this conclusion, the Commission considered Congress's use of the phrase "any election" in place of the phrase "any election *to any political office.*"[93] The Commission concluded that this difference in language indicated Congress's intent that the soft money provision "is not limited to elections for a political office."[94] It explained:

> As used in subparagraph (B) of section [30125(e)(1)], the term, "in connection with *any election other than* an election for Federal office" is, on its face, clearly intended to apply to a different category of elections than those covered by subparagraph (A), which refers to "an election for Federal office." This phrasing, "in connection with any election other than an election for Federal office" also differs significantly from the wording of other provisions of the Act that reach beyond Federal elections. Particularly relevant is the prohibition on contributions or expenditures by national banks and corporations organized by authority of Congress, which applies "in connection with any election to *any political office*." [52 U.S.C. § 30118(a)]. Where Congress uses different terms, it must be presumed that it means different things. Congress expressly chose to limit the reach of section [30118(a)] to those non-Federal elections for a "political office," while intending a broader sweep for section [30125(e)(1)(B)], which applies to "any election" (with only the exclusion of elections to Federal office). Therefore, the Commission concludes that the scope of section [30125(e)(1)(B)] is not limited to elections for a political office.[95]

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91 Advisory Op. 2003-12 (Flake) at 4-6 ("AO 2003-12").

92 *Id.* at 5-6. The Commission also concluded that when a ballot measure committee is established, financed, maintained, or controlled by a federal candidate as was the case in AO 2003-12, its activities before qualifying for the ballot, such as signature gathering, are also "in connection with any election other than an election for Federal office." *Id.* at 6.

93 *Id.* at 6 (emphasis in original).

94 *Id.* at 5-6.

95 *Id.* (emphasis in original, footnote omitted); *see also* F&LA at 2-3, MUR 5367 (Darrell Issa) (concluding, based on the analysis in AO 2003-12, that a recall election was "an election other than an election for Federal office" and that, therefore, BCRA's soft money provisions applied to Congressman Issa's efforts to solicit soft money for a

The Commission distinguished AO 1989-32, which had concluded that ballot initiative activity conducted independently from candidates (*i.e.*, "pure" ballot initiative activity) was not "in connection with" a candidate's election and was, therefore, outside the scope of the foreign national contribution prohibition. The Commission explained that its interpretation in AO 1989-32 was based on pre-BCRA statutory language which "then limited activity 'in connection with any election to political office.'"[96]

Two years later, in Advisory Opinion 2005-10 (Berman/Doolittle), the Commission considered whether the soft money provision prohibits federal candidates and officeholders from raising funds for ballot measure committees formed solely to support or oppose ballot initiatives where the ballot initiative committee was not established, financed, maintained, or controlled by a federal candidate and where no federal candidates appeared on the same ballot.[97] The Commission concluded that the proposed activity was not prohibited, issuing an opinion without explaining the basis for its conclusion. The four Commissioners who voted to approve the advisory opinion explained their rationales in two concurring statements, one in which two Commissioners stated their position that the soft money provision did not apply to any non-candidate elections and the other in which the other two Commissioners stated their position that

ballot measure committee that was supporting the recall and that was established, maintained, financed, or controlled by Issa).

96 AO 2003-12 at 6.

97 Advisory Op. 2005-10 (Berman/Doolittle) at 2 ("AO 2005-10").

the soft money provision did not apply under the particular facts presented.[98]

In Advisory Opinion 2010-07 (Yes on FAIR), the Commission again addressed whether federal candidates' raising of soft money for ballot initiative activity was in connection with an election for federal office within the meaning of the soft money provision.[99] In this instance, the requestor represented that the ballot initiative committee was not established, financed, maintained, or controlled by a federal candidate but that the initiative would appear on the same ballot as federal candidates.[100] The Commission agreed that Members of Congress could solicit funds outside the Act's limits and source prohibitions prior to the initiative qualifying for the ballot but were unable to agree on whether Members could continue to make solicitations outside the limits and prohibitions after the initiative qualified for the ballot.[101]

After this series of advisory opinions, a three-judge district court, in *Bluman v. FEC*, upheld the constitutionality of the foreign national prohibition.[102] In so doing, the court addressed the plaintiffs' arguments that the prohibition was "underinclusive and not narrowly

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98 *See* Concurring Opinion of Comm'rs Mason & Toner at 1-2, AO 2005-10 (stating that the soft money provision "applies to federal and non-federal elections for public office, but does not apply to non-candidate political activity, such as ballot initiatives or referenda"); Concurring Statement of Comm'rs McDonald & Weintraub at 1-2, AO 2005-10 (stating that the soft money ban did not apply because, under the factual circumstances, where no federal candidate would be on the ballot and the committee was not established, financed, maintained, or controlled by a federal candidate, the committee's activities were "not in connection with a federal election"); *see also* Dissenting Opinion of Comm'r Thomas at 2, AO 2005-10 ("In my view, the clear phrase 'any election' means just that — *any* election. This broad statutory language includes elections to decide ballot initiatives as well as elections to select public officials.").

99 Advisory Op. 2010-07 (Yes on FAIR) at 2-3 ("AO 2010-07").

100 *Id.* at 2.

101 *See* AO 2010-07 at 3; Concurring Opinion of Commr's Bauerly, Walther & Weintraub at 4, AO 2010-07 (concluding that "[a]fter an initiative has qualified for a ballot on which Federal candidates will also appear, the activities of a ballot initiative committee are, 'in connection with' an election within the meaning of [52 U.S.C. § 30125]"); Concurring Opinion of Comm'rs Petersen, Hunter & McGahn at 4, AO 2010-07 (concluding that AO 2003-12 has been superseded and that "ballot measures and referenda are not 'elections' within the meaning of the Act").

102 *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2001), *aff'd*, 565 U.S. 1104 (2012).

tailored because it permits foreign nationals to make contributions and expenditures related to ballot initiatives."[103] Neither the court, nor the Commission in its briefs, analyzed the correctness of this understanding of the prohibition, instead focusing on whether such underinclusivity would be fatal to the provision's constitutionality.[104] In upholding the constitutionality of the foreign national prohibition with respect to contributions to candidates and parties, express advocacy expenditures, and donations to outside groups to be used for the same purposes,[105] the *Bluman* court ultimately did not decide whether Congress could prohibit — or had prohibited — foreign nationals from making donations with respect to pure ballot initiatives.[106]

The meaning of "election" in the post-BCRA foreign national prohibition vis-à-vis its application to pure ballot initiative activity was first before the Commission in a post-*Bluman* enforcement matter in MUR 6678 (MindGeek USA, Inc., *et al.*). After discussing the above history of treating or not treating ballot initiative activity as in connection with an election, particularly in the soft money context, this Office reasoned:

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103 *Id.* at 291.

104 *Id.* (concluding that respecting plaintiffs' underinclusivity argument, "Congress's determination that foreign contributions and expenditures pose a greater risk in relation to candidate elections than such activities pose in relation to ballot initiatives is a sensible one and, in our view, does not undermine the validity of the statutory ban on contributions and expenditures" by foreign nationals to candidates); FEC's Opposition to Plaintiffs' Motion for Summary Judgment and Reply in Support of the Comm'n's Motion to Dismiss at 38-39 & n.17, *Bluman*, 800 F. Supp. 2d 281 (No. 10-1766) (responding to plaintiffs' argument that the statute does not go far enough, noting that the Commission, in AO 2003-12, "indirectly indicated that it might interpret" foreign national provision to apply to ballot initiatives, but had since, in AO 2005-10, "suggested that it does not," and arguing that the "exemption of ballot measures" demonstrated narrow tailoring). *Compare Bluman*, 800 F. Supp. 2d at 284 ("This statute, as we interpret it, does not bar foreign nationals from issue advocacy — that is, speech that does not expressly advocate the election or defeat of a specific candidate.").

105 *Bluman*, 800 F. Supp. 2d at 291.

106 *Id.* at 292 (explaining, with respect to plaintiffs' "concern that Congress might bar them from issue advocacy and speaking out on issues of public policy," that "[o]ur holding does not address such questions, and our holding should not be read to support such bans").

> [I]t may not be appropriate to extrapolate Commission analysis under section [30125(e)] to this matter, given that a different statute containing different terms is at issue: section [30125(e)] addresses funds "in connection with any election other than an election for Federal office," while section [30121] focuses on foreign national contributions and donations "in connection with a Federal, State, or local election."[107]

Citing the lack of legislative history directly on the issue as well as the *dicta* in *Bluman* accepting the parties' uncontested notion that the foreign national provision may not extend to ballot initiatives, the Office of General Counsel declined to provide a recommendation regarding whether section 30121 applies to the pure ballot initiative activity in that matter.[108] Instead, we recommended that the Commission exercise its prosecutorial discretion and dismiss the allegations as a result of "the lack of clear legal guidance on whether the foreign national prohibition extends to pure ballot initiative activity."[109] 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 prohibition.[110]

In the years since it considered MUR 6678, the Commission has not answered the question of whether the foreign national prohibition reaches pure ballot initiative activity. In

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[107] First GCR at 18, MUR 6678 (MindGeek USA, Inc., *et al*.).

[108] *Id*.at 19. *But see id.* at 19 n.74 ("Despite the recommendation not to proceed with an enforcement action on these facts, the Commission may still, if it so chooses, use the enforcement matter as a vehicle to provide further public guidance on the underlying legal issue through issuance of a clarifying Factual & Legal Analysis or a unified Statement of Reasons. The Commission may also wish to address the issue of section [30121]'s application to ballot measure activity by regulation or other advance notice.").

[109] *Id.* at 19-20; *see Bluman*, 800 F. Supp. 2d at 281. In recommending dismissing the allegations, the Office of General Counsel also noted 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 further noted that such information would have supported a finding of a violation whether or not the prohibition extends to "pure ballot measure activity." *See* First GCR at 19, MUR 6678.

[110] *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.

MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*), the Commission stated that it was unclear from relevant precedent whether the foreign national prohibition applied to ballot initiatives, but assumed, *arguendo*, that it did and declined the opportunity to decide the issue because it found no reason to believe a foreign national violation occurred on the merits where there was no indication the contributed funds originated with a foreign national or that foreign nationals participated in the decision-making process for the contributions.[111]

2. The Commission Should Dismiss the Allegation That the Jordan Cove Entities Made Prohibited Foreign National Donations to Save Coos Jobs Committee

The Complaint and Oregon campaign finance reports indicate the Jordan Cove entities donated $596,155 to Save Coos Jobs Committee, a ballot measure committee registered with the state of Oregon.[112] As explained above, the available information suggests that the Jordan Cove entities may be foreign nationals as defined in the Act.[113] Thus, this matter again directly raises the question of whether the foreign national prohibition in section 30121 extends to pure ballot measure activity. Consistent with the breadth of section 30121, as revised by Congress in BCRA, as well as the Commission's precedent, including its recent consideration of the Act's

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111 F&LA at 6-8, MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*).

112 Compl. at 2; *see also id.*, Attachs. 1-2; Jordan Cove Donations Chart; *supra* note 12.

113 *See supra* Section III.A.1.

foreign national prohibition, it appears that section 30121's foreign national prohibition applies to Jordan Cove's donations to Save Coos Jobs Committee in connection with Measure 6-162.

However, similar to MUR 6678 (MindGeek USA, Inc., *et al.*), we recommend that the Commission not pursue the foreign national allegations for the Jordan Cove entities' donations to Save Coos Jobs Committee as a result of the lack of clear legal guidance on the scope of section 30121.[115] In light of the substantial, if not growing, concern of foreign influence in the process of American democratic self-governance, which the Commission itself has observed and relied upon in consideration of matters raising such concerns,[116] and the lack of additional legal guidance to the regulated community on the scope of section 30121 in the six years since the Commission's consideration of MUR 6678, we now provide more conclusive recommendations to the Commission on the application of the foreign national prohibition to ballot measure activity like Jordan Cove's donations to Save Coos Jobs Committee in this matter.

As discussed below, consistent with the breadth of section 30121, as revised by Congress in BCRA, as well as the Commission's precedent, including its recent consideration of the Act's foreign national prohibition, it appears that section 30121 applies to Jordan Cove's foreign spending in connection with Measure 6-162. We nevertheless recommend that the Commission

115 *See* First GCR at 19-20, MUR 6678 (MindGeek USA, Inc., *et al.*);

116 *See, e.g.*, Minutes of Open Meeting of Federal Election Commission at 13 (Sept. 16, 2016) (directing this Office to prioritize cases "involving allegations of foreign influence"); Responses to Questions from the Committee on House Administration, Fed. Election Comm'n at 41-42 (May 1, 2019); *see also* 164 CONG. REC. H2045, H2520 (Mar. 22, 2018) [hereinafter Explanatory Statement to Consolidated Appropriations Act, 2018] ("Preserving the integrity of elections, and protecting them from undue foreign influence, is an important function of government at all levels.").

again exercise prosecutorial discretion and dismiss the allegations as to Jordan Cove's donations to Save Coos Jobs Committee so that this analysis may be applied only prospectively.

The Act's general definition of "election" in section 30101(1) makes reference to different kinds of elections including "general, special, primary, or runoff election[s]," but does not, by its own terms, exclude non-candidate based elections.[118] Thus, that general definition does not on its face resolve whether a state ballot measure is a "Federal, State, or local election" for purposes of the foreign national prohibition in section 30121.[119] Similarly, the Commission's general regulatory definition of "election" in 11 C.F.R. § 100.2, which, as discussed above, is limited to candidate-based elections, or nominations for election, *to federal office*,[120] does not resolve the meaning of "election" in the foreign national prohibition, which expressly extends beyond the federal context addressed in section 100.2.

In the absence of such specificity, the word "election" should be given its plain and ordinary meaning in the context of "the language and design of the statute as a whole."[121] The Random House Dictionary of the English Language defines "election" as "the selection of a

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118 52 U.S.C. § 30101(1)(A).

119 *Id.* § 30121.

120 11 C.F.R. § 100.2; *see supra* Section III.B.1.

121 *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted); *see also FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme") (internal quotation omitted); *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning."); *United States v. Palmer*, 854 F.3d 39, 47 (D.C. Cir. 2017) ("Congress is presumed, absent indication to the contrary and there is none here, to use words in their ordinary meaning."); *Shays v. FEC*, 414 F.3d 76, 105 (D.C. Cir. 2005) ("The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." (citing Webster's Third New International Dictionary to determine ordinary meaning of "ask")).

person or persons for office by vote" and "a public vote upon a proposition submitted."[122] The inclusion of the non-candidate meaning of "election," *i.e.*, ballot measures, within the ordinary meaning of "election" substantially predates BCRA.[123] Similarly, other provisions of federal law that, like the foreign national prohibition, regulate not only federal but also state and local elections, have been interpreted using this ordinary meaning and thus including ballot measures in addition to candidate elections.[124] In Oregon, the state in which this matter arises, the Oregon code defines "election" only once in its statutory title on elections, for purposes of the "administration of election laws" chapter, as "any election held within this state."[125]

The BCRA revisions to the Act's foreign national prohibition indicate that Congress intended the prohibition to be applied in accordance with this ordinary meaning. Previously, the Act's foreign national provision applied only to contributions "in connection with *an election to any political office* or in connection with any primary election, convention, or caucus held *to select candidates for any political office.*"[126] In BCRA, however, Congress amended the text of the foreign national provision to remove the candidate-focused references, including the

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122 *Election*, RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED (2d ed. 1987).

123 *See, e.g.*, *Burson v. Freeman*, 504 U.S. 191, 205 (1992) (tracing history of Tennessee candidate and ballot measure polling place regulation, upheld as constitutional by the Court, to 1897 act criminalizing "the use of bribery, violence, or intimidation in order to induce a person to vote or refrain from voting for any particular person *or measure*") (emphasis added).

124 *See* Interpretive Guidelines, 41 Fed. Reg. 29,998, 29,999 (1976) (defining "elections" to which Dept. of Justice will apply Voting Rights Act Language Minority Group provisions, now codified at 52 U.S.C. § 10301 *et seq*, as "any type of election, whether it is a primary, general or special election . . . includ[ing] elections of officers as well as elections regarding such matters as bond issues, constitutional amendments and referendums"); 28 C.F.R. § 51.17 (including "an initiative, referendum, or recall election" in term "special election" subject to Voting Rights Act pre-clearance requirements).

125 ORE. REV. STAT. § 246.012(4) (2005). The Oregon code chapter on ballot initiatives and referenda defines "[m]easure" as certain items "submitted to the people for their approval or rejection at election . . . ." *Id.* § 250.005(3).

126 2 U.S.C. § 441e(a) (2000) (emphasis added).

references to "political office." In their place, Congress prohibited foreign national contributions or donations "in connection with a Federal, State, or local election."[127] This change in statutory language indicates that Congress intended that the prohibition apply broadly and no longer be limited to candidate-focused elections. "When Congress acts to amend a statute," the Supreme Court has stated that it "presume[s Congress] intends its amendment to have real and substantial effect."[128]

The applicability of the ordinary meaning of "elections," in the context of the foreign national prohibition, is reinforced by Congress's treatment of other sections of the Act that were revised by BCRA. For example, Congress, in BCRA, amended the section of the Act prohibiting contributions by national banks (now codified at 52 U.S.C. § 30118), a provision that has long applied to state and local, as well as federal, elections to "political office."[129] Despite amending other aspects of this prohibition, Congress retained the "to any political office" limitation in the scope of "elections" to which the national bank prohibition applies. Thus, in the same set of revisions to the Act, Congress chose to retain the limiting "political office" language in some places but remove it in others. "When Congress amends one statutory provision but not another, it is presumed to have acted intentionally."[130] The BCRA changes to the statutory language of

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127 52 U.S.C. § 30121(a)(1)(A).

128 *Stone v. INS*, 514 U.S. 386, 397 (1995); *see also Russello v. United States*, 464 U.S. 16, 23-24 (1983) ("Where Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended.").

129 BCRA § 203, 116 Stat. at 91-92 (codified at 2 U.S.C. § 441b (now 52 U.S.C. § 30118)) ("It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office . . . ."). The national bank prohibition, like the foreign national prohibition, applies not only to federal but also to state and local elections but only in the case of such elections for political office. *See* Advisory Op. 1987-14 (First Nat'l Bank of Shreveport) at 1 ("[A] national bank is prohibited from making a contribution or expenditure in connection with any election to any political office, including local, state or Federal offices.").

130 *Gross v. FBL Fin. Servs., Inc*., 557 U.S. 167, 174 (2009).

these two prohibitions — removing the limiting "political office" language in the foreign national provision while leaving it in the national bank provision — suggest that Congress intended the foreign national prohibition to apply not only to state and local candidate elections, but also to non-candidate elections such as ballot measures as well.

This understanding is consistent with Congress's other amendments, in BCRA, to expand the foreign national prohibition. For instance, BCRA expanded the scope of the foreign national prohibition beyond "contributions," to include "donations" in order to make clear that foreign nationals could not evade the prohibition by targeting state and local elections.[131] The BCRA amendments further added prohibitions against presidential inaugural committees accepting foreign national donations,[132] instructed the United States Sentencing Commission to provide guidelines which include a sentencing enhancement for criminal violations of the Act which involve "a contribution, donation, or expenditure from a foreign source,"[133] and added significant prohibitions and limitations on candidate and party committees' receipt, solicitation, donation, and transfer of soft money, including from foreign nationals.[134] These changes reflect Congress's multifaceted effort to "prevent[] foreign influence over the U.S. political process."[135]

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131 BCRA § 303, 116 Stat. 81, 96; *see also* Prohibitions E&J, 67 Fed. Reg. at 69,944 (explaining that, through the addition of "donation," and the removal of references to "candidates" and "political office," "Congress left no doubt as to its intention to prohibit foreign national support of . . . foreign national activities in connection with all Federal, State, and local elections"); 148 CONG. REC. S1991-1997 (daily ed. Mar. 18, 2002) (statement of Sen. Feingold); 148 CONG. REC. S2774 (daily ed. Mar. 22, 2002) (statement of Sen. Lieberman).

132 BCRA § 308, 116 Stat. at 103-04 (codified at 36 U.S.C. § 510) (extending foreign national prohibition to non-election context as applied to inaugural committees). Prior to these BCRA amendments, the Commission had concluded that funds received and expended by inaugural committees are neither "contributions" nor "expenditures" because they "are used to finance inaugural activities rather than any Federal election." Advisory Op. 1980-144 (Presidential Inaugural Committee – 1981) at 2.

133 BCRA § 314, 116 Stat. at 107.

134 BCRA § 101, 116 Stat. at 82-86.

135 *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2001), *aff'd*, 565 U.S. 1104 (2012).

Further, in its explanation and justification of the post-BCRA foreign national regulations, the Commission stated that "[a]s indicated by the title of section 303 of BCRA, 'Strengthening Foreign Money Ban,' Congress amended [52 U.S.C. § 30121] to further delineate and expand the ban on contributions, donations, and other things of value by foreign nationals."[136] This expansive purpose, seen in context of Congress's removal of limiting language as to the elections within the scope of some sections of the Act but retaining it in others, its addition of further prohibitions regarding foreign national activity in American elections at all levels, and its extension of the foreign national prohibition to the non-electoral context of inaugurations, all taken together, support the conclusion that "election" for purposes of section 30121 includes ballot measure activity.[137]

That understanding of "election" in the foreign national prohibition is not only consistent with the ordinary meaning of the term and Congress's broad intent, in the context of BCRA, to prevent foreign influence over the U.S. political process, but it is also consistent with the Commission's past conclusions. As noted above, the Commission explained in its explanation and justification that Congress's deletion of the phrase "election to any public office" from the Act's foreign national provision, and the substitution of the "broader phrase 'Federal, State, or local election,'" was meant to clarify congressional intent "to prohibit foreign national support of candidates and their committees and political organizations and foreign national activities in connection with all Federal, State, and local elections."[138] Moreover, in AO 2003-37, the

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136 Prohibitions E&J, 67 Fed. Reg. at 69,440.

137 *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 350 (1943) ("Courts will construe the details of an act in conformity with its dominating general purpose.").

138 Prohibitions E&J, 67 Fed. Reg. at 69,944.

Commission concluded that these changes meant not only that the Act now expressly covered non-federal elections, but also that "this prohibition is not limited to elections for political office."[139]

Consistent with the intent behind Congress's BCRA amendments to the foreign national prohibition in the Act, the Commission has interpreted and applied the foreign national prohibition broadly. For instance, in Advisory Opinion 2010-14 (Democratic Senatorial Campaign Committee), the Commission approved of a national party committee's pre-election use of a recount and election-contest fund, but reiterated that such a fund, though it does not fund "election" activities, was subject to the foreign national prohibition and could not accept contributions from foreign nationals.[140]

[139] AO 2003-37 at 20; *accord* AO 2003-12 at 5-6 (concluding that soft money provisions are "not limited to elections for a political office"); *see supra* Section III.B.1.

[140] Advisory Op. 2010-14 (Democratic Senatorial Campaign Committee) at 2.

The application of the foreign national prohibition to ballot measure activity similarly furthers the Act's purpose to protect "activities intimately related to the process of democratic self-governance."[143]

In its Response to the Complaint, Jordan Cove's only reference to the issue of ballot measure activity is the assertion that the Complaint addresses "facially lawful non[-]federal political contributions, many of which were to a 2017 ballot measure committee."[144] Save Coos Jobs Committee likewise does not explicitly address the issue of ballot measure activity under the foreign national prohibition in its Response.[145]

BCRA's changes to the Act's foreign national provision broadened the application of that provision to reach ballot measure activity such as the Jordan Cove entities' donations to Save Coos Jobs Committee. As recognized by both Congress and the Commission, years after the passage of BCRA, the threat of foreign influence in American elections remains at least a substantial, if not a growing, concern.[146] The Commission has informed Congress that it continues to enforce the foreign national provision and prioritize cases involving allegations of

[143] *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2001) (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984)) (internal quotations omitted), *aff'd*, 565 U.S. 1104 (2012).

