



700 13th Street, NW
Suite 600
Washington, D.C. 20005-3960
FEDERAL MAIL CENTER

+1.202.654.6200
+1.202.654.6211
PerkinsCoie.com

2019 JUN 14 PM 3:46

June 14, 2019

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
1050 First Street, NE
Washington, DC 20463

Re: Matter Under Review 7594

Dear Mr. Jordan:

We write as counsel to Vicente Gonzalez for Congress, Heidi for Senate, Kaptur for Congress, The Bill Keating Committee, Citizens to Elect Rick Larsen, Friends of Chris Murphy, Richard E. Neal for Congress Committee, Pallone for Congress, Peterson for Congress, and Filemon Vela for Congress (collectively, "the Federal Respondents") in response to the Complaint filed by Alexander Austin ("Complainant") on April 8, 2019 ("Complaint") in the above-referenced matter.

The Complaint fails to allege any violation of any law or regulation by any Federal Respondent:

- *First*, the Complaint fails to allege that any foreign national made any contribution. Factually, the Complaint alleges only that the Federal Respondents received lawful contributions from a domestic separate segregated fund ("SSF") registered with the Commission. The Complaint repeatedly and erroneously conflates Enbridge Inc., a Canadian company, with Enbridge (U.S.) Inc., its domestic subsidiary, and Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC), the domestic subsidiary's SSF. The Complaint presents only lawful contributions made by the SSF. The Complaint alleges nothing to suggest that any foreign national engaged in any conduct as to any contribution or any Federal Respondent.
- *Second*, the Complaint fails to allege that any Federal Respondent knowingly received a foreign national contribution. Because a domestic SSF made each of the contributions, and because the Federal Respondents had and continue to have no reason to know or think that they received foreign national contributions, the Complaint alleges no violation by any Federal Respondent.

Because the Complaint fails to allege any fact which, if true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101 *et seq.* (the "Act"), the Commission should find no reason to believe any violation occurred, send the appropriate letters,

2019 JUN 17 PM 1:27
OFFICE OF
GENERAL COUNSEL

Jeff S. Jordan
 June 14, 2019
 Page 2

and close the file. Moreover, because of the negative effect this unsupported Complaint's continued pendency will have on the many respondents named, the Commission should expedite this Complaint's dismissal.

FACTS

The Federal Respondents are all principal campaign committees of current or former candidates for Federal office. The Complaint alleges that the Federal Respondents "accepted contributions from a foreign (Canadian) company (Enbridge Inc.)" in violation of federal law.¹ While Enbridge Inc. is a multinational corporation based in Canada, its domestic subsidiary, Enbridge (U.S.) Inc., is a Delaware-based corporation whose principal place of business is located in Texas.² Enbridge (U.S.) Inc. maintains an SSF registered with the Commission: Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC).

On February 27, 2017, Enbridge Inc. acquired the Texas-based Spectra Energy Corp.³ Before then, Spectra Energy Corp established and maintained an SSF registered with the Commission: Spectra Energy Corp Political Action Committee (Spectra-DCP PAC).⁴ Upon Spectra Energy Corp's acquisition by Enbridge, Spectra Energy Corp's SSF became Enbridge (U.S.) Inc.'s SSF, and Enbridge (U.S.) Inc. became its connected organization.⁵

The Complaint alleges no conduct by Enbridge Inc. or any foreign national as to any Federal Respondent or contribution. It alleges no conduct by any Federal Respondent besides their receipt of lawful contributions. It alleges no facts that would have led any Federal Respondent to associate any contribution with any foreign national, but for the fact that Enbridge Inc. owns Enbridge (U.S.) Inc., which in turn maintains the SSF. In fact, the Complaint appears to disclaim any violation by anyone. It acknowledges the Complainant's "lack of subject matter expertise" and states that he did "not intend to falsely accuse the innocent," preferring instead simply to have his claims "critically examined by professionals."⁶

¹ Compl., at 1.

² See Letter from Bill Burlew, Senior Manager Federal Government Affairs, Enbridge-DCP PAC, to Filemon Vela for Congress (May 3, 2019) (attached as Exhibit A) [hereinafter "Exh. A"].

³ *We are now Enbridge!*, Spectra Energy Corp (Feb. 27, 2017), <http://www.spectraenergy.com/>.

⁴ Spectra Energy Corp Political Action Committee (Spectra-DCP PAC), FEC Form 1, Statement of Organization (Sept. 10, 2014), available at <https://docquery.fec.gov/cgi-bin/forms/C00429662/951351/>.

⁵ Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC), FEC Form 1, Statement of Organization (Feb. 27, 2017) [hereinafter "Enbridge-DCP PAC FEC Form 1"], <https://docquery.fec.gov/cgi-bin/forms/C00429662/1151436/>; see also Exh. A, *supra* note 2 (stating that Enbridge-DCP PAC was "formerly known as Spectra Energy Corp Political Action Committee (Spectra-DCP PAC)").