[144] Jordan Cove Resp. at 3.

[145] *See* Save Coos Jobs Comm., *et al.*, Resp.

[146] *See supra* note 116.

foreign influence.[147] Accordingly, based on Congress's changes to the foreign national prohibition in BCRA and more recent Commission precedent with respect to that provision, it appears that 52 U.S.C. § 30121 applies to the Jordan Cove entities' donations to Save Coos Jobs Committee in this matter.

Nonetheless, in light of the state of the Commission's guidance on this question, including its split on whether to pursue the allegations in MUR 6678, there are sound prudential reasons to dismiss the allegation that Jordan Cove entities violated the foreign national prohibition with regards to donations exclusively related to pure ballot measure activity, as a matter of prosecutorial discretion, and apply section 30121 to ballot measure activity only prospectively.[148] Thus, we recommend that the Commission dismiss 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

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147 *See* Letter from Fed. Election Comm'n to House Comm. on Appropriations & Senate Comm. on Appropriations at 1, 17-18 (Sept. 18, 2018) (reporting on Commission's role "in enforcing the foreign national prohibition, including how it identifies foreign contributions to elections, and what it plans to do in the future" as required by Explanatory Statement to Consolidated Appropriations Act, 2018); Explanatory Statement to Consolidated Appropriations Act, 2018, 164 CONG. REC. at H2520.

148 *See* First GCR at 16-20, MUR 6678 (MindGeek USA, Inc., *et al*.); Certification (Mar. 18, 2015), MUR 6678; *see also FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) ("A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required."); *cf.* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) ("The Commission has previously used the finding 'reason to believe, but take no further action' in cases where the Commission finds that there is a basis for investigating the matter or attempting conciliation, but the Commission declines to proceed for prudential reasons . . . . [T]he Commission believes that resolving these matters through dismissal or dismissal with admonishment more clearly conveys the Commission's intentions and avoids possible confusion about the meaning of a reason to believe finding.").

assistance to the making of prohibited foreign national donations to Save Coos Jobs Committee.[149]

3. The Commission Should Dismiss the Allegation That Save Coos Jobs Committee Knowingly Accepted or Received Prohibited Foreign National Donations

The Complaint and Oregon campaign finance reports indicate that Save Coos Jobs Committee accepted or received $596,155 in donations from one or more of the Jordan Cove entities.[150] Like several Recipient Committees, Save Coos Jobs Committee attached to its Response post-Complaint correspondence from Jordan Cove personnel representing that the donations were made by a U.S. company, sourced from domestic funds, drawn from a domestic bank account, and that all donation decisions were made by U.S. citizens.[151] The record demonstrates all the Jordan Cove entities are incorporated domestically in Delaware.[152]

However, as described above, Save Coos Jobs Committee disclosed the receipt of two donations from Jordan Cove Energy Project L.P. that list a Canadian address.[153] That two of the largest donations that Save Coos Jobs Committee received — amounting to $331,000 — were reported with foreign addresses is a "pertinent fact" that would lead a reasonable person to conclude there is a "substantial probability" that the source was a foreign national or to inquire

149 *See Heckler v. Chaney*, 470 U.S. 821 (1985).

150 *See* Compl., Attachs. 1-2; Jordan Cove Donations Chart; *supra* note 12.

151 *See* Save Coos Jobs Comm., *et al.*, Resp. at 5; *supra* notes 18, 38.

152 *See supra* notes 6, 17.

153 *See* JCEP Mar. 20, 2017 Donation ($216,000 cash contribution made on March 20, 2017 to Save Coos Jobs Committee); JCEP Apr. 10, 2017 Donation ($115,000 cash contribution made on April 10, 2017 to Save Coos Jobs Committee); *supra* note 42.

whether the source of funds was a foreign national.[154] There is no information available to indicate that Save Coos Jobs Committee conducted a reasonable inquiry at the time of the donation to determine whether the donor, Jordan Cove Energy Project L.P., was a foreign national under the Act. Further, the letter from Jordan Cove that Save Coos Jobs Committee attached to its Response post-dates the donations by over a year and appears to have been initiated by Jordan Cove, not by Save Coos Jobs Committee.[155] Thus, because it appears that 52 U.S.C. § 30121 applies to the Jordan Cove entities' donations to Save Coos Jobs Committee[156] and that Save Coos Jobs Committee failed to conduct a reasonable inquiry to determine whether Jordan Cove Energy Project L.P. was a foreign national, the available information supports an inference that Save Coos Jobs Committee knowingly accepted or received foreign national donations.

Nonetheless, for the reasons explained above that the Commission's guidance on the question of whether the foreign national prohibition in section 30121 extends to pure ballot measure activity has been unsettled, we recommend that the Commission exercise its prosecutorial discretion and dismiss 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. [157]

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154 11 C.F.R. § 110.20(a)(4)(ii)-(iii), (5)(ii) (including contributor or donor's use of a foreign address among "pertinent facts" relevant to "knowing" acceptance or receipt of foreign national contribution or donation).

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

156 *See supra* Section III.B.2.

157 *See Heckler v. Chaney*, 470 U.S. 821 (1985).

IV. PROPOSED INVESTIGATION

The proposed investigation would seek information and documentation regarding the circumstances of the Jordan Cove entities' donations to the Recipient Committees, including the persons involved in the decision-making processes, their nationalities, and the specific sources of funding for the donations. Although we plan to utilize informal investigative methods, we recommend that the Commission authorize the use of compulsory process.

V. RECOMMENDATIONS

1. Find reason to believe that Pembina Pipeline Corporation violated 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) by making prohibited foreign national donations to the Recipient Committees;

2. Find reason to believe 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 the Recipient Committees;

3. Find reason to believe that Jordan Cove Energy Project 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 the Recipient Committees;

4. Find reason to believe that Jordan Cove LNG, LLC, violated 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) by making prohibited foreign national donations to the Recipient Committees;

5. Find reason to believe that 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 the Recipient Committees;

6. Find reason to believe that Jordan Cove LNG LLC PAC and Allison Murray in her official capacity as treasurer violated 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) by making prohibited foreign national donations to the Recipient Committees;

7. Take no action at this time regarding the allegations that 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, and Werner for Oregon knowingly accepted or received prohibited foreign national donations;

8. Dismiss the allegation that Knute for Governor 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;

9. Close the file as to Knute for Governor;

10. Dismiss 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;

11. Dismiss the allegation 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;

12. Dismiss 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;

13. Close the file as to Save Coos Jobs Committee;

14. Approve the attached Factual and Legal Analyses;

15. Authorize the use of compulsory process; and

16. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

May 6, 2021
Date

Charles Kitcher
Charles Kitcher
Acting Associate General Counsel for Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Thaddeus H. Ewald
Attorney

Attachments:
1. Jordan Cove Donations Chart
2. Factual and Legal Analysis for Pembina Pipeline Corporation, Fort Chicago Holdings, II US, LLC, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, Jordan Cove LNG, L.P., and Jordan Cove LNG LLC PAC and Allison Murray in her official capacity as treasurer
3. Factual and Legal Analysis for Knute for Governor
4. Factual and Legal Analysis for Save Coos Jobs Committee

Jordan Cove Donations Chart					
Transaction Date	**SOL Date**	**Recipient**	**Donor**	**Donor Address**	**Amount**
04/10/2012	04/10/2017	Coos County Alliance for Progress	Jordan Cove Energy Project L.P.	125 Central Ave., STE 380 Coos Bay, OR 97420-2316	$1,000
10/18/2012	10/18/2017	Coos County Alliance for Progress	Jordan Cove Energy Project L.P.	125 Central Ave., STE 380 Coos Bay, OR 97420-2316	$2,000
12/19/2015	12/19/2020	Friends of Val Hoyle	Jordan Cove LNG LLC PAC	1120 G St. NW Ste 1020 Washington, DC 20005	$5,000
05/24/2016	05/24/2021	Friends of Tobias Read	Jordan Cove LNG LLC	1120 G Street NW, Suite 1020 Washington, DC 20005	$1,000
10/06/2016	10/06/2021	Friends of Ray Lister	Jordan Cove Lng LCC PAC	1120 G Street NW Ste 1020 Washington, DC 20005	$500
10/06/2016	10/06/2021	ChamberPAC	Jordan Cove LNG LLC PAC	1120 G St NW Ste 1020 Washington, DC 20005	$5,000
11/01/2016	11/01/2021	ChamberPAC	Jordan Cove Energy Project LP	111 SW 5th Ave Suite 1100 Portland, OR 97204	$10,050
02/16/2017	02/16/2022	Save Coos Jobs Committee	Jordan Cove LNG	125 W Central Avenue, Suite 380 Coos Bay, OR 97420	$10,500
03/07/2017	03/07/2022	Save Coos Jobs Committee	Jordan Cove LNG	125 W Central Avenue, Suite 380 Coos Bay, OR 97420	$1,500
03/07/2017	03/07/2022	Save Coos Jobs Committee	Jordan Cove LNG	125 W Central Avenue, Suite 380 Coos Bay, OR 97420	$7,500
03/07/2017	03/07/2022	Save Coos Jobs Committee	Jordan Cove LNG	125 W Central Avenue, Suite 380 Coos Bay, OR 97420	$8,000
03/20/2017	03/20/2022	Save Coos Jobs Committee	Jordan Cove Energy Project LP	222 Third Ave. SW Suite 900 Calgary, Alberta, CC 90000	$216,000
04/10/2017	04/10/2022	Save Coos Jobs Committee	Jordan Cove Energy Project LP	222 Third Ave. SW Suite 900 Calgary, Alberta, CC 90000	$115,000

04/24/2017	04/24/2022	Save Coos Jobs Committee	Jordan Cove LNG	125 W Central Avenue, Suite 380 Coos Bay, OR 97420	$1,155
05/03/2017	05/03/2022	Save Coos Jobs Committee	Jordan Cove LNG	5615 Kirby Suite 500 Houston, TX 77005	$236,500
09/11/2017	09/11/2022	Caddy McKeown for Representative	Jordan Cove LNG LLC PAC	1120 G Street NW Suite 1020 Washington, DC 20005	$5,000
09/11/2017	09/11/2022	Oregon Business & Industry Candidate PAC	Jordan Cove LNG	125 Central Ave Suite 250 Coos Bay, OR 97420	$505
10/05/2017	10/05/2022	The Roseburg Area Chamber Political Action Committee	Jordan Cove & Pacific Connector	3411 NE Alameda Street Portland, OR 97212	$15,000
04/20/2018	04/20/2023	Werner for Oregon	Jordan Cove Energy ProjectLP	111 SW 5th Ave Suite 1100 Portland, OR 97204	$500
04/20/2018	04/20/2023	Gomberg for State Rep	Jordan Cove LNG	125 W Central Avenue, Suite 250 Coos Bay, OR 97420	$1,500
04/20/2018	04/20/2023	Citizens to Elect Carl Wilson	Jordan Cove Energy Project	P.O. Box 10750 Portland, OR 97296	$500
04/20/2018	04/20/2023	Friends of Dallas Heard	Jordan Cove	3411 NE Alameda St. Portland, OR 97212	$500
04/20/2018	04/20/2023	Friends of Duane Stark	Jordan Cove	3411 NE Alameda St. Portland, OR 97212	$500
04/21/2018	04/21/2023	Oregonians to Maintain Community Standards	Jordan Cove Energy Project LP	5615 Kirby Drive Suite 500 Houston, TX 77005	$40,000
05/04/2018	05/04/2023	Friends of Tim Freeman	Jordan Cove & Pacific Connector	3411 NE Alameda St. Portland, OR 97212	$5,000
08/03/2018	08/03/2023	Gomberg for State Rep	Jordan Cove LNG	125 W Central Avenue, Suite 250 Coos Bay, OR 97420	$1,000

08/03/2018	08/03/2023	Caddy McKeown for Representative	Jordan Cove Energy	111 SW Fifth Ave Suite 101 Portland, OR 97204	$10,000
08/03/2018	08/03/2023	Friends of David Brock Smith	Jordan Cove LNG	125 W. Central Avenue Suite 250 Coos Bay, OR 97420	$2,000
08/10/2018	08/10/2023	Brad Witt for State Representative	Jordan Cove LNG	111 SW 5th Ave., Suite 101 Portland, OR 97204	$2,000
08/16/2018	08/16/2023	Werner for Oregon	Jordan Cove Energy ProjectLP	111 SW 5th Ave Suite 1100 Portland, OR 97204	$2,000
08/17/2018	08/17/2023	Peter Courtney for State Senate	Jordan Cove Enervendor Pm	111 SW 5th Ave., Suite 1100 Portland, OR 97204	$5,000
08/17/2018	08/17/2023	Committee to Elect John Sweet	Jordan Cove LNG	111 SW 5th Ave., Suite 1100 Portland, OR 97204	$10,000
08/17/2018	08/17/2023	Committee to Elect Betsy Johnson	Jordan Cove LNG	111 SW 5th Ave., Suite 1100 Portland, OR 97204	$2,000
08/17/2018	08/17/2023	Friends of Gary Leif	Jordan Cove Energy	3411 NE Alameda St. Portland, OR 97212	$5,000
08/21/2018	08/21/2023	Oregon Business & Industry Candidate PAC	Jordan Cove LNG	125 Central Ave Suite 250 Coos Bay, OR 97420	$10,000
08/24/2018	08/24/2023	ChamberPAC	Jordan Cove Energy Project LP	111 SW 5th Ave Suite 1100 Portland, OR 97204	$25,000
08/24/2018	08/24/2023	Committee to Elect John Sweet	Jordan Cove LNG	111 SW 5th Ave., Suite 1100 Portland, OR 97204	$10,000
08/24/2018	08/24/2023	Friends of Duane Stark	Jordan Cove	3411 NE Alameda St. Portland, OR 97212	$2,000
10/02/2018	10/02/2023	Oregon Business & Industry Candidate PAC	Jordan Cove LNG	125 Central Ave Suite 250 Coos Bay, OR 97420	$5,000
10/02/2018	10/02/2023	Committee to Elect John Sweet	Jordan Cove LNG	111 SW 5th Ave Suite 1100 Portland, OR 97204	$10,000

10/05/2018	10/05/2023	ChamberPAC	Jordan Cove Energy Project LP	111 SW 5th Ave Suite 1100 Portland, OR 97204	$45,000
10/10/2018	10/10/2023	Committee to Elect John Sweet	Jordan Cove LNG	111 SW 5th Ave., Suite 1100 Portland, OR 97204	$10,000
10/16/2018	10/16/2023	Committee to Elect John Sweet	Jordan Cove LNG	111 SW 5th Ave., Suite 1100 Portland, OR 97204	$10,000

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Pembina Pipeline Corporation MUR 7512
Fort Chicago Holdings, II US, LLC
Jordan Cove Energy Project L.P.
Jordan Cove LNG, LLC
Jordan Cove LNG, L.P.
Jordan Cove LNG LLC PAC

I. INTRODUCTION

The Complaint alleges that Pembina Pipeline Corporation, a Canadian corporation, its U.S. domestic subsidiaries 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" or "Jordan Cove entities"), and Jordan Cove LNG LLC PAC ("Jordan Cove PAC"), an associated separate segregated fund ("SSF"), made foreign national donations to Oregon state and local candidate committees and other non-federal committees (collectively, the "Recipient Committees"), and Save Coos Jobs Committee, a ballot measure committee, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.

For the reasons discussed below, the Commission (1) finds reason to believe 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 the Recipient Committees; (2) finds reason to believe 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 the Recipient Committees; (3) finds reason to believe that Jordan Cove PAC violated 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) by making prohibited foreign national donations; (4) 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 (5) dismisses the allegation 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.

II. FACTUAL BACKGROUND

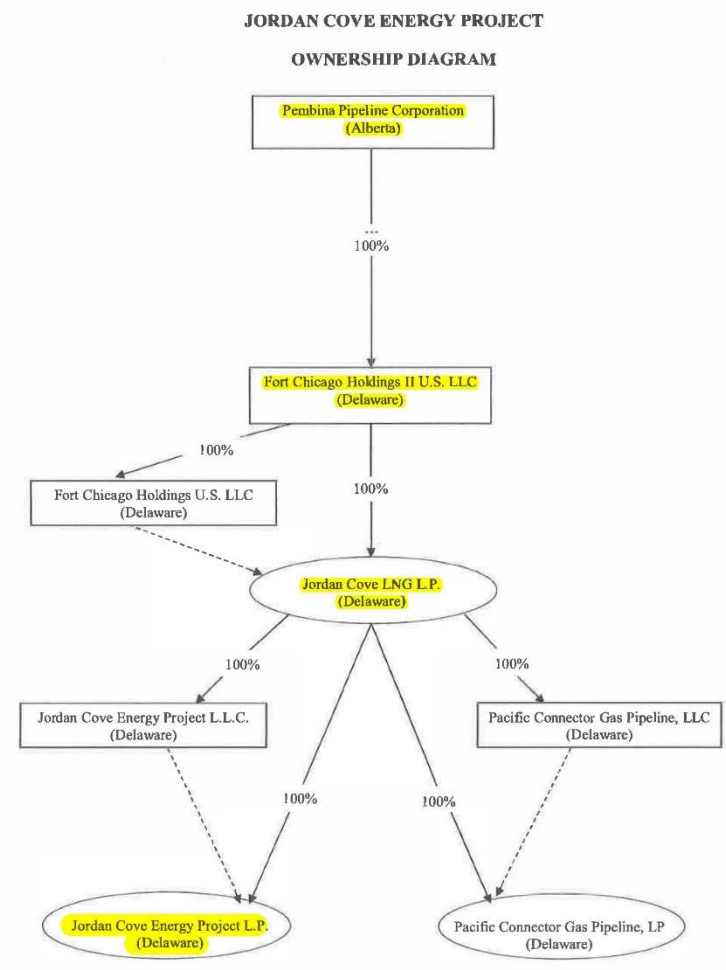
Jordan Cove is a family of corporate entities focused on construction and administration of a liquefied natural gas ("LNG") terminal in Coos Bay, Oregon, and the related Pacific Connector Gas Pipeline.[1] Pembina Pipeline Corporation is a Canadian corporation and the ultimate parent corporation of Fort Chicago Holdings, II US, LLC, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P.[2] Fort Chicago Holdings, II US, LLC, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P., are domestic subsidiaries registered in the state of Delaware.[3] Jordan Cove PAC is an SSF

[1] Compl. at 2-3 (Oct. 12, 2018); 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 2 (Jan. 8, 2019) [hereinafter Jordan Cove Resp.]. The Jordan Cove LNG export terminal is owned by Jordan Cove Energy Project L.P. Compl., Attach. 8 ¶ 1.

[2] Compl. at 5, Attach. 7 (attaching Canadian Press, *Canadian Firm Applies to Build $10-Billion Jordan Cove LNG Project in Oregon*, FIN. POST (Sept. 22, 2017) [hereinafter Canadian Press Article], https://financialpost.com/pmn/business-pmn/canadian-firm-applies-to-build-10-billion-jordan-cove-lng-project-in-oregon); *id.*, Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram); Jordan Cove Resp. at 1. Veresen Inc. was the original foreign parent corporation of the Jordan Cove corporate family, but Pembina Pipeline Corporation purchased Veresen in 2017 in a deal worth $9.7 billion. Compl. at 5-6, Attachs. 3, 9-10; Jordan Cove Resp. at 1-2 & n.1.

[3] *See* Jordan Cove Resp. at 1-2; Am. Compl. at 1, Attach. 1 (Nov. 5, 2018) (attaching Oregon Corporation Division Annual Reports for Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. showing Delaware domicile); Compl., Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram).

connected with Pembina U.S. Corporation that registered with the Commission on October 21, 2015.[4] The Jordan Cove corporate family is partially portrayed in the diagram below:[5]



[4] Jordan Cove LNG LLC PAC, Statement of Organization (Oct. 12, 2015), https://docquery.fec.gov/pdf/870/201510210300029870/201510210300029870.pdf (listing Veresen U.S. Power Inc. as connected organization); Jordan Cove LNG LLC PAC, Amended Statement of Organization (July 8, 2020), https://docquery.fec.gov/pdf/557/202007089244369557/202007089244369557.pdf (reflecting Pembina U.S. Corporation as connected organization); *see* Jordan Cove Resp. at 1. Jordan Cove LNG, LLC, identified Pembina U.S. Corporation, apparently another domestic subsidiary of Pembina Pipeline Corporation, as its sole member in a 2018 filing with the Oregon Secretary of State. *See* Am. Compl., Attach. 1.

[5] *See* Compl., Attach. 8 ¶ 24; *id.*, Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram); Am. Compl. at 1, Attach. 1; Jordan Cove Resp. at 1-2. The Complaint attached this diagram that was originally included in one of Jordan Cove's submissions to the Federal Energy Regulatory Commission ("FERC") related to its application for the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline projects. Compl., Attach. 10. This reproduction includes highlighting to note which of the entities depicted are listed as Respondents in this matter. Respondents Jordan Cove LNG, LLC, and Jordan Cove PAC do not appear on this diagram.

Critics of the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline sponsored a ballot measure ("Measure 6-162") that appeared on the May 16, 2017, ballot in Coos County, Oregon, which allegedly would have effectively banned the Jordan Cove LNG project.[6] Two state-registered ballot measure committees were associated with Measure 6-162: Yes on Measure 6-162, in support thereof, and Save Coos Jobs Committee, in opposition thereto.[7]

The Complaint and the Amended Complaint identify $855,710 in aggregate donations made by the Jordan Cove entities and Jordan Cove PAC:[8] $101,000 to state and local candidate

[6] Compl. at 2, Attach. 3. Measure 6-162 was defeated in the election. *See* FINAL CERTIFIED CANVASS OF VOTES, SPECIAL DISTRICT ELECTION, MAY 16, 2017 at 130, COOS COUNTY, OREGON ELECTIONS OFFICE (June 2, 2017), http://www.co.coos.or.us/Portals/0/County%20Clerk/Elections/Election%202017/canvassofvotes.pdf?ver=2017-06-02-102955-237 (showing 75.85% voting against Measure 6-162).

[7] 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; Yes on Measure 6-162, Amended Statement of Organization for Political Action Committee (May 5, 2017), https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=82119&OWASP_CSRFTOKEN=21VM-2P57-PDSR-5R96-8P6W-XMKR-ZT57-5C8L. In Oregon, committees registered as ballot measure committees are not permitted to contribute to candidates, political parties, or other committees, and must re-register as miscellaneous political committees if they desire to do so. 2018 CAMPAIGN FINANCE MANUAL, OR. SEC'Y OF STATE 81 (June 17, 2018).

[8] The Complaint includes screenshots of the Oregon Secretary of State Election Division's campaign finance system ("OreStar"). Compl. at 1-2, Attachs. 1-2; Am. Compl. at 1-2, Attachs. 2-3; *see Search for Campaign Finance Information*, OR. SEC'Y OF STATE, https://sos.oregon.gov/elections/Pages/campaignfinance.aspx. The Amended Complaint attached a screenshot that compiles all of Jordan Cove's donations as reported through Orestar. Am. Compl., Attach. 2; *see also 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 "Contributor/Payee Information" field for "Jordan Cove") (last visited May 5, 2021) [hereinafter Jordan Cove OreStar Search]. OreStar lists some of the relevant donations as associated with a number of variations on the Jordan Cove entities' official names: "Jordan Cove," "Jordan Cove & Pacific Connector," "Jordan Cove Energy," "Jordan Cove Energy Project," "Jordan Cove Enervendor Pm," and "Jordan Cove LNG." *See* Jordan Cove OreStar Search. For purposes of this analysis, the Commission considers these donations of the Jordan Cove entities. Many of the entries for these donations disclosed addresses that are identical to multiple other Jordan Cove entities' disclosed addresses, *see id.*, and Jordan Cove does not deny it made any of the donations identified in the Complaint, *see* Jordan Cove Resp. at 1-2.

committees,[9] $158,555 to other state and local committees,[10] and $596,155 to Save Coos Jobs Committee.[11]

Jordan Cove Donations by Recipient and Donor Categories		
Recipient Category	**Amount of Donations**	**Donor**
State and Local Candidate Recipient Committees	$89,500	Jordan Cove Entities
	$11,500	Jordan Cove PAC
Sub-Total	**$101,000**	
Non-Federal, Non-Ballot Measure Recipient Committees	$153,555	Jordan Cove Entities
	$5,000	Jordan Cove PAC
Sub-Total	**$158,555**	
Save Coos Jobs Committee	$596,155	Jordan Cove Entities
	$0	Jordan Cove PAC
Sub-Total	**$596,155**	
TOTAL	**$855,710**[12]	

[9] Jordan Cove entities donated: $50,000 to Committee to Elect John Sweet; $10,000 to Caddy McKeown for Representative; $5,000 to Friends of Gary Leif; $5,000 to Friends of Tim Freeman; $5,000 to Peter Courtney for State Senate; $2,500 to Gomberg for State Rep; $2,500 to Werner for Oregon; $2,500 to Friends of Duane Stark; $2,000 to Friends of David Brock Smith; $2,000 to Committee to Elect Betsy Johnson; $2,000 to Brad Witt for State Representative; $500 to Friends of Dallas Heard; and $500 to Citizens to Elect Carl Wilson. *See* Jordan Cove OreStar Search. Jordan Cove PAC contributed an additional $5,000 to Caddy McKeown for Representative; $5,000 to Friends of Val Hoyle; $1,000 to Friends of Tobias Read; and $500 to Friends of Ray Lister. *See id.* The $1,000 donation to Friends of Tobias Read is attributed to "Jordan Cove LNG LLC," but it appears to be a donation from Jordan Cove PAC because the disclosed address is the same as Jordan Cove PAC's, and Jordan Cove PAC reported a $1,000 disbursement to the same recipient the same month to the Commission. *See id.*; FEC Form 3X, Jordan Cove LNG LLC PAC, Amended 2016 July Quarterly Report at 8 (Oct. 11, 2016) [hereinafter Jordan Cove PAC Amended 2016 July Quarterly Report], http://docquery.fec.gov/cgi-bin/paper_forms/C00590265/1092865/sb/22 (listing $1,000 donation to Friends of Tobias Read on May 16, 2016).

[10] Jordan Cove entities donated: $80,050 to ChamberPAC; $40,000 to Oregonians to Maintain Community Standards; $15,505 to Oregon Business & Industry Candidate PAC ("OBI PAC"); $15,000 to The Roseburg Area Chamber Political Action Committee; and $3,000 to Coos County Alliance for Progress. *See* Jordan Cove OreStar Search. Jordan Cove PAC contributed an additional $5,000 to ChamberPAC. *See id.* The donations to Coos County Alliance for Progress were made in 2012 and are therefore beyond the five-year statute of limitations.

[11] Compl. at 2; *see id.*, Attachs. 1-2. These donations by "Jordan Cove LNG" ($265,155) and Jordan Cove Energy Project L.P. ($331,000) accounted for approximately 97% of the $615,155 Save Coos Jobs Committee received in donations for the May 2017 election. *OreStar Transactions: Filtered Results*, ORE. SEC'Y OF STATE, https://secure.sos.state.or.us/orestar/cneSearch.do?cneSearchButtonName=search&cneSearchFilerCommitteeId=18452&OWASP_CSRFTOKEN=V42M-8WK8-STK4-KQBX-7X8O-78CB-HUHM-C6F0 (last visited May 5, 2021) (showing cash and in-kind contributions to Save Coos Jobs Committee).

[12] After the Complaint but before the Amended Complaint, on October 19, 2018, Jordan Cove LNG, LLC, and Jordan Cove Energy Project L.P. each made an additional $1,000 donation to other state candidate committees.

The Complaint alleges that the Jordan Cove entities are foreign corporations; it acknowledges that the donating entities are registered in Delaware but emphasizes that these entities are wholly owned by Canadian corporation Pembina Pipeline Corporation and were previously owned by another Canadian corporation Veresen, Inc.[13] The Complaint alleges that Jordan Cove was "run by foreign individuals" and therefore violated the Act by making prohibited foreign national donations.[14] Jordan Cove asserts that all the Jordan Cove entities are domestic entities, except for foreign parent Pembina Pipeline Corporation, and that the Complaint does not sufficiently allege that any donations were made with foreign funds or that foreign nationals were involved in decision-making regarding the donations.[15]

III. LEGAL ANALYSIS

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.[16]

Transaction Detail, OR. SEC'Y OF STATE (Oct. 26, 2018, 11:31 PM), https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=3035255&OWASP_CSRFTOKEN=91FV-T9I2-KU5S-YK9C-LSQ1-THOM-UYB3-47MD ($1,000 cash contribution made on October 19, 2018, to Friends of Christine Drazan); *Transaction Detail*, OR. SEC'Y OF STATE (Nov. 7, 2018, 4:51 PM) [hereinafter Jeff Barker Donation], https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=3073097&OWASP_CSRFTOKEN=91FV-T9I2-KU5S-YK9C-LSQ1-THOM-UYB3-47MD ($1,000 cash contribution made on October 19, 2018, to Friends of Jeff Barker). On June 11, 2019, "Jordan Cove LNG" donated an additional $505 to the Oregon Business & Industry Candidate PAC. *Transaction Detail*, OR. SEC'Y OF STATE (June 24, 2019, 2:06 PM), https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=3198114&OWASP_CSRFTOKEN=64AI-ODSI-7YUU-HVLD-JBY4-LLLR-2RKY-B4VJ ($505 cash contribution made on June 11, 2019 to OBI PAC).

[13] Compl. at 5-6; *see id.*, Attach. 7.

[14] *Id.* at 1-2, 5.

[15] Jordan Cove. Resp. at 3-4.

[16] 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (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.

The Act's definition of "foreign national" includes any 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."[17]

In the Bipartisan Campaign Reform Act of 2002 ("BCRA"),[18] Congress expanded the Act's foreign national prohibition to expressly prohibit "donations" in addition to contributions. It also codified the Commission's longstanding interpretation of the prohibition, expressly applying it to state and local elections as well as to federal elections.[19]

Commission regulations implementing the Act's foreign national prohibition provide:

> A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation . . . with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.[20]

See Bluman v. FEC, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 565 U.S. 1104 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

[17] 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

[18] Pub. Law 107-155, 116 Stat. 81 (Mar. 27, 2002).

[19] *See* 52 U.S.C. § 30121(a); Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,940 (Nov. 19, 2002) ("Prohibitions E&J"); *see also* Advisory Op. 1999-28 (Bacardi-Martini USA) at 2 (quoting *United States v. Kanchanalak*, 192 F.3d 1037 (D.C. Cir. 1999) (recognizing that the Commission had "consistently interpreted . . . since 1976" the foreign national prohibition to extend to state and local elections)).

[20] 11 C.F.R. § 110.20(i). The Commission has explained that this provision also bars foreign nationals from "involvement in the management of a political committee." Prohibitions E&J, 67 Fed. Reg. at 69,946; *see also* Advisory Op. 2004-26 (Weller) at 2-3 (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees' activities as a volunteer without making a prohibited contribution, she "must not participate in [the candidate's] decisions regarding his campaign activities" and "must refrain from managing or participating in the decisions of the Committees.").

The Commission has found that not all participation by foreign nationals in the election-related activities of others will violate the Act. In MUR 6959, for example, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, such as online research and translations, during a one month-long internship with a party committee.[21] Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to perform at a campaign fundraiser and agreeing to let the political committee use his name and likeness in its emails promoting the concert and soliciting support, where the record did not indicate that the foreign national had been involved in the committee's decision-making process in connection with the making of contributions, donations, expenditures, or disbursements.[22] By contrast, 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 in the management of its separate segregated fund,[23] or where

[21] Factual & Legal Analysis ("F&LA") at 4-5, MUR 6959 (Cindy Nava, *et al.*) (noting that the available information, which was based on two press reports that did not detail the foreign national's activities, did not indicate that the foreign national participated in any political committee's decision-making process). The Commission also found that a $3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

[22] F&LA at 6-9, MURs 5987, 5995, 6015 (Sir Elton John); *see also* F&LA at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller) at 2-3.

[23] *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). The Commission has specifically determined that "no director or officer of the

foreign funds were used by a U.S. subsidiary of a foreign corporation to make contributions or donations in connection with U.S. elections.[24]

The regulations also provide that no person shall "knowingly provide substantial assistance" in the solicitation, making, acceptance, or receipt of a prohibited foreign national contribution or donation, or the making of a prohibited foreign national expenditure, independent expenditure, or disbursement.[25] The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.[26]

A. Prohibited Foreign National Donations to the Recipient Committees

1. The Commission Finds Reason to Believe That the Jordan Cove Entities Made Prohibited Foreign National Donations

The Complaints and Oregon campaign finance reports indicate that Jordan Cove entities donated $89,500 to state and local candidate committees and $153,555 to non-candidate, non-ballot measure state and local committees.[27] Each of the donating Jordan Cove entities — Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. — is a domestic subsidiary of Pembina Pipeline Corporation, which as a Canadian corporation is a

company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions." Advisory Op. 1989-20 (Kuilima) at 2.

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

[25] 11 C.F.R. § 110.20(h). The Commission has explained that substantial assistance "means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction." Prohibitions E&J, 67 Fed. Reg. at 66,945. Moreover, substantial assistance "covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations." *Id.*

[26] 52 U.S.C. § 30121(a)(2). The Commission's regulations employ a "knowingly" standard. 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. *Id.* § 110.20(a)(4).

[27] *See* Compl., Attachs. 1-2; Am. Compl., Attach. 2; Jordan Cove OreStar Search; *supra* notes 9-10.

foreign national.[28] As set forth below, the available information raises a reasonable inference that some or all of the donations made by the Jordan Cove entities were made with foreign national officers' or directors' participation in the decision-making process, or were either funded by their foreign parent or were made at the foreign parent's direction. Therefore, the Commission finds reason to believe that Pembina Pipeline Corporation, Jordan Cove Energy Project L.P, Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P., made foreign national donations in violation of the Act and Commission regulations and that Fort Chicago Holdings, II US, LLC, provided substantial assistance to the making of prohibited foreign national donations.

The attendant circumstances suggest that the donating Jordan Cove entities may have relied upon funding, subsidies, and/or loans from its foreign parents Veresen or Pembina to finance the donations. According to Jordan Cove's own reported estimates, the LNG project will cost $10 billion — up from initial estimates of $7.5 billion.[29] As of 2018, Pembina was budgeting and spending approximately $10 million per month on the project in permitting, development costs, and other expenses.[30] As of April 22, 2021, Jordan Cove had not yet begun construction of the LNG terminal in Coos Bay, Oregon, and paused development of the project

[28] Jordan Cove Resp. at 1-2; *see supra* note 3. It does not appear that Fort Chicago Holdings, II US, LLC, made any direct donations; however, the available information and the corporate structure of Jordan Cove suggest that it may have acted as a conduit or intermediary for the donation funds between Pembina Pipeline Corporation and Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P.

[29] Compl., Attach. 7 (attaching Canadian Press Article).

[30] *Id.* at 7, Attach. 5 (attaching Dennis Webb, *Geopolitical Case for Jordan Cove*, DAILY SENTINEL (Sept. 12, 2018), https://www.gjsentinel.com/news/western_colorado/geopolitical-case-for-jordan-cove/article_cd728716-b64a-11e8-9ed7-10604b9f7e7c.html); *id.*, Attach. 15 (attaching Ted Sickinger, *Jordan Cove LNG Campaign Contributions Raise Questions*, OREGONIAN (Jan. 29, 2019) [hereinafter Oregonian Article], https://www.oregonlive.com/politics/2018/09/jordan_cove_campaigns_contribu.html (quoting Jordan Cove spokesperson)).

as a result of certain denials of required regulatory authorizations.[31]

The record does not contain any information that the donating Jordan Cove entities were conducting active business unrelated to the Jordan Cove LNG pipeline and facility at the time of the donations nor since.[32] Importantly, here, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P., do not have any evident domestic revenue stream to account for their combined $243,055 in donations to the Recipient Committees: their primary

[31] *See* Motion of Respondent-Intervenors to Suspend Merits Briefing Schedule & Hold Cases in Abeyance at 4, *Evans v. FERC*, No. 20-1161 (D.C. Cir. Apr. 22, 2021) [hereinafter Jordan Cove Abeyance Motion]. On March 19, 2020, FERC authorized the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline project, subject to a number of additional requirements, including certain regulatory approvals issued by the state of Oregon. FERC Authorization Order, 170 FERC ¶ 61,202, Mar. 19, 2020, FERC Docket CP17-495, Accession No. 20200319-3077, https://www.oregon.gov/energy/facilities-safety/facilities/Documents/JCEP-PCGP/2020-FERC-Order.pdf [hereinafter FERC Authorization Order]. On January 19, 2021, FERC declined to override the Oregon Department of Environmental Quality's denial of the required water quality certification. Order Denying Petition for Declaratory Order, 174 FERC ¶ 61,057 (Jan. 19, 2021), FERC Docket CP17-494-003, CP17-495,003, https://www.ferc.gov/sites/default/files/2021-01/C-16-CP17-494-003.pdf. On February 8, 2021, the National Oceanic and Atmospheric Administration ("NOAA") upheld the Oregon Department of Land Conservation and Development's objection to the required federal consistency determination. Decisions and Findings in the Consistency Appeal of Jordan Cove Energy Project, L.P., and Pacific Connector Gas Pipeline, L.P., from an objection by the Or. Dep't of Land Conservation and Dev. (Sec'y of Commerce Feb. 8, 2021), https://coast.noaa.gov/data/czm/consistency/appeals/fcappealdecisions/mediadecisions/jordancove.pdf. The FERC Authorization Order requires those two approvals, amongst others, before Jordan Cove begins construction on the LNG terminal. *See* FERC Authorization Order at 1-2 (McNamee, Comm'r, concurring) (listing water quality certification and federal consistency determination as two of the "many federal permits that [Jordan Cove] must receive to begin construction"); *see also* Jordan Cove Abeyance Motion at 2-4 ("Project construction has not and cannot commence until Jordan Cove and Pacific Connector secure the necessary authorizations under the Clean Water Act and the Coastal Zone Management Act.").

[32] *See* F&LA at 1, 4, MUR 6093 (Transurban Group) (finding reason to believe where domestic subsidiary toll road developer began to generate income from domestic operations mid-way through contribution period, but relied upon foreign parent as "predominant source of funds"); Advisory Op. 1989-20 (Kuilima) at 1 (determining company involved in developing commercial real estate projects in the first stages of development that did not generate income — and were therefore funded by loans and contributions by foreign parent company — was prohibited from making contributions); F&LA at 6 & n.5, MUR 4250 (Republican Nat'l Comm.) (finding reason to believe committee accepted foreign national contributions from a domestic subsidiary with no significant assets and only apparent income from rental properties owned by foreign parent company); Conciliation Agreement ¶ IV.6, MUR 2892 (Royal Hawaiian Country Club and Y.Y. Valley Corp.) ("At the time of the events in this matter, neither [domestic companies] were generating income. Respondents' funds consisted of either capital contributions and/or loans from [respondent's] owners."). *Compare* F&LA at 2-3, MUR 6184 (Skyway Concession Company, LLC, *et al.*) (concluding that available information indicated contributions from a transportation business were domestically funded because company maintained a U.S. bank account in which it deposited toll receipts from operation of the business and from which it paid expenses and made political contributions, but finding reason to believe corporation violated foreign national prohibition through foreign national's participation in decision-making process to make donations).

business will be the transport and export of liquefied natural gas, but the feeder pipeline and terminal facility are not yet built. A press account cited in the Complaint quotes a Jordan Cove spokesperson stating that the donated funds derived from Pembina Pipeline Corporation's "U.S. assets" and "are generated in the U.S."[33] Jordan Cove did not, however, make those representations in response to the Complaint. Instead, Jordan Cove argues that the Complaint alleges violations regarding "facially lawful non[-]federal political contributions" and asserts that "no documented or credible allegation that any non[-]federal contribution was made with non-domestic funds, nor that any foreign national engaged in any prohibited decision-making regarding the contributions."[34]

In light of the overall circumstances, including the lack of any asserted or otherwise evident revenue streams that the domestic subsidiaries could have used to fund the donations in question, the foregoing assertions do not overcome the more likely scenario that the funds used to make the donations were from the only source indicated by the available record — namely, the capital supplied by Pembina Pipeline Corporation.[35]

The available information also suggests that at least one Jordan Cove entity had a primary place of business in, operated from, and made donations from, Canada during the relevant time period. While the Amended Complaint attached copies of various Jordan Cove entities' Annual Reports that disclose domestic mailing addresses, domestic primary places of businesses, and

[33] *See* Oregonian Article (quoting Jordan Cove spokesman on September 21, 2018, that "all the political contributions are direct from Jordan Cove Energy Project L.P., a domestic company registered in Delaware"); Compl., Attach. 15 (attaching Oregonian Article).

[34] Jordan Cove Resp. at 3-4.

[35] *Cf.* Advisory Op. 1992-16 (Nansay Hawaii) at 3 (articulating "certain conditions" for domestic subsidiaries' political contributions, including the subsidiary's ability to demonstrate sufficient domestic funds in its account, beyond funds or loans from the foreign parent, through a reasonable accounting method, and the foreign parent's subsidies or capitalization cannot replenish any portion of the subsidiary's contributions).

domestic addresses for members and partners,[36] Annual Reports from prior years (including years in which donations were made by the relevant entities) disclose Canadian addresses.[37] Save Coos Jobs Committee reported two donations — $216,000 on March 20, 2017, and $115,000 on April 10, 2017 — from Jordan Cove Energy Project L.P. that list a Canadian address.[38] Moreover, the Annual Reports and those two donations reference the same Canadian address: 222 Third Ave. SW, Suite 900, Calgary, Alberta, Canada.[39] That certain Jordan Cove entities disclosed foreign primary places of business and mailing addresses and two of Jordan Cove's largest donations — amounting to $331,000 — were reported with foreign addresses is indicative of both foreign national decision-making and foreign-generated funds.[40] Moreover,

[36] Am. Compl., Attach. 1.

[37] *See, e.g.*, Amended Annual Report, Jordan Cove Energy Project L.P. (July 26, 2017) [hereinafter JCEP 2017 Am. Annual Report], http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/5442257 (listing Canadian mailing address, primary place of business, and address for "General Partner" Jordan Cove Energy Project LLC); Amended Annual Report, Jordan Cove Energy Project L.P. (Aug. 9, 2016) [hereinafter JCEP 2016 Am. Annual Report], http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/4736005 (same); Amended Annual Report, Jordan Cove Energy Project L.P. (Aug. 5, 2015) [hereinafter JCEP 2015 Am. Annual Report], http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/4077591 (same).

[38] *See Transaction Detail*, OR. SEC'Y OF STATE (Apr. 11, 2017, 11:59 PM) [hereinafter JCEP Mar. 20, 2017 Donation], https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=2516478&OWASP_CSRFTOKEN=Z7DW-C58T-GDV8-SG3O-9IQ0-4ZD4-45LX-HZD8 ($216,000 cash contribution made on March 20, 2017 to Save Coos Jobs Committee); *Transaction Detail*, OR. SEC'Y OF STATE (Apr. 17, 2017, 11:59 PM) [hereinafter JCEP Apr. 10, 2017 Donation], https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=2529302&OWASP_CSRFTOKEN=OPPM-WQA9-LES3-QNZA-DCI9-SY3V-BNXJ-2D9O ($115,000 cash contribution made on April 10, 2017 to Save Coos Jobs Committee).

[39] *Compare* JCEP 2017 Am. Annual Report, JCEP 2016 Am. Annual Report, *and* JCEP 2015 Am. Annual Report, *with* JCEP Mar. 20, 2017 Donation, *and* JCEP Apr. 10, 2017 Donation.

[40] The Commission has previously indicated that information that a contribution or donation is received from a foreign address or foreign bank is pertinent, although not dispositive, information when assessing a contributor's nationality. *See, e.g.*, F&LA at 2, MURs 7430, 7444, 7445 (Unknown Respondent) (acknowledging payment processing forms stating the contributions came from Italy but dismissing because *de minimis* amount in violation); F&LA at 2-3, MUR 6944 (Jose E. Farias, *et al.*) (dismissing allegations related to a contribution received from a foreign address of a domestically registered corporation because of *de minimis* amount in violation); F&LA at 2, 5-6, MURs 6401, 6432 (TransCanada Keystone Pipeline, GP, LLC) (noting contribution with a Canadian address, but finding no reason to believe where contributor demonstrated domestic funding, domestic decision-makers, and context of foreign address appearing on envelope); F&LA at 2-3, 6, MUR 6099 (Waverly Glen Systems Ltd.) (same); F&LA at 14, 18, MURs 6078, 6090, 6108, 6139, 6142, 6214 (Obama for America) (noting contributions listed foreign addresses but ultimately dismissing because contributions were limited and there was insufficient information that recipient acted unreasonably in relying upon contributors' affirmations of U.S. citizenship);

Jordan Cove Energy Project L.P., the same Jordan Cove entity that reported the foreign addresses for the two donations to Save Coos Jobs Committee totaling $331,000, made at least nine other donations to at least five other non-federal candidate and non-ballot measure committees totaling at least $126,550, using domestic addresses in Oregon and Texas, raising questions regarding the decision-making and funding of those donations.[41]

Jordan Cove did not provide specific information regarding the circumstances of the donations, such as details of the decision-making process, the individual(s) involved therein, and the nationalities of those individuals, or the source of funds used to make the donations. In similar circumstances, the Commission has found reason to believe the respondents made prohibited foreign national contributions or donations where the respondent has failed to provide contextual information necessary to assess the decision-makers' nationalities[42] or failed to demonstrate they had sufficient domestically generated funds to make the challenged contributions or donations.[43] Alternatively, the Commission has found no reason to believe

cf. 11 C.F.R. § 110.20(a)(5)(ii) (including contributor's or donor's use of a foreign address among "pertinent facts" relevant to "knowing" solicitation, receipt, or acceptance of foreign national contribution or donation).

[41] *See* Jordan Cove OreStar Search; Jeff Barker Donation.

[42] *See, e.g.*, F&LA at 10-11, MUR 2892 (Jet Hawaii, Inc.) (finding reason to believe where the response did not provide information regarding the nationality of individuals making the contribution decisions); F&LA at 11, MUR 2892 (Hawaii Omori Corp.) (finding reason to believe where the respondent listed individuals participating in contribution decision-making, but not specifying their nationalities); *see also, e.g.*, F&LA at 11, MUR 2892 (The Westin Kauai) (finding reason to believe where the response did not identify the nationality of the individuals making the contribution decisions and the information indicated a limited partner owning 16% of the contributing entity was owned indirectly by foreign citizens); F&LA at 11, MUR 2892 (Horita Corp.) (finding reason to believe where respondent did not submit a response, even though a different respondent provided information that owners were U.S. citizens, because the Commission could not "question th[e] entity directly").