⁶ Compl., at 2.

Jeff S. Jordan
 June 14, 2019
 Page 3

LEGAL ANALYSIS

The Complaint fails to allege any violation of the Act. Rather, it alleges only that an SSF made lawful contributions to the Federal Respondents. It alleges no actual conduct by any foreign national, nor does it allege any facts that would have given the Federal Respondents any reason to question any of the contributions.

A complaint must allege “‘sufficient specific facts’ that, if proven[,] would constitute a violation of the Act.”⁷ A complainant’s “unwarranted legal conclusions from asserted facts[] will not be accepted as true.”⁸ Further, statements in complaints that “are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant’s belief in the truth of such statements.”⁹ Without such information, there is no actionable complaint.

Here, the Complainant lacks personal knowledge: “I have no personal or business connection to any of these people or organizations that I am aware of; as such, all information ultimately comes from publicly available sources that I list in this document.”¹⁰ Those “publicly available sources” present no potential violation. The Complainant repeatedly confuses the SSF, Enbridge (U.S.) Inc., and Enbridge Inc., and the Complaint’s cited sources present only contributions made by the SSF. Thus, the Commission should find no reason to believe a violation occurred.

I. The Complaint Fails to Allege Any Foreign National Contribution

The Complaint’s claim of a supposed violation hinges entirely on its failure to distinguish between an SSF, its U.S. connected organization, and that connected organization’s Canadian parent. The Complaint alleges that Enbridge Inc. “made hundreds of contributions *directly* to American political campaigns,” but the supporting documentation shows only lawful contributions that the SSF made to the Federal Respondents.¹¹

The domestic subsidiary of a foreign corporation may maintain an SSF which, in turn, may contribute to federal candidates.¹² By contrast, a foreign national may not directly or indirectly make a contribution or donation of money or other thing of value in connection with any federal,

⁷ Fed. Election Comm’n, Matter Under Review 5972 (Iowa Christian Alliance), Factual and Legal Analysis, at 7 (Nov. 4, 2008) (citation omitted).

⁸ Fed. Election Comm’n, Matter Under Review 5141 (Moran for Congress), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold, at 2 (Apr. 17, 2002).

⁹ 11 C.F.R. § 111.4(d)(2).

¹⁰ Compl., at 1.

¹¹ *Id.*

¹² Fed. Election Comm’n, Advisory Op. 2009-14 at 3 (Mercedes-Benz USA/Sterling) [hereinafter “AO 2009-14”].

Jeff S. Jordan
 June 14, 2019
 Page 4

state, or local election.¹³ The term “foreign national” refers to: (1) any individual who is not a citizen, national, or lawfully-admitted permanent resident of the United States; and (2) any “foreign principal” who is not a U.S. citizen.¹⁴ A “foreign principal” includes, *inter alia*, “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.”¹⁵

However, a corporation “organized under the laws of any State within the United States that has its principal place of business in the United States” is neither a foreign principal nor a foreign national under the Act.¹⁶ The domestic subsidiary of a foreign corporation is not a foreign national and may establish and maintain an SSF to make contributions, so long as it is a “discrete entit[y] whose principal place of business is the United States”¹⁷ and “those exercising decision-making authority over the SSF are not foreign nationals.”¹⁸ The foreign corporation must “delegate all decisions concerning [the federal PAC’s] administration . . . to some other corporate personnel group comprised exclusively of United States citizens or individuals lawfully admitted for permanent residence in the United States.”¹⁹

The facts presented by the Complaint are consistent with this long line of Commission authority and show no deviation. The documents cited in the Complaint show that the SSF was the donor to the Federal Respondents, has its principal place of business in the United States, and is maintained and controlled by a domestic U.S. corporation.²⁰ The documents also show no contributions from Enbridge Inc. or any other foreign national. They also do not establish that any foreign national exercised any decision-making authority over the SSF or participated in any decisions regarding the contributions. In short, the Complaint and its supporting documents present lawful conduct: contributions made by a domestic SSF, established and maintained by a domestic corporation, in compliance with the Act.

¹³ 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

¹⁴ 52 U.S.C. § 30121(b).

¹⁵ 22 U.S.C. § 611(b)(3); 52 U.S.C. § 30121(b)(1).

¹⁶ See Fed. Election Comm’n, Advisory Op. 2000-17, at 4 (Extencicare) [hereinafter “AO 2000-17”].

¹⁷ AO 2009-14, *supra* note 12, at 3.