[43] *See, e.g.*, F&LA at 11, MUR 2892 (Jet Hawaii, Inc.) (explaining that domestic subsidiaries or associated political committees of foreign nationals "must demonstrate that it does not receive funds for the contributions from its parent foreign national" and that the "source of the funds must be examined"); F&LA at 11, MUR 2892 (Daiei (USA) Inc.) (finding reason to believe where the respondent did not provide information on the source of the contribution funds); F&LA at 11, MUR 2892 (The Westin Kauai) (finding reason to believe where the respondent only provided the bank account name and number for its contributions but no other information about the source thereof).

respondents violated the Act's foreign national prohibition where the respondent has credibly identified the persons involved in the decision-making process as U.S. citizens or permanent residents,[44] or credibly demonstrated that the relevant contributions or donations derived from domestically generated revenues.[45]

The key issue is not whether a U.S. citizen or national was *the* decision maker as to a donation — *i.e.*, had final decision-making authority or final say regarding the making of a donation — but whether any foreign national directed, dictated, controlled, or directly or indirectly participated in the decision-making *process* in connection with election-related spending. Indeed, the Act's prohibition on foreign nationals directly or indirectly making contributions or donations, as implemented by the Commission, requires that "no director or officer of the company or its parent who is a foreign national may participate in *any way* in the decision-making process with regard to making . . . contributions."[46] Even if the Commission

[44] *See, e.g.*, F&LA at 6-8, MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*) (identifying U.S. permanent resident as sole decision-maker); F&LA at 6, MUR 6099 (Waverly Glen Systems Ltd.) (identifying sole person with decision-making authority or involved in decision-making process with supporting affidavit).

[45] *See, e.g.*, F&LA at 5, MUR 6099 (Waverly Glen Systems Ltd.) (reviewing bank statements provided by domestic subsidiary showing sufficient account balance to make contribution and sufficient revenue from a U.S. customer); F&LA at 7, MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*) (reviewing loan agreement between a domestic subsidiary and a U.S. lender that provided funds for contributions from bank's U.S. revenues and required to be repaid with subsidiary's U.S. revenues); *see also* F&LA at 5-6, MUR 7122 (APIC) (highlighting affidavit from domestic subsidiary's CFO averring use of domestically generated funds and separate ledger account for political contributions, including identification of specific revenue-generating sale that provided funds for the contribution, but finding reason to believe corporation violated foreign national prohibition through foreign national's participation in decision-making process to make contributions); F&LA at 2-3, MUR 6184 (Skyway Concession Company, LLC, *et al.*) (relying upon evidence that revenues from domestic business were deposited into a U.S.-based expense account from which contributions were made, but finding reason to believe corporation violated foreign national prohibition through foreign national's participation in decision-making process to make donations). The Commission has also advised a domestic subsidiary that it "must be able to demonstrate through a reasonable accounting method that it has sufficient funds in its account, other than funds given or loaned by its foreign national parent, from which the contribution is made." Advisory Op. 1992-16 (Nansay Hawaii) at 3. Furthermore, the Commission instructed the foreign parent to "consider the political contributions of its subsidiary when granting further subsidies to or further capitalization of the subsidiary." *Id.*

[46] Advisory Op. 1989-20 (Kuilima) at 3 (emphasis added).

were to credit the assertion of the Jordan Cove spokesman in a press account that the donations are direct from a domestic company and the funds come from "U.S. assets . . . . [that] are generated in the U.S. and stay in the U.S.,"[47] that still leaves open the possibility that non-U.S. citizens directly or indirectly participated in the decision-making process and does not address the role of foreign nationals in the decision-making process in connection with Jordan Cove's donations.[48]

These circumstances — Jordan Cove's apparent lack of a domestic revenue stream, annual reports indicating Canadian primary places of business and mailing addresses, donations disclosed from a Jordan Cove entity at a Canadian address, and the Commission's lack of information to assess the decision-making process for and funding of the donations — support a reasonable inference that foreign nationals were involved in the decision-making process regarding the donations and the funds Jordan Cove used to make the donations originated from a foreign national source.[49] Therefore, the Commission finds reason to believe 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 the Recipient Committees and that Fort Chicago

[47] *See* Oregonian Article; Compl., Attach. 15 (attaching Oregonian Article)

[48] *See also* F&LA at 2-3, 6, MUR 7122 (APIC) (finding reason to believe where a U.S. director had sole decision-making over political contributions because final authority did not "exclude the possibility that in his role as decision-maker" he sought approval from company's board of directors, including foreign national directors and owners, where U.S. director was quoted as letting board approve of donation before sending it); F&LA at 11, MUR 2892 (Ala Moana Hotel) (finding reason to believe despite argument that contribution decisions were made in the U.S. by officers of the domestic subsidiary because the response did not identify the nationalities of those officers); F&LA at 11, MUR 2892 (Pacific Resources, Inc.) (finding reason to believe despite argument that contribution decisions were not influenced by any foreign national because one officer was a foreign national and the response did not specify who made the contribution decisions).

[49] *Cf.* F&LA at 6, MUR 6184 (Skyway Concession Company, LLC, *et al.*).

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 the Recipient Committees.

2. The Commission Finds Reason to Believe That Jordan Cove PAC Made Prohibited Foreign National Donations

Jordan Cove PAC is an SSF registered with the Commission and associated with Pembina U.S. Corporation.[50] Jordan Cove PAC reported an aggregate $59,500 in receipts and an aggregate $45,380 in disbursements to the Commission during the two relevant election cycles in which it was active: 2015-2016 and 2017-2018.[51] However, it appears that Jordan Cove PAC only reported $11,000 of the $16,500 it donated to state and local committees that are reflected in Oregon campaign finance reports to the Commission as disbursements.[52] Thus, it appears that

[50] Jordan Cove LNG LLC PAC, Amended Statement of Organization (July 8, 2020), https://docquery.fec.gov/pdf/557/202007089244369557/202007089244369557.pdf; *see* Jordan Cove Resp. at 1; *supra* note 4. Commission records indicate that there was another SSF, Jordan Cove Energy Project, L.P. PAC, associated with Jordan Cove Energy Project L.P. Jordan Cove Energy Project L.P. PAC, Statement of Organization at 1-2 (May 20, 2014), https://docquery.fec.gov/pdf/718/14031240718/14031240718.pdf. Shortly after its formation, the Reports Analysis Division sent a Request for Additional Information notifying this SSF that, because its connected organization was a partnership, "most forms of support received by a committee from such an organization are considered contributions and subject to the" Act. Jordan Cove Energy Project L.P. PAC, Request for Additional Info. at 1 (June 3, 2014), https://docquery.fec.gov/pdf/231/14330053231/14330053231.pdf. Jordan Cove Energy Project, L.P. PAC filed a Termination Report on August 10, 2016, explaining that it was never active and it mistakenly reported activity in 2016. FEC Form 3X, Jordan Cove Energy Project L.P. PAC, Termination Report at 1 (Aug. 10, 2016), https://docquery.fec.gov/pdf/399/201608100300094399/201608100300094399.pdf.

[51] FEC Form 3X, Jordan Cove LNG LLC PAC, 2015 Year-End Report at 2 (Jan. 29, 2016) [hereinafter Jordan Cove PAC 2015 Year-End Report], https://docquery.fec.gov/pdf/493/201601290300043493/201601290300043493.pdf (disclosing $15,000 in total receipts and $5,000 in total disbursements for 2015); FEC Form 3X, Jordan Cove LNG LLC PAC, 2016 Year-End Report at 2 (Jan. 30, 2017), https://docquery.fec.gov/pdf/224/201701300300136224/201701300300136224.pdf (disclosing $20,000 in total receipts and $22,500 in total disbursements for 2016); FEC Form 3X, Jordan Cove LNG LLC PAC, 2017 Year-End Report at 2 (Jan. 30, 2018) [hereinafter Jordan Cove PAC 2017 Year-End Report], https://docquery.fec.gov/pdf/791/201801300300189791/201801300300189791.pdf (disclosing $7,500 in total receipts and $12,730 in total disbursements in 2017); FEC Form 3X, Jordan Cove LNG LLC PAC, 2018 Year-End Report at 2 (Jan. 30, 2019), https://docquery.fec.gov/pdf/980/201901300300260980/201901300300260980.pdf (disclosing $17,000 in total receipts and $5,150 in total disbursements in 2018).

[52] *See* Jordan Cove PAC 2015 Year-End Report at 7 (disclosing $5,000 donation to Friends of Val Hoyle on December 11, 2015); Jordan Cove PAC Amended 2016 July Quarterly Report at 8 (listing $1,000 donation to Friends of Tobias Read on May 16, 2016); Jordan Cove PAC 2017 Year-End Report at 8 (disclosing $5,000 donation to Caddy McKeown for State Representative on September 11, 2017).

either some of the donations are mistakenly attributed to Jordan Cove PAC in disclosures to the state of Oregon,[53] or that Jordan Cove PAC failed to report all of its disbursements to the Commission.

A domestic subsidiary of a foreign national corporation is permitted to establish and administer an SSF if it is a discrete entity whose principal place of business is in the United States and if those exercising decision-making authority over the SSF are not foreign nationals.[54] Jordan Cove did not explain or identify those who participated in Jordan Cove PAC's decision-making process regarding its donations, like it did not identify those involved with regards to the other Jordan Cove entities' donations, or in the management of Jordan Cove PAC itself.[55]

Nor did Jordan Cove PAC explain whether its administrative expenses were paid with domestic funds. It appears that all of the individuals who contributed to Jordan Cove PAC during the relevant time periods listed Jordan Cove LNG, LLC, or Veresen, Inc., as their employer, and none of the contributions appear to exceed the $5,000 annual limit on contributions from individuals to PACs.[56] However, Jordan Cove PAC reported one contribution from Don Althoff, President and CEO of Veresen, Inc., with a Canadian address.[57]

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[53] There is some information available that supports this explanation: the Jordan Cove spokesperson quoted in a press account stated that "all the political contributions are direct from Jordan Cove Energy Project L.P." *See* Oregonian Article; Compl., Attach. 15 (attaching Oregonian Article).

[54] Advisory Op. 2009-14 (Mercedes-Benz USA/Sterling) at 3; Advisory Op. 2000-17 (Extendicare) at 4-6; Advisory Op. 1999-28 (Bacardi-Martini) at 3; *see also* Prohibitions E&J, 67 Fed. Reg. at 69,943; Advisory Op. 2006-15 (TransCanada Corp.) at 2-6.

[55] *See* Jordan Cove Resp.

[56] 52 U.S.C. § 30116(a)(2); *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?cycle=2016&data_type=processed&committee_id=C00590265&two_year_transaction_period=2016&two_year_transaction_period=2018&line_number=F3X-11AI (last visited May 5, 2021) (reflecting individual contributions to Jordan Cove PAC during the 2016 and 2018 election cycles).

[57] Jordan Cove PAC 2015 Year-End Report at 6 (listing $5,000 contribution from Don Althoff in Calgary, Alberta, Canada on October 22, 2015).

It does not appear that Jordan Cove PAC responded to the Commission's Reports Analysis Division's Request for Additional Information about that contribution by amending the 2015 Year-End Report or submitting a Form 99 Misc Text, but subsequent contributions reported from Althoff reflect a domestic address.[58]

For the same reasons articulated above with regards to the Jordan Cove entities,[59] the Commission finds reason to believe that Jordan Cove LNG LLC PAC and Allison Murray in her official capacity as treasurer violated 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b) by making prohibited foreign national donations to the Recipient Committees.

B. Alleged Foreign National Donations to Save Coos Jobs Committee

1. The Foreign National Prohibition's Application to Ballot Measure Activity

The Act and Commission regulations prohibit any foreign national from making a contribution or donation "in connection with a Federal, State, or local election."[60] In affirming the constitutionality of the Act's ban on foreign national contributions, the court in *Bluman v. FEC* held:

[58] *See* Jordan Cove LNG LLC PAC, Request for Additional Info. at 1-2 (Apr. 21, 2016), https://docquery.fec.gov/pdf/018/201604210300042018/201604210300042018.pdf; *see, e.g.*, Jordan Cove PAC Amended 2016 July Quarterly Report at 6 (listing $3,000 contribution from Don Althoff in Chicago, IL on June 21, 2016).

[59] *See supra* Section III.A.1.

[60] 52 U.S.C. § 30121(a)(1)(A).

> It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.[61]

The Commission has explained that "[s]uch exclusion 'is part of the sovereign's obligation to preserve the basic conception of a political community.'"[62]

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."[63] 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*."[64] Section 30121 states that "[i]t shall be unlawful for" a foreign national, directly or indirectly, to make "a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election."[65] By expressly including state and local elections within its prohibition on contributions or donations by foreign nationals, section 30121 on its face applies beyond the context of the Commission's general regulatory definition of elections, which makes reference both to "individuals" and the pursuit of "*Federal* office."[66] The text of section 30121

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61 800 F. Supp. 2d 281, 287 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012); *see also United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019); Advisory Op. 2018-12 (Defending Digital Campaigns, Inc.) at 7.

62 Advisory Op. 2018-12 (Defending Digital Campaigns, Inc.) at 7 (quoting *Bluman*, 800 F. Supp. 2d at 287).

63 52 U.S.C. § 30101(1).

64 11 C.F.R. § 100.2(a) (emphasis added).

65 52 U.S.C. § 30121(a)(1)(A).

66 *Id.* (emphasis added).

thus raises the question whether the state or local elections to which it applies includes elections, such as one at issue in this matter, in which a local ballot measure is put to voters.

Prior to Congress's enactment of BCRA, the Act prohibited foreign national contributions "in connection with an election *to any political office*."[67] Accordingly, before BCRA, the Commission treated foreign national donations relating only to ballot initiatives as generally outside the purview of the Act on the basis that ballot initiative elections generally are not in connection with elections for political office.[68] Nonetheless, in pre-BCRA Advisory Opinion 1989-32 (McCarthy), the Commission described circumstances in which a ballot initiative "inextricably linked" to a candidate would be "in connection with" that candidate's election to political office and, therefore, a committee supporting such a ballot initiative would be prohibited from accepting funds from a foreign national.[69]

In enacting BCRA, Congress amended the Act's foreign national section to prohibit foreign national contributions or donations "in connection with a Federal, State, or local election."[70] In the course of issuing implementing regulations to correspond with the revised statutory provision, the Commission concluded that the deletion of the phrase "election to any public office" and the substitution of the "broader phrase 'Federal, State, or local election'" was meant to clarify congressional intent "to prohibit foreign national support of candidates and their

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67 *See* 2 U.S.C. § 441e(a) (2000) (emphasis added).

68 *See* Advisory Op. 1989-32 (McCarthy) ("AO 1989-32").

69 *Id.* 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).

70 *Compare* 2 U.S.C. § 441e(a) (2000), *with* 2 U.S.C. § 441e(a)(1)(A) (2002) (codified at 52 U.S.C. § 30121(a)(1)(A)).

committees and political organizations and foreign national activities in connection with all Federal, State, and local elections."[71]

Shortly after the passage of BCRA, in Advisory Opinion 2003-37 (Americans for a Better Country), the Commission addressed whether a political committee's non-federal account could raise and spend funds from foreign nationals for voter registration and mobilization activities on behalf of federal candidates.[72] In framing its analysis, the Commission began by generally explaining the foreign national prohibition and specifically explaining that its application is not limited to "elections for political office":

> The Act, as amended by BCRA, prohibits foreign nationals from, among other things, directly or indirectly making a contribution or donation of money or other thing of value, or to expressly or impliedly promise to make a contribution or donation, in connection with a Federal, State, or local election (*this prohibition is not limited to elections for political office*).[73]

This language from AO 2003-37, which was not prepared in connection with an analysis of ballot initiatives, remains the only Commission-approved interpretation of the meaning of the Act's post-BCRA foreign national prohibition's use of "election" with respect to non-candidate elections. Nonetheless, the Commission has addressed the scope of the term "election" in a number of advisory opinions considering whether ballot measure activities are "in connection with" an election as that term is used in BCRA's "soft money" provision now codified at 52 U.S.C. § 30125(e). Like the pre-BCRA foreign national provision, BCRA's soft money

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[71] Prohibitions E&J, 67 Fed. Reg. at 69,944.

[72] Advisory Op. 2003-37 (Americans for a Better Country) at 20-21 ("AO 2003-37").

[73] AO 2003-37 at 20 (emphasis added), *superseded on other grounds*, Political Committee Status & Definition of Contribution, 69 Fed. Reg. 68,056, 68,063 (Nov. 23, 2004) (promulgating rules on the spending of federal and non-federal funds for voter drives, but not contradicting or otherwise addressing AO 2003-37's analysis of the foreign national contribution ban).

provision refers to elections *for office*, prohibiting federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by them, or acting on their behalf, from raising or spending non-federal funds "in connection with an election for Federal office" and "in connection with any election other than an election for Federal office."[74]

The first of the post-BCRA soft money ballot initiative advisory opinions, Advisory Opinion 2003-12 (Flake), was considered shortly before AO 2003-37 interpreted the foreign national provision as discussed above. In AO 2003-12, the Commission was asked whether, under the soft money rules, a ballot initiative committee's activities were in connection with "any election other than an election for Federal office."[75] The Commission determined that they were, once the initiative qualified for the ballot.[76] In reaching this conclusion, the Commission considered Congress's use of the phrase "any election" in place of the phrase "any election *to any political office.*"[77] The Commission concluded that this difference in language indicated Congress's intent that the soft money provision "is not limited to elections for a political office."[78] It explained:

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74 52 U.S.C. § 30125(e).

75 Advisory Op. 2003-12 (Flake) at 4-6 ("AO 2003-12").

76 *Id.* at 5-6. The Commission also concluded that when a ballot measure committee is established, financed, maintained, or controlled by a federal candidate as was the case in AO 2003-12, its activities before qualifying for the ballot, such as signature gathering, are also "in connection with any election other than an election for Federal office." *Id.* at 6.

77 *Id.* at 6 (emphasis in original).

78 *Id.* at 5-6.

> As used in subparagraph (B) of section [30125(e)(1)], the term, "in connection with *any election other than* an election for Federal office" is, on its face, clearly intended to apply to a different category of elections than those covered by subparagraph (A), which refers to "an election for Federal office." This phrasing, "in connection with any election other than an election for Federal office" also differs significantly from the wording of other provisions of the Act that reach beyond Federal elections. Particularly relevant is the prohibition on contributions or expenditures by national banks and corporations organized by authority of Congress, which applies "in connection with any election to *any political office*." [52 U.S.C. § 30118(a)]. Where Congress uses different terms, it must be presumed that it means different things. Congress expressly chose to limit the reach of section [30118(a)] to those non-Federal elections for a "political office," while intending a broader sweep for section [30125(e)(1)(B)], which applies to "any election" (with only the exclusion of elections to Federal office). Therefore, the Commission concludes that the scope of section [30125(e)(1)(B)] is not limited to elections for a political office.[79]

The Commission distinguished AO 1989-32, which had concluded that ballot initiative activity conducted independently from candidates (*i.e.*, "pure" ballot initiative activity) was not "in connection with" a candidate's election and was, therefore, outside the scope of the foreign national contribution prohibition. The Commission explained that its interpretation in AO 1989-32 was based on pre-BCRA statutory language which "then limited activity 'in connection with any election to political office.'"[80]

Two years later, in Advisory Opinion 2005-10 (Berman/Doolittle), the Commission considered whether the soft money provision prohibits federal candidates and officeholders from raising funds for ballot measure committees formed solely to support or oppose ballot initiatives

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[79] *Id.* (emphasis in original, footnote omitted); *see also* F&LA at 2-3, MUR 5367 (Darrell Issa) (concluding, based on the analysis in AO 2003-12, that a recall election was "an election other than an election for Federal office" and that, therefore, BCRA's soft money provisions applied to Congressman Issa's efforts to solicit soft money for a ballot measure committee that was supporting the recall and that was established, maintained, financed, or controlled by Issa).

[80] AO 2003-12 at 6.

where the ballot initiative committee was not established, financed, maintained, or controlled by a federal candidate and where no federal candidates appeared on the same ballot.[81] The Commission concluded that the proposed activity was not prohibited, issuing an opinion without explaining the basis for its conclusion. The four Commissioners who voted to approve the advisory opinion explained their rationales in two concurring statements, one in which two Commissioners stated their position that the soft money provision did not apply to any non-candidate elections and the other in which the other two Commissioners stated their position that the soft money provision did not apply under the particular facts presented.[82]

In Advisory Opinion 2010-07 (Yes on FAIR), the Commission again addressed whether federal candidates' raising of soft money for ballot initiative activity was in connection with an election for federal office within the meaning of the soft money provision.[83] In this instance, the requestor represented that the ballot initiative committee was not established, financed, maintained, or controlled by a federal candidate but that the initiative would appear on the same ballot as federal candidates.[84] The Commission agreed that Members of Congress could solicit funds outside the Act's limits and source prohibitions prior to the initiative qualifying for the

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81 Advisory Op. 2005-10 (Berman/Doolittle) at 2 ("AO 2005-10").

82 *See* Concurring Opinion of Comm'rs Mason & Toner at 1-2, AO 2005-10 (stating that the soft money provision "applies to federal and non-federal elections for public office, but does not apply to non-candidate political activity, such as ballot initiatives or referenda"); Concurring Statement of Comm'rs McDonald & Weintraub at 1-2, AO 2005-10 (stating that the soft money ban did not apply because, under the factual circumstances, where no federal candidate would be on the ballot and the committee was not established, financed, maintained, or controlled by a federal candidate, the committee's activities were "not in connection with a federal election"); *see also* Dissenting Opinion of Comm'r Thomas at 2, AO 2005-10 ("In my view, the clear phrase 'any election' means just that — *any* election. This broad statutory language includes elections to decide ballot initiatives as well as elections to select public officials.").

83 Advisory Op. 2010-07 (Yes on FAIR) at 2-3 ("AO 2010-07").

84 *Id.* at 2.

ballot but were unable to agree on whether Members could continue to make solicitations outside the limits and prohibitions after the initiative qualified for the ballot.[85]

After this series of advisory opinions, a three-judge district court, in *Bluman v. FEC*, upheld the constitutionality of the foreign national prohibition.[86] In so doing, the court addressed the plaintiffs' arguments that the prohibition was "underinclusive and not narrowly tailored because it permits foreign nationals to make contributions and expenditures related to ballot initiatives."[87] Neither the court, nor the Commission in its briefs, analyzed the correctness of this understanding of the prohibition, instead focusing on whether such underinclusivity would be fatal to the provision's constitutionality.[88] In upholding the constitutionality of the foreign national prohibition with respect to contributions to candidates and parties, express advocacy expenditures, and donations to outside groups to be used for the same purposes,[89] the *Bluman*

[85] *See* AO 2010-07 at 3; Concurring Opinion of Commr's Bauerly, Walther & Weintraub at 4, AO 2010-07 (concluding that "[a]fter an initiative has qualified for a ballot on which Federal candidates will also appear, the activities of a ballot initiative committee are, 'in connection with' an election within the meaning of [52 U.S.C. § 30125]"); Concurring Opinion of Comm'rs Petersen, Hunter & McGahn at 4, AO 2010-07 (concluding that AO 2003-12 has been superseded and that "ballot measures and referenda are not 'elections' within the meaning of the Act").

[86] *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2001), *aff'd*, 565 U.S. 1104 (2012).

[87] *Id.* at 291.

[88] *Id.* (concluding that respecting plaintiffs' underinclusivity argument, "Congress's determination that foreign contributions and expenditures pose a greater risk in relation to candidate elections than such activities pose in relation to ballot initiatives is a sensible one and, in our view, does not undermine the validity of the statutory ban on contributions and expenditures" by foreign nationals to candidates); FEC's Opposition to Plaintiffs' Motion for Summary Judgment and Reply in Support of the Comm'n's Motion to Dismiss at 38-39 & n.17, *Bluman*, 800 F. Supp. 2d 281 (No. 10-1766) (responding to plaintiffs' argument that the statute does not go far enough, noting that the Commission, in AO 2003-12, "indirectly indicated that it might interpret" foreign national provision to apply to ballot initiatives, but had since, in AO 2005-10, "suggested that it does not," and arguing that the "exemption of ballot measures" demonstrated narrow tailoring). *Compare Bluman*, 800 F. Supp. 2d at 284 ("This statute, as we interpret it, does not bar foreign nationals from issue advocacy — that is, speech that does not expressly advocate the election or defeat of a specific candidate.").

[89] *Bluman*, 800 F. Supp. 2d at 291.

court ultimately did not decide whether Congress could prohibit — or had prohibited — foreign nationals from making donations with respect to pure ballot initiatives.[90]

The meaning of "election" in the post-BCRA foreign national prohibition vis-à-vis its application to pure ballot initiative activity was first before the Commission in a post-*Bluman* enforcement matter in MUR 6678 (MindGeek USA, Inc., *et al.*). After discussing the above history of treating or not treating ballot initiative activity as in connection with an election, particularly in the soft money context, the Office of General Counsel reasoned:

> [I]t may not be appropriate to extrapolate Commission analysis under section [30125(e)] to this matter, given that a different statute containing different terms is at issue: section [30125(e)] addresses funds "in connection with any election other than an election for Federal office," while section [30121] focuses on foreign national contributions and donations "in connection with a Federal, State, or local election."[91]

Citing the lack of legislative history directly on the issue as well as the *dicta* in *Bluman* accepting the parties' uncontested notion that the foreign national provision may not extend to ballot initiatives, the Office of General Counsel declined to provide a recommendation regarding whether section 30121 applies to the pure ballot initiative activity in that matter.[92] Instead, the Office of General Counsel recommended that the Commission exercise its prosecutorial discretion and dismiss the allegations as a result of "the lack of clear legal guidance on whether

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[90] *Id.* at 292 (explaining, with respect to plaintiffs' "concern that Congress might bar them from issue advocacy and speaking out on issues of public policy," that "[o]ur holding does not address such questions, and our holding should not be read to support such bans").

[91] First Gen. Counsel's Rpt. ("First GCR") at 18, MUR 6678 (MindGeek USA, Inc., *et al.*).

[92] *Id.*at 19. *But see id.* at 19 n.74 ("Despite the recommendation not to proceed with an enforcement action on these facts, the Commission may still, if it so chooses, use the enforcement matter as a vehicle to provide further public guidance on the underlying legal issue through issuance of a clarifying Factual & Legal Analysis or a unified Statement of Reasons. The Commission may also wish to address the issue of section [30121]'s application to ballot measure activity by regulation or other advance notice.").

the foreign national prohibition extends to pure ballot initiative activity."[93] 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 prohibition.[94]

In the years since it considered MUR 6678, the Commission has not answered the question of whether the foreign national prohibition reaches pure ballot initiative activity. In MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*), the Commission stated that it was unclear from relevant precedent whether the foreign national prohibition applied to ballot initiatives, but assumed, *arguendo*, that it did and declined the opportunity to decide the issue because it found no reason to believe a foreign national violation occurred on the merits where there was no indication the contributed funds originated with a foreign national or that foreign nationals participated in the decision-making process for the contributions.[95]

2. The Commission Dismisses the Allegation That the Jordan Cove Entities Made Prohibited Foreign National Donations to Save Coos Jobs Committee

The Complaint and Oregon campaign finance reports indicate the Jordan Cove entities donated $596,155 to Save Coos Jobs Committee, a ballot measure committee registered with the

[93] *Id.* at 19-20; *see Bluman*, 800 F. Supp. 2d at 281. In recommending dismissing the allegations, the Office of General Counsel also noted 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 further noted that such information would have supported a finding of a violation whether or not the prohibition extends to "pure ballot measure activity." *See* First GCR at 19, MUR 6678.

[94] *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.

[95] F&LA at 6-8, MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*).

state of Oregon.[96] As explained above, the available information suggests that the Jordan Cove entities may be foreign nationals as defined in the Act.[97] Thus, this matter again directly raises the question of whether the foreign national prohibition in section 30121 extends to pure ballot measure activity. Consistent with the breadth of section 30121, as revised by Congress in BCRA, as well as the Commission's precedent, including its recent consideration of the Act's foreign national prohibition, it appears that section 30121's foreign national prohibition applies to Jordan Cove's donations to Save Coos Jobs Committee in connection with Measure 6-162.

However, similar to MUR 6678 (MindGeek USA, Inc., *et al.*), the Commission will not pursue the foreign national allegations for the Jordan Cove entities' donations to Save Coos Jobs Committee as a result of the lack of clear legal guidance on the scope of section 30121.[98] In light of the substantial, if not growing, concern of foreign influence in the process of American democratic self-governance, which the Commission itself has observed and relied upon in consideration of matters raising such concerns,[99] and the lack of additional legal guidance to the regulated community on the scope of section 30121 in the six years since the Commission's consideration of MUR 6678, the Commission now provides a more conclusive determination on the application of the foreign national prohibition to ballot measure activity like Jordan Cove's donations to Save Coos Jobs Committee in this matter.

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96 Compl. at 2; *see also id.*, Attachs. 1-2; Jordan Cove OreStar Search; *supra* note 11.

97 *See supra* Section III.A.1.

98 *See* First GCR at 19-20, MUR 6678 (MindGeek USA, Inc., *et al.*).

99 *See, e.g.*, Minutes of Open Meeting of Federal Election Commission at 13 (Sept. 16, 2016) (directing the Office of General Counsel to prioritize cases "involving allegations of foreign influence"); Responses to Questions from the Committee on House Administration, Fed. Election Comm'n at 41-42 (May 1, 2019); *see also* 164 CONG. REC. H2045, H2520 (Mar. 22, 2018) [hereinafter Explanatory Statement to Consolidated Appropriations Act, 2018] ("Preserving the integrity of elections, and protecting them from undue foreign influence, is an important function of government at all levels.").

As discussed below, consistent with the breadth of section 30121, as revised by Congress in BCRA, as well as the Commission's precedent, including its recent consideration of the Act's foreign national prohibition, it appears that section 30121 applies to Jordan Cove's foreign spending in connection with Measure 6-162. Nevertheless, the Commission again exercises prosecutorial discretion and dismisses the allegations as to Jordan Cove's donations to Save Coos Jobs Committee so that this analysis may be applied only prospectively.

The Act's general definition of "election" in section 30101(1) makes reference to different kinds of elections including "general, special, primary, or runoff election[s]," but does not, by its own terms, exclude non-candidate based elections.[100] Thus, that general definition does not on its face resolve whether a state ballot measure is a "Federal, State, or local election" for purposes of the foreign national prohibition in section 30121.[101] Similarly, the Commission's general regulatory definition of "election" in 11 C.F.R. § 100.2, which, as discussed above, is limited to candidate-based elections, or nominations for election, *to federal office*,[102] does not resolve the meaning of "election" in the foreign national prohibition, which expressly extends beyond the federal context addressed in section 100.2.

In the absence of such specificity, the word "election" should be given its plain and ordinary meaning in the context of "the language and design of the statute as a whole."[103] The

100 52 U.S.C. § 30101(1)(A).

101 *Id.* § 30121.

102 11 C.F.R. § 100.2; *see supra* Section III.B.1.

103 *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted); *see also FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme") (internal quotation omitted); *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning."); *United States v. Palmer*, 854 F.3d 39, 47 (D.C. Cir. 2017) ("Congress is presumed, absent indication to the contrary and there is none here, to use words in their ordinary meaning."); *Shays v. FEC*, 414 F.3d 76, 105 (D.C. Cir. 2005) ("The meaning—or ambiguity—of certain

Random House Dictionary of the English Language defines "election" as "the selection of a person or persons for office by vote" and "a public vote upon a proposition submitted."[104] The inclusion of the non-candidate meaning of "election," *i.e.*, ballot measures, within the ordinary meaning of "election" substantially predates BCRA.[105] Similarly, other provisions of federal law that, like the foreign national prohibition, regulate not only federal but also state and local elections, have been interpreted using this ordinary meaning and thus including ballot measures in addition to candidate elections.[106] In Oregon, the state in which this matter arises, the Oregon code defines "election" only once in its statutory title on elections, for purposes of the "administration of election laws" chapter, as "any election held within this state."[107]

The BCRA revisions to the Act's foreign national prohibition indicate that Congress intended the prohibition to be applied in accordance with this ordinary meaning. Previously, the Act's foreign national provision applied only to contributions "in connection with *an election to any political office* or in connection with any primary election, convention, or caucus held *to*

words or phrases may only become evident when placed in context." (citing Webster's Third New International Dictionary to determine ordinary meaning of "ask")).

[104] *Election*, RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED (2d ed. 1987).

[105] *See, e.g.*, *Burson v. Freeman*, 504 U.S. 191, 205 (1992) (tracing history of Tennessee candidate and ballot measure polling place regulation, upheld as constitutional by the Court, to 1897 act criminalizing "the use of bribery, violence, or intimidation in order to induce a person to vote or refrain from voting for any particular person *or measure*") (emphasis added).

[106] *See* Interpretive Guidelines, 41 Fed. Reg. 29,998, 29,999 (1976) (defining "elections" to which Dept. of Justice will apply Voting Rights Act Language Minority Group provisions, now codified at 52 U.S.C. § 10301 *et seq*, as "any type of election, whether it is a primary, general or special election . . . includ[ing] elections of officers as well as elections regarding such matters as bond issues, constitutional amendments and referendums"); 28 C.F.R. § 51.17 (including "an initiative, referendum, or recall election" in term "special election" subject to Voting Rights Act pre-clearance requirements).

[107] ORE. REV. STAT. § 246.012(4) (2005). The Oregon code chapter on ballot initiatives and referenda defines "[m]easure" as certain items "submitted to the people for their approval or rejection at election . . . ." *Id.* § 250.005(3).

select candidates for any political office."[108] In BCRA, however, Congress amended the text of the foreign national provision to remove the candidate-focused references, including the references to "political office." In their place, Congress prohibited foreign national contributions or donations "in connection with a Federal, State, or local election."[109] This change in statutory language indicates that Congress intended that the prohibition apply broadly and no longer be limited to candidate-focused elections. "When Congress acts to amend a statute," the Supreme Court has stated that it "presume[s Congress] intends its amendment to have real and substantial effect."[110]

The applicability of the ordinary meaning of "elections," in the context of the foreign national prohibition, is reinforced by Congress's treatment of other sections of the Act that were revised by BCRA. For example, Congress, in BCRA, amended the section of the Act prohibiting contributions by national banks (now codified at 52 U.S.C. § 30118), a provision that has long applied to state and local, as well as federal, elections to "political office."[111] Despite amending other aspects of this prohibition, Congress retained the "to any political office" limitation in the scope of "elections" to which the national bank prohibition applies. Thus, in the same set of revisions to the Act, Congress chose to retain the limiting "political office" language in some

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[108] 2 U.S.C. § 441e(a) (2000) (emphasis added).

[109] 52 U.S.C. § 30121(a)(1)(A).

[110] *Stone v. INS*, 514 U.S. 386, 397 (1995); *see also Russello v. United States*, 464 U.S. 16, 23-24 (1983) ("Where Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended.").

[111] BCRA § 203, 116 Stat. at 91-92 (codified at 2 U.S.C. § 441b (now 52 U.S.C. § 30118)) ("It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office . . . ."). The national bank prohibition, like the foreign national prohibition, applies not only to federal but also to state and local elections but only in the case of such elections for political office. *See* Advisory Op. 1987-14 (First Nat'l Bank of Shreveport) at 1 ("[A] national bank is prohibited from making a contribution or expenditure in connection with any election to any political office, including local, state or Federal offices.").

places but remove it in others. "When Congress amends one statutory provision but not another, it is presumed to have acted intentionally."[112] The BCRA changes to the statutory language of these two prohibitions — removing the limiting "political office" language in the foreign national provision while leaving it in the national bank provision — suggest that Congress intended the foreign national prohibition to apply not only to state and local candidate elections, but also to non-candidate elections such as ballot measures as well.

This understanding is consistent with Congress's other amendments, in BCRA, to expand the foreign national prohibition. For instance, BCRA expanded the scope of the foreign national prohibition beyond "contributions," to include "donations" in order to make clear that foreign nationals could not evade the prohibition by targeting state and local elections.[113] The BCRA amendments further added prohibitions against presidential inaugural committees accepting foreign national donations,[114] instructed the United States Sentencing Commission to provide guidelines which include a sentencing enhancement for criminal violations of the Act which involve "a contribution, donation, or expenditure from a foreign source,"[115] and added significant prohibitions and limitations on candidate and party committees' receipt, solicitation,

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112 *Gross v. FBL Fin. Servs., Inc*., 557 U.S. 167, 174 (2009).

113 BCRA § 303, 116 Stat. 81, 96; *see also* Prohibitions E&J, 67 Fed. Reg. at 69,944 (explaining that, through the addition of "donation," and the removal of references to "candidates" and "political office," "Congress left no doubt as to its intention to prohibit foreign national support of . . . foreign national activities in connection with all Federal, State, and local elections"); 148 CONG. REC. S1991-1997 (daily ed. Mar. 18, 2002) (statement of Sen. Feingold); 148 CONG. REC. S2774 (daily ed. Mar. 22, 2002) (statement of Sen. Lieberman).

114 BCRA § 308, 116 Stat. at 103-04 (codified at 36 U.S.C. § 510) (extending foreign national prohibition to non-election context as applied to inaugural committees). Prior to these BCRA amendments, the Commission had concluded that funds received and expended by inaugural committees are neither "contributions" nor "expenditures" because they "are used to finance inaugural activities rather than any Federal election." Advisory Op. 1980-144 (Presidential Inaugural Committee – 1981) at 2.

115 BCRA § 314, 116 Stat. at 107.

donation, and transfer of soft money, including from foreign nationals.[116] These changes reflect Congress's multifaceted effort to "prevent[] foreign influence over the U.S. political process."[117]

Further, in its explanation and justification of the post-BCRA foreign national regulations, the Commission stated that "[a]s indicated by the title of section 303 of BCRA, 'Strengthening Foreign Money Ban,' Congress amended [52 U.S.C. § 30121] to further delineate and expand the ban on contributions, donations, and other things of value by foreign nationals."[118] This expansive purpose, seen in context of Congress's removal of limiting language as to the elections within the scope of some sections of the Act but retaining it in others, its addition of further prohibitions regarding foreign national activity in American elections at all levels, and its extension of the foreign national prohibition to the non-electoral context of inaugurations, all taken together, support the conclusion that "election" for purposes of section 30121 includes ballot measure activity.[119]

That understanding of "election" in the foreign national prohibition is not only consistent with the ordinary meaning of the term and Congress's broad intent, in the context of BCRA, to prevent foreign influence over the U.S. political process, but it is also consistent with the Commission's past conclusions. As noted above, the Commission explained in its explanation and justification that Congress's deletion of the phrase "election to any public office" from the Act's foreign national provision, and the substitution of the "broader phrase 'Federal, State, or local election,'" was meant to clarify congressional intent "to prohibit foreign national support of

116 BCRA § 101, 116 Stat. at 82-86.

117 *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2001), *aff'd*, 565 U.S. 1104 (2012).

118 Prohibitions E&J, 67 Fed. Reg. at 69,440.

119 *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 350 (1943) ("Courts will construe the details of an act in conformity with its dominating general purpose.").

candidates and their committees and political organizations and foreign national activities in connection with all Federal, State, and local elections."[120] Moreover, in AO 2003-37, the Commission concluded that these changes meant not only that the Act now expressly covered non-federal elections, but also that "this prohibition is not limited to elections for political office."[121]

Consistent with the intent behind Congress's BCRA amendments to the foreign national prohibition in the Act, the Commission has interpreted and applied the foreign national prohibition broadly. For instance, in Advisory Opinion 2010-14 (Democratic Senatorial Campaign Committee), the Commission approved of a national party committee's pre-election use of a recount and election-contest fund, but reiterated that such a fund, though it does not fund "election" activities, was subject to the foreign national prohibition and could not accept contributions from foreign nationals.[122] The application of the foreign national prohibition to ballot measure activity similarly furthers the Act's purpose to protect "activities intimately related to the process of democratic self-governance."[123]

In its Response to the Complaint, Jordan Cove's only reference to the issue of ballot measure activity is the assertion that the Complaint addresses "facially lawful non[-]federal political contributions, many of which were to a 2017 ballot measure committee."[124]

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120 Prohibitions E&J, 67 Fed. Reg. at 69,944.

121 AO 2003-37 at 20; *accord* AO 2003-12 at 5-6 (concluding that soft money provisions are "not limited to elections for a political office"); *see supra* Section III.B.1.

122 Advisory Op. 2010-14 (Democratic Senatorial Campaign Committee) at 2.

123 *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2001) (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984)) (internal quotations omitted), *aff'd*, 565 U.S. 1104 (2012).

124 Jordan Cove Resp. at 3.

BCRA's changes to the Act's foreign national provision broadened the application of that provision to reach ballot measure activity such as the Jordan Cove entities' donations to Save Coos Jobs Committee. As recognized by both Congress and the Commission, years after the passage of BCRA, the threat of foreign influence in American elections remains at least a substantial, if not a growing, concern.[125] The Commission has informed Congress that it continues to enforce the foreign national provision and prioritize cases involving allegations of foreign influence.[126] Accordingly, based on Congress's changes to the foreign national prohibition in BCRA and more recent Commission precedent with respect to that provision, it appears that 52 U.S.C. § 30121 applies to the Jordan Cove entities' donations to Save Coos Jobs Committee in this matter.

Nonetheless, in light of the state of the Commission's guidance on this question, including its split on whether to pursue the allegations in MUR 6678, there are sound prudential reasons to dismiss the allegation that Jordan Cove entities violated the foreign national prohibition with regards to donations exclusively related to pure ballot measure activity, as a matter of prosecutorial discretion, and apply section 30121 to ballot measure activity only prospectively.[127] Thus, the Commission dismisses the allegations that Pembina Pipeline

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125 *See supra* note 99.

126 *See* Letter from Fed. Election Comm'n to House Comm. on Appropriations & Senate Comm. on Appropriations at 1, 17-18 (Sept. 18, 2018) (reporting on Commission's role "in enforcing the foreign national prohibition, including how it identifies foreign contributions to elections, and what it plans to do in the future" as required by Explanatory Statement to Consolidated Appropriations Act, 2018); Explanatory Statement to Consolidated Appropriations Act, 2018, 164 CONG. REC. at H2520.

127 *See* First GCR at 16-20, MUR 6678 (MindGeek USA, Inc., *et al*.); Certification (Mar. 18, 2015), MUR 6678; *see also FCC v. Fox Television Stations, Inc*., 567 U.S. 239, 253 (2012) ("A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required."); *cf.* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) ("The Commission has previously used the finding 'reason to believe, but take no further action' in cases where the Commission finds that there is a basis for investigating the matter or attempting conciliation, but the Commission declines to proceed for prudential reasons . . . . [T]he Commission

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.[128]

believes that resolving these matters through dismissal or dismissal with admonishment more clearly conveys the Commission's intentions and avoids possible confusion about the meaning of a reason to believe finding.").

[128] *See Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Knute for Governor MUR 7512

I. INTRODUCTION

The Complaint alleges that Knute for Governor, an Oregon state candidate committee, accepted or received foreign national donations from Pembina Pipeline Corporation, a Canadian corporation, its U.S. domestic subsidiaries 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" or "Jordan Cove entities"), and Jordan Cove LNG LLC PAC ("Jordan Cove PAC"), an associated separate segregated fund ("SSF"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.

For the reasons discussed below, the Commission dismisses the allegation that Knute for Governor 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.

II. FACTUAL BACKGROUND

Jordan Cove is a family of corporate entities focused on construction and administration of a liquefied natural gas ("LNG") terminal in Coos Bay, Oregon, and the related Pacific Connector Gas Pipeline.[1] Pembina Pipeline Corporation is a Canadian corporation and the ultimate parent corporation of Fort Chicago Holdings, II US, LLC, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P.[2] Fort Chicago Holdings, II US, LLC,

[1] Compl. at 2-3 (Oct. 12, 2018). The Jordan Cove LNG export terminal is owned by Jordan Cove Energy Project L.P. *Id.*, Attach. 8 ¶ 1.

[2] *Id.* at 5, Attach. 7 (attaching Canadian Press, *Canadian Firm Applies to Build $10-Billion Jordan Cove LNG Project in Oregon*, FIN. POST (Sept. 22, 2017), https://financialpost.com/pmn/business-pmn/canadian-firm-applies-to-build-10-billion-jordan-cove-lng-project-in-oregon); *id.*, Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram). Veresen Inc. was the original foreign parent corporation of the Jordan Cove corporate family,

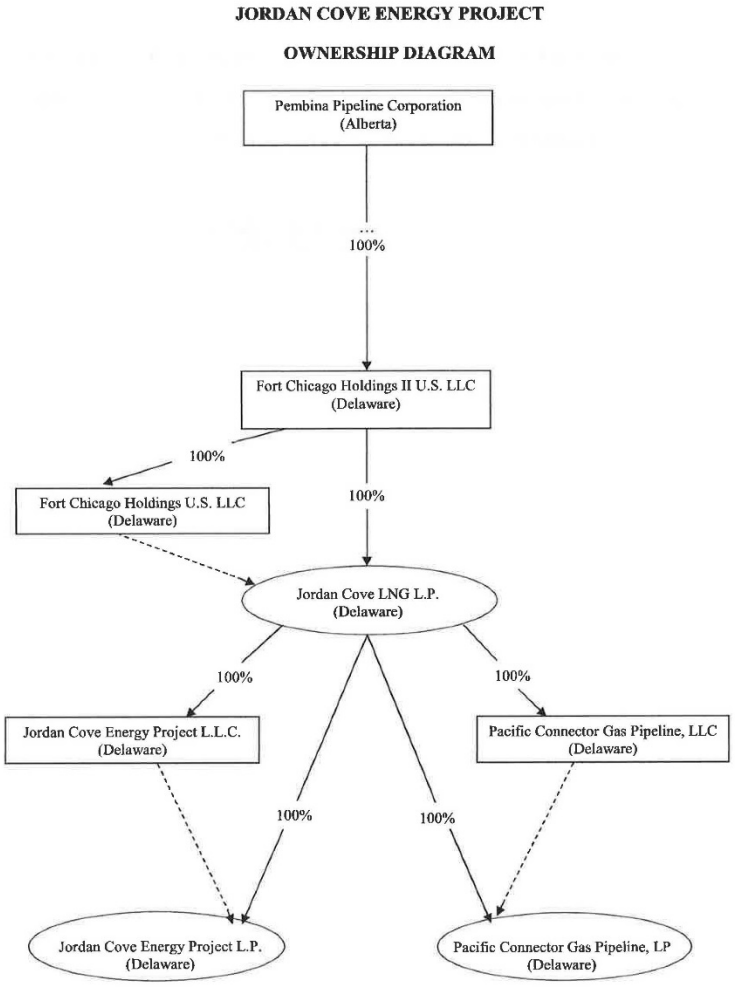
Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P., are domestic subsidiaries registered in the state of Delaware.[3] Jordan Cove PAC is an SSF connected with Pembina U.S. Corporation that registered with the Commission on October 21, 2015.[4] The Jordan Cove corporate family is partially portrayed in the diagram below:[5]

but Pembina Pipeline Corporation purchased Veresen in 2017 in a deal worth $9.7 billion. Compl. at 5-6, Attachs. 3, 9-10.

[3] *See* Am. Compl. at 1, Attach. 1 (Nov. 5, 2018) (attaching Oregon Corporation Division Annual Reports for Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. showing Delaware domicile); Compl., Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram).

[4] Jordan Cove LNG LLC PAC, Statement of Organization (Oct. 12, 2015), https://docquery.fec.gov/pdf/870/201510210300029870/201510210300029870.pdf (listing Veresen U.S. Power Inc. as connected organization); Jordan Cove LNG LLC PAC, Amended Statement of Organization (July 8, 2020), https://docquery.fec.gov/pdf/557/202007089244369557/202007089244369557.pdf (reflecting Pembina U.S. Corporation as connected organization). Jordan Cove LNG, LLC, identified Pembina U.S. Corporation, apparently another domestic subsidiary of Pembina Pipeline Corporation, as its sole member in a 2018 filing with the Oregon Secretary of State. *See* Am. Compl., Attach. 1.

[5] *See* Compl., Attach. 8 ¶ 24; *id.*, Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram); Am. Compl. at 1, Attach. 1. The Complaint attached this diagram that was originally included in one of Jordan Cove's submissions to the Federal Energy Regulatory Commission related to its application for the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline projects. Compl., Attach. 10.



The Complaint alleges that the Jordan Cove entities are foreign corporations; it acknowledges that the donating entities are registered in Delaware but emphasizes that these entities are wholly owned by Canadian corporation Pembina Pipeline Corporation and were previously owned by another Canadian corporation Veresen, Inc.[6] The Complaint alleges that Jordan Cove was "run by foreign individuals" and therefore made prohibited foreign national donations, and Knute for Governor violated the Act by accepting or receiving prohibited foreign

[6] Compl. at 5-6; *see id.*, Attach. 7.

national donations.[7] Knute for Governor asserts that it never received any donations from Jordan Cove.[8]

III. LEGAL ANALYSIS

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.[9] The Act's definition of "foreign national" includes any 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."[10]

In the Bipartisan Campaign Reform Act of 2002 ("BCRA"),[11] Congress expanded the Act's foreign national prohibition to expressly prohibit "donations" in addition to contributions. It also codified the Commission's longstanding interpretation of the prohibition, expressly

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

8 Knute for Governor, *et al.*, Resp. (Dec. 21, 2018).

9 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (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* 565 U.S. 1104 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

10 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

11 Pub. Law 107-155, 116 Stat. 81 (Mar. 27, 2002).

applying it to state and local elections as well as to federal elections.[12]

Commission regulations implementing the Act's foreign national prohibition provide:

> A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation . . . with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.[13]

The Commission has found that not all participation by foreign nationals in the election-related activities of others will violate the Act. In MUR 6959, for example, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, such as online research and translations, during a one month-long internship with a party committee.[14] Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to perform at a campaign fundraiser and agreeing to let the political committee use his name and likeness in its emails promoting the concert and soliciting support, where the record did not

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[12] *See* 52 U.S.C. § 30121(a); Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,940 (Nov. 19, 2002) ("Prohibitions E&J"); *see also* Advisory Op. 1999-28 (Bacardi-Martini USA) at 2 (quoting *United States v. Kanchanalak*, 192 F.3d 1037 (D.C. Cir. 1999) (recognizing that the Commission had "consistently interpreted . . . since 1976" the foreign national prohibition to extend to state and local elections)).

[13] 11 C.F.R. § 110.20(i). The Commission has explained that this provision also bars foreign nationals from "involvement in the management of a political committee." Prohibitions E&J, 67 Fed. Reg. at 69,946; *see also* Advisory Op. 2004-26 (Weller) at 2-3 (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees' activities as a volunteer without making a prohibited contribution, she "must not participate in [the candidate's] decisions regarding his campaign activities" and "must refrain from managing or participating in the decisions of the Committees.").

[14] Factual & Legal Analysis ("F&LA") at 4-5, MUR 6959 (Cindy Nava, *et al.*) (noting that the available information, which was based on two press reports that did not detail the foreign national's activities, did not indicate that the foreign national participated in any political committee's decision-making process). The Commission also found that a $3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

indicate that the foreign national had been involved in the committee's decision-making process in connection with the making of contributions, donations, expenditures, or disbursements.[15] By contrast, 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 in the management of its separate segregated fund,[16] 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.[17]

The regulations also provide that no person shall "knowingly provide substantial assistance" in the solicitation, making, acceptance, or receipt of a prohibited foreign national contribution or donation, or the making of a prohibited foreign national expenditure, independent expenditure, or disbursement.[18] The Act further prohibits persons from soliciting, accepting, or

[15] F&LA at 6-9, MURs 5987, 5995, 6015 (Sir Elton John); *see also* F&LA at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller) at 2-3.

[16] *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). The Commission has specifically determined that "no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions." Advisory Op. 1989-20 (Kuilima) at 2.

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

[18] 11 C.F.R. § 110.20(h). The Commission has explained that substantial assistance "means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction." Prohibitions E&J, 67 Fed. Reg. at 66,945. Moreover, substantial assistance "covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations." *Id.*

receiving a contribution or donation from a foreign national.[19]

Neither the Complaints nor Oregon campaign finance reports indicate that Knute for Governor accepted or received any donations directly from one or more of the Jordan Cove entities or Jordan Cove PAC.[20] It appears that the Amended Complaint's allegation against Knute for Governor is premised on the Jordan Cove entities' and Jordan Cove PAC's donations to ChamberPAC, which itself made a donation to Knute for Governor.[21] Knute for Governor asserts that it never received any donations from Jordan Cove, which Oregon campaign finance reports appear to confirm.[22] There is no information available to indicate that the Jordan Cove donations specifically funded ChamberPAC's donation to Knute for Governor, were made for that purpose, or, assuming, *arguendo*, there was such evidence, no information that Knute for Governor was aware that the donation derived from Jordan Cove. Therefore, the Commission dismisses the allegation that Knute for Governor 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.

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[19] 52 U.S.C. § 30121(a)(2). The Commission's regulations employ a "knowingly" standard. 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. *Id.* § 110.20(a)(4).

[20] *See* Compl., Attachs. 1-2; Am. Compl., Attach. 3; *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 "Contributor/Payee Information" field for "Jordan Cove") (last visited May 5, 2021).

[21] *See* Am. Compl. at 1, Attach. 3.

[22] Knute for Governor, *et al.*, Resp.; *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 "Knute for Governor" and "Contributor/Payee Information" field for "Jordan Cove", returning zero results) (last visited May 5, 2021).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Save Coos Jobs Committee MUR 7512

I. INTRODUCTION

The Complaint alleges that Save Coos Jobs Committee, a ballot measure committee in Oregon, accepted or received foreign national donations from Pembina Pipeline Corporation, a Canadian corporation, and its U.S. domestic subsidiaries 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" or "Jordan Cove entities"), in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.

For the reasons discussed below, 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.

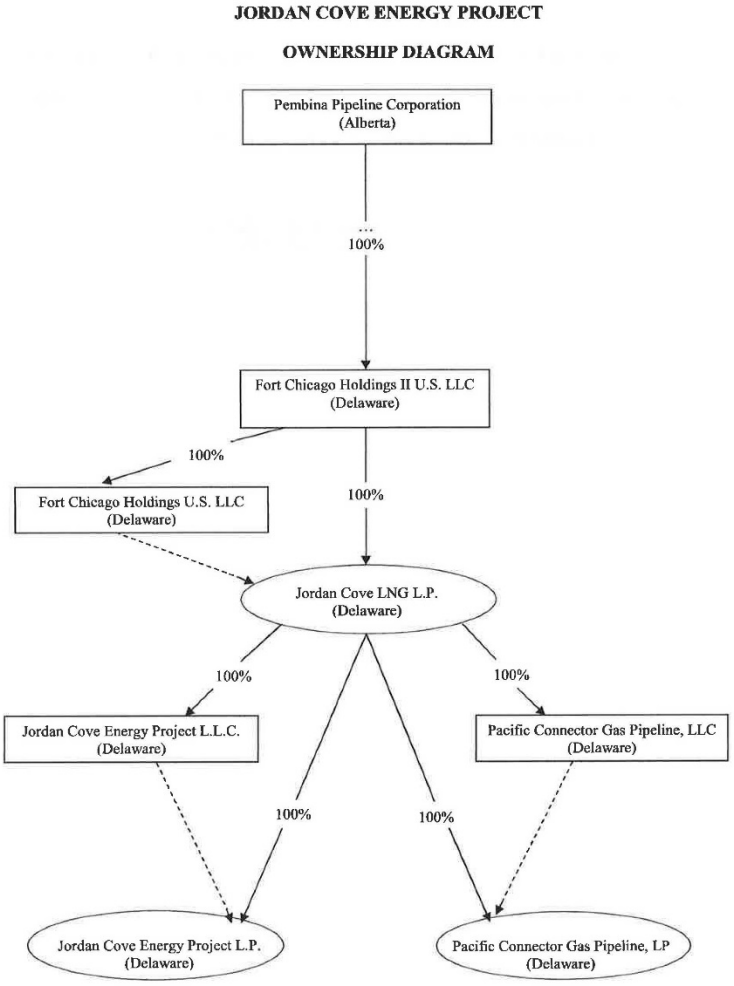
II. FACTUAL BACKGROUND

Jordan Cove is a family of corporate entities focused on construction and administration of a liquefied natural gas ("LNG") terminal in Coos Bay, Oregon, and the related Pacific Connector Gas Pipeline.[1] Pembina Pipeline Corporation is a Canadian corporation and the ultimate parent corporation of Fort Chicago Holdings, II US, LLC, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P.[2] Fort Chicago Holdings, II US, LLC,

[1] Compl. at 2-3 (Oct. 12, 2018). The Jordan Cove LNG export terminal is owned by Jordan Cove Energy Project L.P. *Id.*, Attach. 8 ¶ 1.

[2] *Id.* at 5, Attach. 7 (attaching Canadian Press, *Canadian Firm Applies to Build $10-Billion Jordan Cove LNG Project in Oregon*, FIN. POST (Sept. 22, 2017) [hereinafter Canadian Press Article], https://financialpost.com/pmn/business-pmn/canadian-firm-applies-to-build-10-billion-jordan-cove-lng-project-in-oregon); *id.*, Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram). Veresen Inc. was the original foreign parent corporation of the Jordan Cove corporate family, but Pembina Pipeline Corporation purchased Veresen in 2017 in a deal worth $9.7 billion. Compl. at 5-6, Attachs. 3, 9-10.

Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P., are domestic subsidiaries registered in the state of Delaware.[3] The Jordan Cove corporate family is partially portrayed in the diagram below:[4]



[3] *See* Am. Compl. at 1, Attach. 1 (Nov. 5, 2018) (attaching Oregon Corporation Division Annual Reports for Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. showing Delaware domicile); Compl., Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram).

[4] *See* Compl., Attach. 8 ¶ 24; *id.*, Attach. 10 at 5 (Jordan Cove Energy Project Ownership Diagram); Am. Compl. at 1, Attach. 1. The Complaint attached this diagram that was originally included in one of Jordan Cove's submissions to the Federal Energy Regulatory Commission ("FERC") related to its application for the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline projects. Compl., Attach. 10.

Critics of the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline sponsored a ballot measure ("Measure 6-162") that appeared on the May 16, 2017, ballot in Coos County, Oregon, which allegedly would have effectively banned the Jordan Cove LNG project.[5] Two state-registered ballot measure committees were associated with Measure 6-162: Yes on Measure 6-162, in support thereof, and Save Coos Jobs Committee, in opposition thereto.[6]

The Complaint and the Amended Complaint identify $596,155 in donations made by the Jordan Cove entities[7] to Save Coos Jobs Committee.[8]

[5] Compl. at 2, Attach. 3. Measure 6-162 was defeated in the election. *See* FINAL CERTIFIED CANVASS OF VOTES, SPECIAL DISTRICT ELECTION, MAY 16, 2017 at 130, COOS COUNTY, OREGON ELECTIONS OFFICE (June 2, 2017), http://www.co.coos.or.us/Portals/0/County%20Clerk/Elections/Election%202017/canvassofvotes.pdf?ver=2017-06-02-102955-237 (showing 75.85% voting against Measure 6-162).

[6] 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; Yes on Measure 6-162, Amended Statement of Organization for Political Action Committee (May 5, 2017), https://secure.sos.state.or.us/orestar/sooDetail.do?sooRsn=82119&OWASP_CSRFTOKEN=21VM-2P57-PDSR-5R96-8P6W-XMKR-ZT57-5C8L. In Oregon, committees registered as ballot measure committees are not permitted to contribute to candidates, political parties, or other committees, and must re-register as miscellaneous political committees if they desire to do so. 2018 CAMPAIGN FINANCE MANUAL, OR. SEC'Y OF STATE 81 (June 17, 2018).

[7] The Complaint includes screenshots of the Oregon Secretary of State Election Division's campaign finance system ("OreStar"). Compl. at 1-2, Attachs. 1-2; Am. Compl. at 1-2, Attachs. 2-3; *see Search for Campaign Finance Information*, OR. SEC'Y OF STATE, https://sos.oregon.gov/elections/Pages/campaignfinance.aspx. The Amended Complaint attached a screenshot that compiles all of Jordan Cove's donations as reported through Orestar. Am. Compl., Attach. 2; *see also 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 "Contributor/Payee Information" field for "Jordan Cove") (last visited May 5, 2021) [hereinafter Jordan Cove OreStar Search]. OreStar lists some of the relevant donations as associated with a number of variations on the Jordan Cove entities' official names: "Jordan Cove," "Jordan Cove & Pacific Connector," "Jordan Cove Energy," "Jordan Cove Energy Project," "Jordan Cove Enervendor Pm," and "Jordan Cove LNG." *See* Jordan Cove OreStar Search. For purposes of this analysis, the Commission considers these donations of the Jordan Cove entities. Many of the entries for these donations disclosed addresses that are identical to multiple other Jordan Cove entities' disclosed addresses. *See id.*

[8] Compl. at 2; *see id.*, Attachs. 1-2. These donations by "Jordan Cove LNG" ($265,155) and Jordan Cove Energy Project L.P. ($331,000) accounted for approximately 97% of the $615,155 Save Coos Jobs Committee received in donations for the May 2017 election. *OreStar Transactions: Filtered Results*, ORE. SEC'Y OF STATE, https://secure.sos.state.or.us/orestar/cneSearch.do?cneSearchButtonName=search&cneSearchFilerCommitteeId=18452&OWASP_CSRFTOKEN=V42M-8WK8-STK4-KQBX-7X8O-78CB-HUHM-C6F0 (last visited May 5, 2021) (showing cash and in-kind contributions to Save Coos Jobs Committee).

The Complaint alleges that the Jordan Cove entities are foreign corporations; it acknowledges that the donating entities are registered in Delaware but emphasizes that these entities are wholly owned by Canadian corporation Pembina Pipeline Corporation and were previously owned by another Canadian corporation Veresen, Inc.[9] The Complaint alleges that Jordan Cove was "run by foreign individuals" and therefore made prohibited foreign national donations, and Save Coos Jobs Committee violated the Act by accepting or receiving prohibited foreign national donations.[10]

Save Coos Jobs Committee asserts that the Jordan Cove entities that made the donations are all domestic subsidiaries, registered in the United States, of a foreign parent and are permitted to make the donations at issue.[11] Furthermore, it 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.[12]

III. LEGAL ANALYSIS

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,

[9] Compl. at 5-6; *see id.*, Attach. 7.

[10] *Id.* at 1-2, 5.

[11] Save Coos Jobs Comm., *et al.*, Resp. at 9-10 (Dec. 19, 2018) (citing Jordan Cove entities' corporate filings).

[12] *Id.* at 1, 5. The letter provided to Save Coos Jobs Committee by Jordan Cove 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." *Id.* at 5. The letter was dated December 4, 2018, after the Complaint was filed and Save Coos Jobs Committee was first notified by the Commission on October 19, 2018. *See id.*

independent expenditure, or disbursement, in connection with a federal, state, or local election.[13] The Act's definition of "foreign national" includes any 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."[14]

In the Bipartisan Campaign Reform Act of 2002 ("BCRA"),[15] Congress expanded the Act's foreign national prohibition to expressly prohibit "donations" in addition to contributions. It also codified the Commission's longstanding interpretation of the prohibition, expressly applying it to state and local elections as well as to federal elections.[16]

Commission regulations implementing the Act's foreign national prohibition provide:

> A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation . . . with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.[17]

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[13] 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (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* 565 U.S. 1104 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

[14] 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

[15] Pub. Law 107-155, 116 Stat. 81 (Mar. 27, 2002).

[16] *See* 52 U.S.C. § 30121(a); Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,940 (Nov. 19, 2002) ("Prohibitions E&J"); *see also* Advisory Op. 1999-28 (Bacardi-Martini USA) at 2 (quoting *United States v. Kanchanalak*, 192 F.3d 1037 (D.C. Cir. 1999) (recognizing that the Commission had "consistently interpreted . . . since 1976" the foreign national prohibition to extend to state and local elections)).

[17] 11 C.F.R. § 110.20(i). The Commission has explained that this provision also bars foreign nationals from "involvement in the management of a political committee." Prohibitions E&J, 67 Fed. Reg. at 69,946; *see also* Advisory Op. 2004-26 (Weller) at 2-3 (noting that foreign national prohibition at section 110.20(i) is broad and

The Commission has found that not all participation by foreign nationals in the election-related activities of others will violate the Act. In MUR 6959, for example, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, such as online research and translations, during a one month-long internship with a party committee.[18] Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to perform at a campaign fundraiser and agreeing to let the political committee use his name and likeness in its emails promoting the concert and soliciting support, where the record did not indicate that the foreign national had been involved in the committee's decision-making process in connection with the making of contributions, donations, expenditures, or disbursements.[19] By contrast, 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

concluding that, while a foreign national fiancé of the candidate could participate in committees' activities as a volunteer without making a prohibited contribution, she "must not participate in [the candidate's] decisions regarding his campaign activities" and "must refrain from managing or participating in the decisions of the Committees.").

[18] Factual & Legal Analysis ("F&LA") at 4-5, MUR 6959 (Cindy Nava, *et al.*) (noting that the available information, which was based on two press reports that did not detail the foreign national's activities, did not indicate that the foreign national participated in any political committee's decision-making process). The Commission also found that a $3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

[19] F&LA at 6-9, MURs 5987, 5995, 6015 (Sir Elton John); *see also* F&LA at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller) at 2-3.

decisions to make contributions or in the management of its separate segregated fund,[20] 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.[21]

The regulations also provide that no person shall "knowingly provide substantial assistance" in the solicitation, making, acceptance, or receipt of a prohibited foreign national contribution or donation, or the making of a prohibited foreign national expenditure, independent expenditure, or disbursement.[22] The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.[23]

A. Alleged Foreign National Donations to Save Coos Jobs Committee

The Complaint and Oregon campaign finance reports indicate that Jordan Cove entities donated $596,155 to Save Coos Jobs Committee, a ballot measure committee registered with the

[20] *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). The Commission has specifically determined that "no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions." Advisory Op. 1989-20 (Kuilima) at 2.

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

[22] 11 C.F.R. § 110.20(h). The Commission has explained that substantial assistance "means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction." Prohibitions E&J, 67 Fed. Reg. at 66,945. Moreover, substantial assistance "covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations." *Id.*

[23] 52 U.S.C. § 30121(a)(2). The Commission's regulations employ a "knowingly" standard. 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. *Id.* § 110.20(a)(4).

state of Oregon.[24] Each of the donating Jordan Cove entities — Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P. — is a domestic subsidiary of Pembina Pipeline Corporation, which as a Canadian corporation is a foreign national.[25] As set forth below, the available information raises a reasonable inference that some or all of the donations made by the Jordan Cove entities were made with foreign national officers' or directors' participation in the decision-making process, or were either funded by their foreign parent or were made at the foreign parent's direction.

The attendant circumstances suggest that the donating Jordan Cove entities may have relied upon funding, subsidies, and/or loans from its foreign parents Veresen or Pembina to finance the donations. According to Jordan Cove's own reported estimates, the LNG project will cost $10 billion — up from initial estimates of $7.5 billion.[26] As of 2018, Pembina was budgeting and spending approximately $10 million per month on the project in permitting, development costs, and other expenses.[27] As of April 22, 2021, Jordan Cove had not yet begun construction of the LNG terminal in Coos Bay, Oregon, and paused development of the project

[24] *See* Compl., Attachs. 1-2; Jordan Cove OreStar Search; *supra* note 8.

[25] *See supra* note 3.

[26] Compl., Attach. 7 (attaching Canadian Press Article).

[27] *Id.* at 7, Attach. 5 (attaching Dennis Webb, *Geopolitical Case for Jordan Cove*, DAILY SENTINEL (Sept. 12, 2018), https://www.gjsentinel.com/news/western_colorado/geopolitical-case-for-jordan-cove/article_cd728716-b64a-11e8-9ed7-10604b9f7e7c.html); *id.*, Attach. 15 (attaching Ted Sickinger, *Jordan Cove LNG Campaign Contributions Raise Questions*, OREGONIAN (Jan. 29, 2019) [hereinafter Oregonian Article], https://www.oregonlive.com/politics/2018/09/jordan_cove_campaigns_contribu.html (quoting Jordan Cove spokesperson)).

as a result of certain denials of required regulatory authorizations.[28]

The record does not contain any information that the donating Jordan Cove entities were conducting active business unrelated to the Jordan Cove LNG pipeline and facility at the time of the donations nor since.[29] Importantly, here, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P., do not have any evident domestic revenue stream to account for their combined $596,155 in donations to Save Coos Jobs Committee: their primary

[28] *See* Motion of Respondent-Intervenors to Suspend Merits Briefing Schedule & Hold Cases in Abeyance at 4, *Evans v. FERC*, No. 20-1161 (D.C. Cir. Apr. 22, 2021) [hereinafter Jordan Cove Abeyance Motion]. On March 19, 2020, FERC authorized the Jordan Cove LNG terminal and Pacific Connector Gas Pipeline project, subject to a number of additional requirements, including certain regulatory approvals issued by the state of Oregon. FERC Authorization Order, 170 FERC ¶ 61,202, Mar. 19, 2020, FERC Docket CP17-495, Accession No. 20200319-3077, https://www.oregon.gov/energy/facilities-safety/facilities/Documents/JCEP-PCGP/2020-FERC-Order.pdf [hereinafter FERC Authorization Order]. On January 19, 2021, FERC declined to override the Oregon Department of Environmental Quality's denial of the required water quality certification. Order Denying Petition for Declaratory Order, 174 FERC ¶ 61,057 (Jan. 19, 2021), FERC Docket CP17-494-003, CP17-495,003, https://www.ferc.gov/sites/default/files/2021-01/C-16-CP17-494-003.pdf. On February 8, 2021, the National Oceanic and Atmospheric Administration ("NOAA") upheld the Oregon Department of Land Conservation and Development's objection to the required federal consistency determination. Decisions and Findings in the Consistency Appeal of Jordan Cove Energy Project, L.P., and Pacific Connector Gas Pipeline, L.P., from an objection by the Or. Dep't of Land Conservation and Dev. (Sec'y of Commerce Feb. 8, 2021), https://coast.noaa.gov/data/czm/consistency/appeals/fcappealdecisions/mediadecisions/jordancove.pdf. The FERC Authorization Order requires those two approvals, amongst others, before Jordan Cove begins construction on the LNG terminal. *See* FERC Authorization Order at 1-2 (McNamee, Comm'r, concurring) (listing water quality certification and federal consistency determination as two of the "many federal permits that [Jordan Cove] must receive to begin construction"); *see also* Jordan Cove Abeyance Motion at 2-4 ("Project construction has not and cannot commence until Jordan Cove and Pacific Connector secure the necessary authorizations under the Clean Water Act and the Coastal Zone Management Act.").

[29] *See* F&LA at 1, 4, MUR 6093 (Transurban Group) (finding reason to believe where domestic subsidiary toll road developer began to generate income from domestic operations mid-way through contribution period, but relied upon foreign parent as "predominant source of funds"); Advisory Op. 1989-20 (Kuilima) at 1 (determining company involved in developing commercial real estate projects in the first stages of development that did not generate income — and were therefore funded by loans and contributions by foreign parent company — was prohibited from making contributions); F&LA at 6 & n.5, MUR 4250 (Republican Nat'l Comm.) (finding reason to believe committee accepted foreign national contributions from a domestic subsidiary with no significant assets and only apparent income from rental properties owned by foreign parent company); Conciliation Agreement ¶ IV.6, MUR 2892 (Royal Hawaiian Country Club and Y.Y. Valley Corp.) ("At the time of the events in this matter, neither [domestic companies] were generating income. Respondents' funds consisted of either capital contributions and/or loans from [respondent's] owners."). *Compare* F&LA at 2-3, MUR 6184 (Skyway Concession Company, LLC, *et al.*) (concluding that available information indicated contributions from a transportation business were domestically funded because company maintained a U.S. bank account in which it deposited toll receipts from operation of the business and from which it paid expenses and made political contributions, but finding reason to believe corporation violated foreign national prohibition through foreign national's participation in decision-making process to make donations).

business will be the transport and export of liquefied natural gas, but the feeder pipeline and terminal facility are not yet built. A press account cited in the Complaint quotes a Jordan Cove spokesperson stating that the donated funds derived from Pembina Pipeline Corporation's "U.S. assets" and "are generated in the U.S."[30] In an unsworn letter addressed to Save Coos Jobs Committee sent after the Complaint was filed, Jordan Cove also denied that its donations were derived from foreign funds and that foreign nationals were involved in the donation decision-making.[31]

In light of the overall circumstances, including the lack of any asserted or otherwise evident revenue streams that the domestic subsidiaries could have used to fund the donations in question, the foregoing assertions do not overcome the more likely scenario that the funds used to make the donations were from the only source indicated by the available record — namely, the capital supplied by Pembina Pipeline Corporation.[32]

The available information also suggests that at least one Jordan Cove entity had a primary place of business in, operated from, and made donations from, Canada during the relevant time period. While the Amended Complaint attached copies of various Jordan Cove entities' Annual Reports that disclose domestic mailing addresses, domestic primary places of businesses, and

[30] *See* Oregonian Article (quoting Jordan Cove spokesman on September 21, 2018, that "all the political contributions are direct from Jordan Cove Energy Project L.P., a domestic company registered in Delaware"); Compl., Attach. 15 (attaching Oregonian Article).

[31] The letter from Jordan Cove represent that "[t]he funds for Jordan Cove's political donations 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." *See* Save Coos Jobs Comm., *et al.*, Resp. at 1, 5; *supra* note 12.

[32] *Cf.* Advisory Op. 1992-16 (Nansay Hawaii) at 3 (articulating "certain conditions" for domestic subsidiaries' political contributions, including the subsidiary's ability to demonstrate sufficient domestic funds in its account, beyond funds or loans from the foreign parent, through a reasonable accounting method, and the foreign parent's subsidies or capitalization cannot replenish any portion of the subsidiary's contributions).

domestic addresses for members and partners,[33] Annual Reports from prior years (including years in which donations were made by the relevant entities) disclose Canadian addresses.[34] Save Coos Jobs Committee reported two donations — $216,000 on March 20, 2017, and $115,000 on April 10, 2017 — from Jordan Cove Energy Project L.P. that list a Canadian address.[35] Moreover, the Annual Reports and those two donations reference the same Canadian address: 222 Third Ave. SW, Suite 900, Calgary, Alberta, Canada.[36] That certain Jordan Cove entities disclosed foreign primary places of business and mailing addresses and two of Jordan Cove's largest donations — amounting to $331,000 — were reported with foreign addresses is indicative of both foreign national decision-making and foreign-generated funds.[37] Moreover,

[33] Am. Compl., Attach. 1.

[34] *See, e.g.*, Amended Annual Report, Jordan Cove Energy Project L.P. (July 26, 2017) [hereinafter JCEP 2017 Am. Annual Report], http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/5442257 (listing Canadian mailing address, primary place of business, and address for "General Partner" Jordan Cove Energy Project LLC); Amended Annual Report, Jordan Cove Energy Project L.P. (Aug. 9, 2016) [hereinafter JCEP 2016 Am. Annual Report], http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/4736005 (same); Amended Annual Report, Jordan Cove Energy Project L.P. (Aug. 5, 2015) [hereinafter JCEP 2015 Am. Annual Report], http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/4077591 (same).

[35] *See Transaction Detail*, OR. SEC'Y OF STATE (Apr. 11, 2017, 11:59 PM) [hereinafter JCEP Mar. 20, 2017 Donation], https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=2516478&OWASP_CSRFTOKEN=Z7DW-C58T-GDV8-SG3O-9IQ0-4ZD4-45LX-HZD8 ($216,000 cash contribution made on March 20, 2017 to Save Coos Jobs Committee); *Transaction Detail*, OR. SEC'Y OF STATE (Apr. 17, 2017, 11:59 PM) [hereinafter JCEP Apr. 10, 2017 Donation], https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=2529302&OWASP_CSRFTOKEN=OPPM-WQA9-LES3-QNZA-DCI9-SY3V-BNXJ-2D9O ($115,000 cash contribution made on April 10, 2017 to Save Coos Jobs Committee).

[36] *Compare* JCEP 2017 Am. Annual Report, JCEP 2016 Am. Annual Report, *and* JCEP 2015 Am. Annual Report, *with* JCEP Mar. 20, 2017 Donation, *and* JCEP Apr. 10, 2017 Donation.

[37] The Commission has previously indicated that information that a contribution or donation is received from a foreign address or foreign bank is pertinent, although not dispositive, information when assessing a contributor's nationality. *See, e.g.*, F&LA at 2, MURs 7430, 7444, 7445 (Unknown Respondent) (acknowledging payment processing forms stating the contributions came from Italy but dismissing because *de minimis* amount in violation); F&LA at 2-3, MUR 6944 (Jose E. Farias, *et al.*) (dismissing allegations related to a contribution received from a foreign address of a domestically registered corporation because of *de minimis* amount in violation); F&LA at 2, 5-6, MURs 6401, 6432 (TransCanada Keystone Pipeline, GP, LLC) (noting contribution with a Canadian address, but finding no reason to believe where contributor demonstrated domestic funding, domestic decision-makers, and context of foreign address appearing on envelope); F&LA at 2-3, 6, MUR 6099 (Waverly Glen Systems Ltd.) (same); F&LA at 14, 18, MURs 6078, 6090, 6108, 6139, 6142, 6214 (Obama for America) (noting contributions listed foreign addresses but ultimately dismissing because contributions were limited and there was insufficient information that recipient acted unreasonably in relying upon contributors' affirmations of U.S. citizenship);

Jordan Cove Energy Project L.P., the same Jordan Cove entity that reported the foreign addresses for the two donations to Save Coos Jobs Committee totaling $331,000, made at least nine other donations to at least five other non-federal candidate and non-ballot measure committees totaling at least $126,550, using domestic addresses in Oregon and Texas, raising questions regarding the decision-making and funding of those donations.[38]

The Commission lacks specific information regarding the circumstances of the donations, such as details of the decision-making process, the individual(s) involved therein, and the nationalities of those individuals, or the source of funds used to make the donations. In similar circumstances, the Commission has found reason to believe the respondents made prohibited foreign national contributions or donations where the respondent has failed to provide contextual information necessary to assess the decision-makers' nationalities[39] or failed to demonstrate they had sufficient domestically generated funds to make the challenged contributions or donations.[40]

cf. 11 C.F.R. § 110.20(a)(5)(ii) (including contributor's or donor's use of a foreign address among "pertinent facts" relevant to "knowing" solicitation, receipt, or acceptance of foreign national contribution or donation).

[38] *See* Jordan Cove OreStar Search; *Transaction Detail*, OR. SEC'Y OF STATE (Nov. 7, 2018, 4:51 PM), https://secure.sos.state.or.us/orestar/gotoPublicTransactionDetail.do?tranRsn=3073097&OWASP_CSRFTOKEN=91FV-T9I2-KU5S-YK9C-LSQ1-THOM-UYB3-47MD ($1,000 cash contribution made on October 19, 2018, to Friends of Jeff Barker).

[39] *See, e.g.*, F&LA at 10-11, MUR 2892 (Jet Hawaii, Inc.) (finding reason to believe where the response did not provide information regarding the nationality of individuals making the contribution decisions); F&LA at 11, MUR 2892 (Hawaii Omori Corp.) (finding reason to believe where the respondent listed individuals participating in contribution decision-making, but not specifying their nationalities); *see also, e.g.*, F&LA at 11, MUR 2892 (The Westin Kauai) (finding reason to believe where the response did not identify the nationality of the individuals making the contribution decisions and the information indicated a limited partner owning 16% of the contributing entity was owned indirectly by foreign citizens); F&LA at 11, MUR 2892 (Horita Corp.) (finding reason to believe where respondent did not submit a response, even though a different respondent provided information that owners were U.S. citizens, because the Commission could not "question th[e] entity directly").

[40] *See, e.g.*, F&LA at 11, MUR 2892 (Jet Hawaii, Inc.) (explaining that domestic subsidiaries or associated political committees of foreign nationals "must demonstrate that it does not receive funds for the contributions from its parent foreign national" and that the "source of the funds must be examined"); F&LA at 11, MUR 2892 (Daiei (USA) Inc.) (finding reason to believe where the respondent did not provide information on the source of the contribution funds); F&LA at 11, MUR 2892 (The Westin Kauai) (finding reason to believe where the respondent only provided the bank account name and number for its contributions but no other information about the source thereof).

Alternatively, the Commission has found no reason to believe respondents violated the Act's foreign national prohibition where the respondent has credibly identified the persons involved in the decision-making process as U.S. citizens or permanent residents,[41] or credibly demonstrated that the relevant contributions or donations derived from domestically generated revenues.[42]

The key issue is not whether a U.S. citizen or national was *the* decision maker as to a donation — *i.e.*, had final decision-making authority or final say regarding the making of a donation — but whether any foreign national directed, dictated, controlled, or directly or indirectly participated in the decision-making *process* in connection with election-related spending. Indeed, the Act's prohibition on foreign nationals directly or indirectly making contributions or donations, as implemented by the Commission, requires that "no director or officer of the company or its parent who is a foreign national may participate in *any way* in the decision-making process with regard to making . . . contributions."[43] Even if the Commission

[41] *See, e.g.*, F&LA at 6-8, MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*) (identifying U.S. permanent resident as sole decision-maker); F&LA at 6, MUR 6099 (Waverly Glen Systems Ltd.) (identifying sole person with decision-making authority or involved in decision-making process with supporting affidavit).

[42] *See, e.g.*, F&LA at 5, MUR 6099 (Waverly Glen Systems Ltd.) (reviewing bank statements provided by domestic subsidiary showing sufficient account balance to make contribution and sufficient revenue from a U.S. customer); F&LA at 7, MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*) (reviewing loan agreement between a domestic subsidiary and a U.S. lender that provided funds for contributions from bank's U.S. revenues and required to be repaid with subsidiary's U.S. revenues); *see also* F&LA at 5-6, MUR 7122 (APIC) (highlighting affidavit from domestic subsidiary's CFO averring use of domestically generated funds and separate ledger account for political contributions, including identification of specific revenue-generating sale that provided funds for the contribution, but finding reason to believe corporation violated foreign national prohibition through foreign national's participation in decision-making process to make contributions); F&LA at 2-3, MUR 6184 (Skyway Concession Company, LLC, *et al.*) (relying upon evidence that revenues from domestic business were deposited into a U.S.-based expense account from which contributions were made, but finding reason to believe corporation violated foreign national prohibition through foreign national's participation in decision-making process to make donations). The Commission has also advised a domestic subsidiary that it "must be able to demonstrate through a reasonable accounting method that it has sufficient funds in its account, other than funds given or loaned by its foreign national parent, from which the contribution is made." Advisory Op. 1992-16 (Nansay Hawaii) at 3. Furthermore, the Commission instructed the foreign parent to "consider the political contributions of its subsidiary when granting further subsidies to or further capitalization of the subsidiary." *Id.*

[43] Advisory Op. 1989-20 (Kuilima) at 3 (emphasis added).

were to credit the assertion in the *post hoc*, unsworn letter provided by Jordan Cove to Save Coos Jobs Committee that "[a]ll decisions regarding the contributions are made by U.S. citizens,"[44] that still leaves open the possibility that non-U.S. citizens directly or indirectly participated in the decision-making process and does not address the role of foreign nationals in the decision-making process in connection with Jordan Cove's donations.[45]

These circumstances — Jordan Cove's apparent lack of a domestic revenue stream, annual reports indicating Canadian primary places of business and mailing addresses, donations disclosed from a Jordan Cove entity at a Canadian address, and the Commission's lack of information to assess the decision-making process for and funding of the donations — support a reasonable inference that foreign nationals were involved in the decision-making process regarding the donations and the funds Jordan Cove used to make the donations originated from a foreign national source.[46]

B. The Foreign National Prohibition's Application to Ballot Measure Activity

The Act and Commission regulations prohibit any foreign national from making a contribution or donation "in connection with a Federal, State, or local election."[47] In affirming

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

45 *See* F&LA at 2-3, 6, MUR 7122 (APIC) (finding reason to believe where a U.S. director had sole decision-making over political contributions because final authority did not "exclude the possibility that in his role as decision-maker" he sought approval from company's board of directors, including foreign national directors and owners, where U.S. director was quoted as letting board approve of donation before sending it); F&LA at 11, MUR 2892 (Ala Moana Hotel) (finding reason to believe despite argument that contribution decisions were made in the U.S. by officers of the domestic subsidiary because the response did not identify the nationalities of those officers); F&LA at 11, MUR 2892 (Pacific Resources, Inc.) (finding reason to believe despite argument that contribution decisions were not influenced by any foreign national because one officer was a foreign national and the response did not specify who made the contribution decisions).

46 *Cf.* F&LA at 6, MUR 6184 (Skyway Concession Company, LLC, *et al.*).

47 52 U.S.C. § 30121(a)(1)(A).

the constitutionality of the Act's ban on foreign national contributions, the court in *Bluman v. FEC* held:

> It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.[48]

The Commission has explained that "[s]uch exclusion 'is part of the sovereign's obligation to preserve the basic conception of a political community.'"[49]

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."[50] 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*."[51] Section 30121 states that "[i]t shall be unlawful for" a foreign national, directly or indirectly, to make "a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election."[52] By expressly including state and local elections within its prohibition on contributions or donations by foreign nationals, section 30121 on its face applies

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[48] 800 F. Supp. 2d 281, 287 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012); *see also United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019); Advisory Op. 2018-12 (Defending Digital Campaigns, Inc.) at 7.

[49] Advisory Op. 2018-12 (Defending Digital Campaigns, Inc.) at 7 (quoting *Bluman*, 800 F. Supp. 2d at 287).

[50] 52 U.S.C. § 30101(1).

[51] 11 C.F.R. § 100.2(a) (emphasis added).

[52] 52 U.S.C. § 30121(a)(1)(A).

beyond the context of the Commission's general regulatory definition of elections, which makes reference both to "individuals" and the pursuit of "*Federal* office."[53] The text of section 30121 thus raises the question whether the state or local elections to which it applies includes elections, such as one at issue in this matter, in which a local ballot measure is put to voters.

Prior to Congress's enactment of BCRA, the Act prohibited foreign national contributions "in connection with an election *to any political office*."[54] Accordingly, before BCRA, the Commission treated foreign national donations relating only to ballot initiatives as generally outside the purview of the Act on the basis that ballot initiative elections generally are not in connection with elections for political office.[55] Nonetheless, in pre-BCRA Advisory Opinion 1989-32 (McCarthy), the Commission described circumstances in which a ballot initiative "inextricably linked" to a candidate would be "in connection with" that candidate's election to political office and, therefore, a committee supporting such a ballot initiative would be prohibited from accepting funds from a foreign national.[56]

In enacting BCRA, Congress amended the Act's foreign national section to prohibit foreign national contributions or donations "in connection with a Federal, State, or local election."[57] In the course of issuing implementing regulations to correspond with the revised

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53 *Id.* (emphasis added).

54 *See* 2 U.S.C. § 441e(a) (2000) (emphasis added).

55 *See* Advisory Op. 1989-32 (McCarthy) ("AO 1989-32").

56 *Id.* 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).

57 *Compare* 2 U.S.C. § 441e(a) (2000), *with* 2 U.S.C. § 441e(a)(1)(A) (2002) (codified at 52 U.S.C. § 30121(a)(1)(A)).

statutory provision, the Commission concluded that the deletion of the phrase "election to any public office" and the substitution of the "broader phrase 'Federal, State, or local election'" was meant to clarify congressional intent "to prohibit foreign national support of candidates and their committees and political organizations and foreign national activities in connection with all Federal, State, and local elections."[58]

Shortly after the passage of BCRA, in Advisory Opinion 2003-37 (Americans for a Better Country), the Commission addressed whether a political committee's non-federal account could raise and spend funds from foreign nationals for voter registration and mobilization activities on behalf of federal candidates.[59] In framing its analysis, the Commission began by generally explaining the foreign national prohibition and specifically explaining that its application is not limited to "elections for political office":

> The Act, as amended by BCRA, prohibits foreign nationals from, among other things, directly or indirectly making a contribution or donation of money or other thing of value, or to expressly or impliedly promise to make a contribution or donation, in connection with a Federal, State, or local election (*this prohibition is not limited to elections for political office*).[60]

This language from AO 2003-37, which was not prepared in connection with an analysis of ballot initiatives, remains the only Commission-approved interpretation of the meaning of the Act's post-BCRA foreign national prohibition's use of "election" with respect to non-candidate elections. Nonetheless, the Commission has addressed the scope of the term "election" in a

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[58] Prohibitions E&J, 67 Fed. Reg. at 69,944.

[59] Advisory Op. 2003-37 (Americans for a Better Country) at 20-21 ("AO 2003-37").

[60] AO 2003-37 at 20 (emphasis added), *superseded on other grounds*, Political Committee Status & Definition of Contribution, 69 Fed. Reg. 68,056, 68,063 (Nov. 23, 2004) (promulgating rules on the spending of federal and non-federal funds for voter drives, but not contradicting or otherwise addressing AO 2003-37's analysis of the foreign national contribution ban).

number of advisory opinions considering whether ballot measure activities are "in connection with" an election as that term is used in BCRA's "soft money" provision now codified at 52 U.S.C. § 30125(e). Like the pre-BCRA foreign national provision, BCRA's soft money provision refers to elections *for office*, prohibiting federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by them, or acting on their behalf, from raising or spending non-federal funds "in connection with an election for Federal office" and "in connection with any election other than an election for Federal office."[61]

The first of the post-BCRA soft money ballot initiative advisory opinions, Advisory Opinion 2003-12 (Flake), was considered shortly before AO 2003-37 interpreted the foreign national provision as discussed above. In AO 2003-12, the Commission was asked whether, under the soft money rules, a ballot initiative committee's activities were in connection with "any election other than an election for Federal office."[62] The Commission determined that they were, once the initiative qualified for the ballot.[63] In reaching this conclusion, the Commission considered Congress's use of the phrase "any election" in place of the phrase "any election *to any political office.*"[64] The Commission concluded that this difference in language indicated

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61 52 U.S.C. § 30125(e).

62 Advisory Op. 2003-12 (Flake) at 4-6 ("AO 2003-12").

63 *Id.* at 5-6. The Commission also concluded that when a ballot measure committee is established, financed, maintained, or controlled by a federal candidate as was the case in AO 2003-12, its activities before qualifying for the ballot, such as signature gathering, are also "in connection with any election other than an election for Federal office." *Id.* at 6.

64 *Id.* at 6 (emphasis in original).

Congress's intent that the soft money provision "is not limited to elections for a political office."[65] It explained:

> As used in subparagraph (B) of section [30125(e)(1)], the term, "in connection with *any election other than* an election for Federal office" is, on its face, clearly intended to apply to a different category of elections than those covered by subparagraph (A), which refers to "an election for Federal office." This phrasing, "in connection with any election other than an election for Federal office" also differs significantly from the wording of other provisions of the Act that reach beyond Federal elections. Particularly relevant is the prohibition on contributions or expenditures by national banks and corporations organized by authority of Congress, which applies "in connection with any election to *any political office*." [52 U.S.C. § 30118(a)]. Where Congress uses different terms, it must be presumed that it means different things. Congress expressly chose to limit the reach of section [30118(a)] to those non-Federal elections for a "political office," while intending a broader sweep for section [30125(e)(1)(B)], which applies to "any election" (with only the exclusion of elections to Federal office). Therefore, the Commission concludes that the scope of section [30125(e)(1)(B)] is not limited to elections for a political office.[66]

The Commission distinguished AO 1989-32, which had concluded that ballot initiative activity conducted independently from candidates (*i.e.*, "pure" ballot initiative activity) was not "in connection with" a candidate's election and was, therefore, outside the scope of the foreign national contribution prohibition. The Commission explained that its interpretation in AO 1989-32 was based on pre-BCRA statutory language which "then limited activity 'in connection with any election to political office.'"[67]

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[65] *Id.* at 5-6.

[66] *Id.* (emphasis in original, footnote omitted); *see also* F&LA at 2-3, MUR 5367 (Darrell Issa) (concluding, based on the analysis in AO 2003-12, that a recall election was "an election other than an election for Federal office" and that, therefore, BCRA's soft money provisions applied to Congressman Issa's efforts to solicit soft money for a ballot measure committee that was supporting the recall and that was established, maintained, financed, or controlled by Issa).

[67] AO 2003-12 at 6.

Two years later, in Advisory Opinion 2005-10 (Berman/Doolittle), the Commission considered whether the soft money provision prohibits federal candidates and officeholders from raising funds for ballot measure committees formed solely to support or oppose ballot initiatives where the ballot initiative committee was not established, financed, maintained, or controlled by a federal candidate and where no federal candidates appeared on the same ballot.[68] The Commission concluded that the proposed activity was not prohibited, issuing an opinion without explaining the basis for its conclusion. The four Commissioners who voted to approve the advisory opinion explained their rationales in two concurring statements, one in which two Commissioners stated their position that the soft money provision did not apply to any non-candidate elections and the other in which the other two Commissioners stated their position that the soft money provision did not apply under the particular facts presented.[69]

In Advisory Opinion 2010-07 (Yes on FAIR), the Commission again addressed whether federal candidates' raising of soft money for ballot initiative activity was in connection with an election for federal office within the meaning of the soft money provision.[70] In this instance, the requestor represented that the ballot initiative committee was not established, financed, maintained, or controlled by a federal candidate but that the initiative would appear on the same

[68] Advisory Op. 2005-10 (Berman/Doolittle) at 2 ("AO 2005-10").

[69] *See* Concurring Opinion of Comm'rs Mason & Toner at 1-2, AO 2005-10 (stating that the soft money provision "applies to federal and non-federal elections for public office, but does not apply to non-candidate political activity, such as ballot initiatives or referenda"); Concurring Statement of Comm'rs McDonald & Weintraub at 1-2, AO 2005-10 (stating that the soft money ban did not apply because, under the factual circumstances, where no federal candidate would be on the ballot and the committee was not established, financed, maintained, or controlled by a federal candidate, the committee's activities were "not in connection with a federal election"); *see also* Dissenting Opinion of Comm'r Thomas at 2, AO 2005-10 ("In my view, the clear phrase 'any election' means just that — *any* election. This broad statutory language includes elections to decide ballot initiatives as well as elections to select public officials.").

[70] Advisory Op. 2010-07 (Yes on FAIR) at 2-3 ("AO 2010-07").

ballot as federal candidates.[71] The Commission agreed that Members of Congress could solicit funds outside the Act's limits and source prohibitions prior to the initiative qualifying for the ballot but were unable to agree on whether Members could continue to make solicitations outside the limits and prohibitions after the initiative qualified for the ballot.[72]

After this series of advisory opinions, a three-judge district court, in *Bluman v. FEC*, upheld the constitutionality of the foreign national prohibition.[73] In so doing, the court addressed the plaintiffs' arguments that the prohibition was "underinclusive and not narrowly tailored because it permits foreign nationals to make contributions and expenditures related to ballot initiatives."[74] Neither the court, nor the Commission in its briefs, analyzed the correctness of this understanding of the prohibition, instead focusing on whether such underinclusivity would be fatal to the provision's constitutionality.[75] In upholding the constitutionality of the foreign national prohibition with respect to contributions to candidates and parties, express advocacy

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[71] *Id.* at 2.

[72] *See* AO 2010-07 at 3; Concurring Opinion of Commr's Bauerly, Walther & Weintraub at 4, AO 2010-07 (concluding that "[a]fter an initiative has qualified for a ballot on which Federal candidates will also appear, the activities of a ballot initiative committee are, 'in connection with' an election within the meaning of [52 U.S.C. § 30125]"); Concurring Opinion of Comm'rs Petersen, Hunter & McGahn at 4, AO 2010-07 (concluding that AO 2003-12 has been superseded and that "ballot measures and referenda are not 'elections' within the meaning of the Act").

[73] *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2001), *aff'd*, 565 U.S. 1104 (2012).

[74] *Id.* at 291.

[75] *Id.* (concluding that respecting plaintiffs' underinclusivity argument, "Congress's determination that foreign contributions and expenditures pose a greater risk in relation to candidate elections than such activities pose in relation to ballot initiatives is a sensible one and, in our view, does not undermine the validity of the statutory ban on contributions and expenditures" by foreign nationals to candidates); FEC's Opposition to Plaintiffs' Motion for Summary Judgment and Reply in Support of the Comm'n's Motion to Dismiss at 38-39 & n.17, *Bluman*, 800 F. Supp. 2d 281 (No. 10-1766) (responding to plaintiffs' argument that the statute does not go far enough, noting that the Commission, in AO 2003-12, "indirectly indicated that it might interpret" foreign national provision to apply to ballot initiatives, but had since, in AO 2005-10, "suggested that it does not," and arguing that the "exemption of ballot measures" demonstrated narrow tailoring). *Compare Bluman*, 800 F. Supp. 2d at 284 ("This statute, as we interpret it, does not bar foreign nationals from issue advocacy — that is, speech that does not expressly advocate the election or defeat of a specific candidate.").

expenditures, and donations to outside groups to be used for the same purposes,[76] the *Bluman* court ultimately did not decide whether Congress could prohibit — or had prohibited — foreign nationals from making donations with respect to pure ballot initiatives.[77]

The meaning of "election" in the post-BCRA foreign national prohibition vis-à-vis its application to pure ballot initiative activity was first before the Commission in a post-*Bluman* enforcement matter in MUR 6678 (MindGeek USA, Inc., *et al.*). After discussing the above history of treating or not treating ballot initiative activity as in connection with an election, particularly in the soft money context, the Office of General Counsel reasoned:

> [I]t may not be appropriate to extrapolate Commission analysis under section [30125(e)] to this matter, given that a different statute containing different terms is at issue: section [30125(e)] addresses funds "in connection with any election other than an election for Federal office," while section [30121] focuses on foreign national contributions and donations "in connection with a Federal, State, or local election."[78]

Citing the lack of legislative history directly on the issue as well as the *dicta* in *Bluman* accepting the parties' uncontested notion that the foreign national provision may not extend to ballot initiatives, the Office of General Counsel declined to provide a recommendation regarding whether section 30121 applies to the pure ballot initiative activity in that matter.[79] Instead, the Office of General Counsel recommended that the Commission exercise its prosecutorial

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[76] *Bluman*, 800 F. Supp. 2d at 291.

[77] *Id.* at 292 (explaining, with respect to plaintiffs' "concern that Congress might bar them from issue advocacy and speaking out on issues of public policy," that "[o]ur holding does not address such questions, and our holding should not be read to support such bans").

[78] First Gen. Counsel's Rpt. ("First GCR") at 18, MUR 6678 (MindGeek USA, Inc., *et al.*).

[79] *Id.*at 19. *But see id.* at 19 n.74 ("Despite the recommendation not to proceed with an enforcement action on these facts, the Commission may still, if it so chooses, use the enforcement matter as a vehicle to provide further public guidance on the underlying legal issue through issuance of a clarifying Factual & Legal Analysis or a unified Statement of Reasons. The Commission may also wish to address the issue of section [30121]'s application to ballot measure activity by regulation or other advance notice.").

discretion and dismiss the allegations as a result of "the lack of clear legal guidance on whether the foreign national prohibition extends to pure ballot initiative activity."[80] 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 prohibition.[81]

In the years since it considered MUR 6678, the Commission has not answered the question of whether the foreign national prohibition reaches pure ballot initiative activity. In MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*), the Commission stated that it was unclear from relevant precedent whether the foreign national prohibition applied to ballot initiatives, but assumed, *arguendo*, that it did and declined the opportunity to decide the issue because it found no reason to believe a foreign national violation occurred on the merits where there was no indication the contributed funds originated with a foreign national or that foreign nationals participated in the decision-making process for the contributions.[82]

C. The Commission Dismisses the Allegation That Save Coos Jobs Committee Knowingly Accepted or Received Prohibited Foreign National Donations

The Complaint and Oregon campaign finance reports indicate that Save Coos Jobs Committee, a ballot measure committee registered with the state of Oregon, accepted or received

[80] *Id.* at 19-20; *see Bluman*, 800 F. Supp. 2d at 281. In recommending dismissing the allegations, the Office of General Counsel also noted 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 further noted that such information would have supported a finding of a violation whether or not the prohibition extends to "pure ballot measure activity." *See* First GCR at 19, MUR 6678.

[81] *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.

[82] F&LA at 6-8, MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City, *et al.*).

$596,155 in donations from one or more of the Jordan Cove entities.[83] As explained above, the available information suggests that the Jordan Cove entities may be foreign nationals as defined in the Act.[84] Thus, this matter again directly raises the question of whether the foreign national prohibition in section 30121 extends to pure ballot measure activity. Consistent with the breadth of section 30121, as revised by Congress in BCRA, as well as the Commission's precedent, including its recent consideration of the Act's foreign national prohibition, it appears that section 30121's foreign national prohibition applies to Jordan Cove's donations to Save Coos Jobs Committee in connection with Measure 6-162.

However, similar to MUR 6678 (MindGeek USA, Inc., *et al.*), the Commission will not pursue the foreign national allegations for Save Coos Jobs Committee's acceptance or receipt of the Jordan Cove entities' donations as a result of the lack of clear legal guidance on the scope of section 30121.[85] In light of the substantial, if not growing, concern of foreign influence in the process of American democratic self-governance, which the Commission itself has observed and relied upon in consideration of matters raising such concerns,[86] and the lack of additional legal guidance to the regulated community on the scope of section 30121 in the six years since the Commission's consideration of MUR 6678, the Commission now provides a more conclusive

83 *See* Compl., Attachs. 1-2; Jordan Cove OreStar Search; *supra* note 8.

84 *See supra* Section III.A.

85 *See* First GCR at 19-20, MUR 6678 (MindGeek USA, Inc., *et al.*).

86 *See, e.g.*, Minutes of Open Meeting of Federal Election Commission at 13 (Sept. 16, 2016) (directing the Office of General Counsel to prioritize cases "involving allegations of foreign influence"); Responses to Questions from the Committee on House Administration, Fed. Election Comm'n at 41-42 (May 1, 2019); *see also* 164 CONG. REC. H2045, H2520 (Mar. 22, 2018) [hereinafter Explanatory Statement to Consolidated Appropriations Act, 2018] ("Preserving the integrity of elections, and protecting them from undue foreign influence, is an important function of government at all levels.").

determination on the application of the foreign national prohibition to ballot measure activity like Jordan Cove's donations to Save Coos Jobs Committee in this matter.

As discussed below, consistent with the breadth of section 30121, as revised by Congress in BCRA, as well as the Commission's precedent, including its recent consideration of the Act's foreign national prohibition, it appears that section 30121 applies to Jordan Cove's foreign spending in connection with Measure 6-162. Nevertheless, the Commission again exercises its prosecutorial discretion and dismisses the allegations as to Save Coos Jobs Committee's knowing acceptance or receipt of Jordan Cove's donations so that this analysis may be applied only prospectively.

The Act's general definition of "election" in section 30101(1) makes reference to different kinds of elections including "general, special, primary, or runoff election[s]," but does not, by its own terms, exclude non-candidate based elections.[87] Thus, that general definition does not on its face resolve whether a state ballot measure is a "Federal, State, or local election" for purposes of the foreign national prohibition in section 30121.[88] Similarly, the Commission's general regulatory definition of "election" in 11 C.F.R. § 100.2, which, as discussed above, is limited to candidate-based elections, or nominations for election, *to federal office*,[89] does not resolve the meaning of "election" in the foreign national prohibition, which expressly extends beyond the federal context addressed in section 100.2.

87 52 U.S.C. § 30101(1)(A).

88 *Id.* § 30121.

89 11 C.F.R. § 100.2; *see supra* Section III.B.

In the absence of such specificity, the word "election" should be given its plain and ordinary meaning in the context of "the language and design of the statute as a whole."[90] The Random House Dictionary of the English Language defines "election" as "the selection of a person or persons for office by vote" and "a public vote upon a proposition submitted."[91] The inclusion of the non-candidate meaning of "election," *i.e.*, ballot measures, within the ordinary meaning of "election" substantially predates BCRA.[92] Similarly, other provisions of federal law that, like the foreign national prohibition, regulate not only federal but also state and local elections, have been interpreted using this ordinary meaning and thus including ballot measures in addition to candidate elections.[93] In Oregon, the state in which this matter arises, the Oregon code defines "election" only once in its statutory title on elections, for purposes of the "administration of election laws" chapter, as "any election held within this state."[94]

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[90] *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted); *see also FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme") (internal quotation omitted); *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning."); *United States v. Palmer*, 854 F.3d 39, 47 (D.C. Cir. 2017) ("Congress is presumed, absent indication to the contrary and there is none here, to use words in their ordinary meaning."); *Shays v. FEC*, 414 F.3d 76, 105 (D.C. Cir. 2005) ("The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." (citing Webster's Third New International Dictionary to determine ordinary meaning of "ask")).

[91] *Election*, RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED (2d ed. 1987).

[92] *See, e.g.*, *Burson v. Freeman*, 504 U.S. 191, 205 (1992) (tracing history of Tennessee candidate and ballot measure polling place regulation, upheld as constitutional by the Court, to 1897 act criminalizing "the use of bribery, violence, or intimidation in order to induce a person to vote or refrain from voting for any particular person *or measure*") (emphasis added).

[93] *See* Interpretive Guidelines, 41 Fed. Reg. 29,998, 29,999 (1976) (defining "elections" to which Dept. of Justice will apply Voting Rights Act Language Minority Group provisions, now codified at 52 U.S.C. § 10301 *et seq*, as "any type of election, whether it is a primary, general or special election . . . includ[ing] elections of officers as well as elections regarding such matters as bond issues, constitutional amendments and referendums"); 28 C.F.R. § 51.17 (including "an initiative, referendum, or recall election" in term "special election" subject to Voting Rights Act pre-clearance requirements).

[94] ORE. REV. STAT. § 246.012(4) (2005). The Oregon code chapter on ballot initiatives and referenda defines "[m]easure" as certain items "submitted to the people for their approval or rejection at election . . . ." *Id.* § 250.005(3).

The BCRA revisions to the Act's foreign national prohibition indicate that Congress intended the prohibition to be applied in accordance with this ordinary meaning. Previously, the Act's foreign national provision applied only to contributions "in connection with *an election to any political office* or in connection with any primary election, convention, or caucus held *to select candidates for any political office.*"[95] In BCRA, however, Congress amended the text of the foreign national provision to remove the candidate-focused references, including the references to "political office." In their place, Congress prohibited foreign national contributions or donations "in connection with a Federal, State, or local election."[96] This change in statutory language indicates that Congress intended that the prohibition apply broadly and no longer be limited to candidate-focused elections. "When Congress acts to amend a statute," the Supreme Court has stated that it "presume[s Congress] intends its amendment to have real and substantial effect."[97]

The applicability of the ordinary meaning of "elections," in the context of the foreign national prohibition, is reinforced by Congress's treatment of other sections of the Act that were revised by BCRA. For example, Congress, in BCRA, amended the section of the Act prohibiting contributions by national banks (now codified at 52 U.S.C. § 30118), a provision that has long

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95 2 U.S.C. § 441e(a) (2000) (emphasis added).

96 52 U.S.C. § 30121(a)(1)(A).

97 *Stone v. INS*, 514 U.S. 386, 397 (1995); *see also Russello v. United States*, 464 U.S. 16, 23-24 (1983) ("Where Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended.").

applied to state and local, as well as federal, elections to "political office."[98] Despite amending other aspects of this prohibition, Congress retained the "to any political office" limitation in the scope of "elections" to which the national bank prohibition applies. Thus, in the same set of revisions to the Act, Congress chose to retain the limiting "political office" language in some places but remove it in others. "When Congress amends one statutory provision but not another, it is presumed to have acted intentionally."[99] The BCRA changes to the statutory language of these two prohibitions — removing the limiting "political office" language in the foreign national provision while leaving it in the national bank provision — suggest that Congress intended the foreign national prohibition to apply not only to state and local candidate elections, but also to non-candidate elections such as ballot measures as well.

This understanding is consistent with Congress's other amendments, in BCRA, to expand the foreign national prohibition. For instance, BCRA expanded the scope of the foreign national prohibition beyond "contributions," to include "donations" in order to make clear that foreign nationals could not evade the prohibition by targeting state and local elections.[100] The BCRA amendments further added prohibitions against presidential inaugural committees accepting

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[98] BCRA § 203, 116 Stat. at 91-92 (codified at 2 U.S.C. § 441b (now 52 U.S.C. § 30118)) ("It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office . . . ."). The national bank prohibition, like the foreign national prohibition, applies not only to federal but also to state and local elections but only in the case of such elections for political office. *See* Advisory Op. 1987-14 (First Nat'l Bank of Shreveport) at 1 ("[A] national bank is prohibited from making a contribution or expenditure in connection with any election to any political office, including local, state or Federal offices.").

[99] *Gross v. FBL Fin. Servs., Inc*., 557 U.S. 167, 174 (2009).

[100] BCRA § 303, 116 Stat. 81, 96; *see also* Prohibitions E&J, 67 Fed. Reg. at 69,944 (explaining that, through the addition of "donation," and the removal of references to "candidates" and "political office," "Congress left no doubt as to its intention to prohibit foreign national support of . . . foreign national activities in connection with all Federal, State, and local elections"); 148 CONG. REC. S1991-1997 (daily ed. Mar. 18, 2002) (statement of Sen. Feingold); 148 CONG. REC. S2774 (daily ed. Mar. 22, 2002) (statement of Sen. Lieberman).

foreign national donations,[101] instructed the United States Sentencing Commission to provide guidelines which include a sentencing enhancement for criminal violations of the Act which involve "a contribution, donation, or expenditure from a foreign source,"[102] and added significant prohibitions and limitations on candidate and party committees' receipt, solicitation, donation, and transfer of soft money, including from foreign nationals.[103] These changes reflect Congress's multifaceted effort to "prevent[] foreign influence over the U.S. political process."[104]

Further, in its explanation and justification of the post-BCRA foreign national regulations, the Commission stated that "[a]s indicated by the title of section 303 of BCRA, 'Strengthening Foreign Money Ban,' Congress amended [52 U.S.C. § 30121] to further delineate and expand the ban on contributions, donations, and other things of value by foreign nationals."[105] This expansive purpose, seen in context of Congress's removal of limiting language as to the elections within the scope of some sections of the Act but retaining it in others, its addition of further prohibitions regarding foreign national activity in American elections at all levels, and its extension of the foreign national prohibition to the non-electoral

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101 BCRA § 308, 116 Stat. at 103-04 (codified at 36 U.S.C. § 510) (extending foreign national prohibition to non-election context as applied to inaugural committees). Prior to these BCRA amendments, the Commission had concluded that funds received and expended by inaugural committees are neither "contributions" nor "expenditures" because they "are used to finance inaugural activities rather than any Federal election." Advisory Op. 1980-144 (Presidential Inaugural Committee – 1981) at 2.

102 BCRA § 314, 116 Stat. at 107.

103 BCRA § 101, 116 Stat. at 82-86.

104 *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2001), *aff'd*, 565 U.S. 1104 (2012).

105 Prohibitions E&J, 67 Fed. Reg. at 69,440.

context of inaugurations, all taken together, support the conclusion that "election" for purposes of section 30121 includes ballot measure activity.[106]

That understanding of "election" in the foreign national prohibition is not only consistent with the ordinary meaning of the term and Congress's broad intent, in the context of BCRA, to prevent foreign influence over the U.S. political process, but it is also consistent with the Commission's past conclusions. As noted above, the Commission explained in its explanation and justification that Congress's deletion of the phrase "election to any public office" from the Act's foreign national provision, and the substitution of the "broader phrase 'Federal, State, or local election,'" was meant to clarify congressional intent "to prohibit foreign national support of candidates and their committees and political organizations and foreign national activities in connection with all Federal, State, and local elections."[107] Moreover, in AO 2003-37, the Commission concluded that these changes meant not only that the Act now expressly covered non-federal elections, but also that "this prohibition is not limited to elections for political office."[108]

Consistent with the intent behind Congress's BCRA amendments to the foreign national prohibition in the Act, the Commission has interpreted and applied the foreign national prohibition broadly. For instance, in Advisory Opinion 2010-14 (Democratic Senatorial Campaign Committee), the Commission approved of a national party committee's pre-election use of a recount and election-contest fund, but reiterated that such a fund, though it does not fund

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106 *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 350 (1943) ("Courts will construe the details of an act in conformity with its dominating general purpose.").

107 Prohibitions E&J, 67 Fed. Reg. at 69,944.

108 AO 2003-37 at 20; *accord* AO 2003-12 at 5-6 (concluding that soft money provisions are "not limited to elections for a political office"); *see supra* Section III.B.

"election" activities, was subject to the foreign national prohibition and could not accept contributions from foreign nationals.[109] The application of the foreign national prohibition to ballot measure activity similarly furthers the Act's purpose to protect "activities intimately related to the process of democratic self-governance."[110]

BCRA's changes to the Act's foreign national provision broadened the application of that provision to reach ballot measure activity such as the Jordan Cove entities' donations to Save Coos Jobs Committee. As recognized by both Congress and the Commission, years after the passage of BCRA, the threat of foreign influence in American elections remains at least a substantial, if not a growing, concern.[111] The Commission has informed Congress that it continues to enforce the foreign national provision and prioritize cases involving allegations of foreign influence.[112] Accordingly, based on Congress's changes to the foreign national prohibition in BCRA and more recent Commission precedent with respect to that provision, it appears that 52 U.S.C. § 30121 applies to the Jordan Cove entities' donations to Save Coos Jobs Committee in this matter.

The Commission's regulations employ a "knowingly" standard, whereby a person knowingly accepts or receives 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

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109 Advisory Op. 2010-14 (Democratic Senatorial Campaign Committee) at 2.

110 *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2001) (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984)) (internal quotations omitted), *aff'd*, 565 U.S. 1104 (2012).

111 *See supra* note 86.

112 *See* Letter from Fed. Election Comm'n to House Comm. on Appropriations & Senate Comm. on Appropriations at 1, 17-18 (Sept. 18, 2018) (reporting on Commission's role "in enforcing the foreign national prohibition, including how it identifies foreign contributions to elections, and what it plans to do in the future" as required by Explanatory Statement to Consolidated Appropriations Act, 2018); Explanatory Statement to Consolidated Appropriations Act, 2018, 164 CONG. REC. at H2520.

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.[113]

Save Coos Jobs Committee does not explicitly address the issue of ballot measure activity under the foreign national prohibition in its Response.[114] Save Coos Jobs Committee attached to its Response post-Complaint correspondence from Jordan Cove personnel representing that the donations were made by a U.S. company, sourced from domestic funds, drawn from a domestic bank account, and that all donation decisions were made by U.S. citizens.[115] The record demonstrates all the Jordan Cove entities are incorporated domestically in Delaware.[116]

However, as described above, Save Coos Jobs Committee disclosed the receipt of two donations from Jordan Cove Energy Project L.P. that list a Canadian address.[117] That two of the largest donations that Save Coos Jobs Committee received — amounting to $331,000 — were reported with foreign addresses is a "pertinent fact" that would lead a reasonable person to conclude there is a "substantial probability" that the source was a foreign national or to inquire

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113 11 C.F.R. § 110.20(a)(4); *see also* 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

114 *See* Save Coos Jobs Comm., *et al.*, Resp.

115 *See id.* at 5; *supra* notes 12, 31.

116 *See supra* notes 4, 11.

117 *See* JCEP Mar. 20, 2017 Donation ($216,000 cash contribution made on March 20, 2017 to Save Coos Jobs Committee); JCEP Apr. 10, 2017 Donation ($115,000 cash contribution made on April 10, 2017 to Save Coos Jobs Committee); *supra* note 34.

whether the source of funds was a foreign national.[118] There is no information available to indicate that Save Coos Jobs Committee conducted a reasonable inquiry at the time of the donation to determine whether the donor, Jordan Cove Energy Project L.P., was a foreign national under the Act. Further, the letter from Jordan Cove that Save Coos Jobs Committee attached to its Response post-dates the donations by over a year and appears to have been initiated by Jordan Cove, not by Save Coos Jobs Committee.[119] Thus, because it appears that 52 U.S.C. § 30121 applies to the Jordan Cove entities' donations to Save Coos Jobs Committee and that Save Coos Jobs Committee failed to conduct a reasonable inquiry to determine whether Jordan Cove Energy Project L.P. was a foreign national, the available information supports an inference that Save Coos Jobs Committee knowingly accepted or received foreign national donations.

Nonetheless, in light of the state of the Commission's guidance on this question, including its split on whether to pursue the allegations in MUR 6678, there are sound prudential reasons to dismiss the allegation that Save Coos Jobs Committee violated the foreign national prohibition with regards to the acceptance or receipt of donations exclusively related to pure ballot measure activity, as a matter of prosecutorial discretion, and apply section 30121 to ballot

[118] 11 C.F.R. § 110.20(a)(4)(ii)-(iii), (5)(ii) (including contributor or donor's use of a foreign address among "pertinent facts" relevant to "knowing" acceptance or receipt of foreign national contribution or donation).

[119] *See* Save Coos Jobs Comm., *et al.*, Resp. at 1, 5.

measure activity only prospectively.[120] Thus, 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.[121]

[120] *See* First GCR at 16-20, MUR 6678 (MindGeek USA, Inc., *et al*.); Certification (Mar. 18, 2015), MUR 6678; *see also FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) ("A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required."); *cf.* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007) ("The Commission has previously used the finding 'reason to believe, but take no further action' in cases where the Commission finds that there is a basis for investigating the matter or attempting conciliation, but the Commission declines to proceed for prudential reasons . . . . [T]he Commission believes that resolving these matters through dismissal or dismissal with admonishment more clearly conveys the Commission's intentions and avoids possible confusion about the meaning of a reason to believe finding.").

[121] *See Heckler v. Chaney*, 470 U.S. 821 (1985).