¹⁸ *Id.*; see also Fed. Election Comm’n, Advisory Op. 1999-28, at 4 (Bacardi-Martini) (“[A] domestic subsidiary may establish and administer an SSF subject to certain conditions”); Fed. Election Comm’n, Advisory Op. 1995-15, at 2-3 (Allison Engine PAC) (stating that the domestic subsidiary of a foreign corporation may establish an SSF so long as, *inter alia*, “foreign national[s] . . . would abstain from voting on the selection of individuals to operate the committee and exercise decision-making authority with respect to its contributions and expenditures”); Fed. Election Comm’n, Advisory Op. 1990-08, at 2 (CIT) (“[A] discrete corporate entity organized under the laws of Delaware and with New York as its principal place of business . . . [was] not a foreign principal and, therefore, may establish and operate a separate segregated fund subject to certain conditions[.]”).

¹⁹ AO 2000-17, *supra* note 16, at 6.

²⁰ See Enbridge-DCP PAC FEC Form 1, *supra* note 5; see also Exh. A, *supra* note 2.

Jeff S. Jordan
June 14, 2019
Page 5

II. The Complainant Fails to Allege That Any Federal Respondent Knowingly Received a Foreign National Contribution

Even if the Complaint could somehow be read to allege that a foreign national *made* a prohibited contribution, it fails to allege that any Federal Respondent knowingly *accepted* a foreign national contribution. This failure provides a separate, independent reason to dismiss the Complaint as to the Federal Respondents.

Under the Act, no person shall knowingly accept or receive a contribution from a foreign national.²¹ The word “knowingly” means that a person: (1) has “actual knowledge” that the source of funds is a foreign national; (2) is “aware of facts that would lead a reasonable person to conclude that there is a substantial probability” that the source of the funds is a foreign national; *or* (3) is “aware of facts that would lead a reasonable person to inquire” whether the source of funds is a foreign national while failing “to conduct a reasonable inquiry.”²² Such facts include whether the contributor or donor uses a foreign passport or passport number for identification purposes, provides a foreign address, resides abroad, or draws or wires funds from a foreign bank.²³

The Complaint offers no such facts. It makes no claim that any Federal Respondent had any actual knowledge that the source of the contributions is a foreign national. It presents no facts that could have led a reasonable person to conclude or inquire whether there is a substantial probability that the source of the funds is a foreign national—besides the fact that the contributing SSF was maintained by the domestic subsidiary of a foreign corporation, which the Commission has repeatedly held to be legal.²⁴

To the contrary, a recipient committee inquiring about the SSF, using its Commission identification number, would have seen that the SSF’s connected organization is based in Houston, Texas. The recipient committee also would have seen that the SSF’s custodian of records, treasurer, and designated agent—all different people—are based in Houston, Texas, as well. Finally, the representations made most recently by the SSF and its connected organization to the Federal Respondents affirm that they “are in full compliance with federal law and regulations.”²⁵ Thus, the Complaint presents no facts to allege that the Federal Respondents knowingly received any foreign national contribution.

²¹ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

²² 11 C.F.R. § 110.20(a)(4)(i)-(iii).

²³ *Id.* § 110.20(a)(5)(i)-(iv).

²⁴ *See, e.g.*, AO 2009-14, *supra* note 12, at 3; AO 2000-17, *supra* note 16, at 4.

²⁵ Exh. A, *supra* note 2.

Jeff S. Jordan
June 14, 2019
Page 6

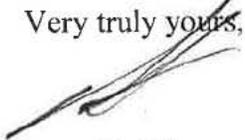
CONCLUSION

This Complaint is the rare Commission equivalent of complex litigation, naming dozens of political committee respondents for no reason at all besides the fact that they received lawful contributions and disclosed them on Commission reports. The consequences of a pending complaint can be significant for a respondent committee, depending on its circumstances. A pending complaint can keep a committee from terminating and force it to continue filing reports so long as the Complaint remains pending. It can affect the disclosures a committee must make to lenders, and thereby the costs it must incur to obtain loans.

Although Commission rules provide no specific process for responding to a frivolous complaint, the Commission retains full power to resolve a complaint on the merits. Moreover, where, as here, the Complaint is defective on its face, there is nothing to keep the Commission from dismissing it on an expedited basis. Thus, the Federal Respondents respectfully request that the Commission do so here and promptly find no reason to believe any violation occurred, dismiss the Complaint, and close the file.

We appreciate the Commission's consideration of this response.

Very truly yours,



Marc E. Elias
Brian G. Svoboda
Rachel L. Jacobs
Counsel to the Federal Respondents



Enbridge DCP PAC
5400 Westheimer Court
Houston, Texas 77056

May 3, 2019

Filemon Vela For Congress
1150 N Loop 1604 W
Ste 102 - 230
San Antonio, TX 78248

Re: Complaint filed with the Federal Election Commission by Alexander Austin with respect to Enbridge-DCP PAC – MUR 7594

To whom it may concern:

As you may be aware, Alexander Austin, an individual residing in Colorado, has submitted a complaint to the Federal Election Commission (FEC) with respect to Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC) (which was formerly known as Spectra Energy Corp Political Action Committee (Spectra-DCP PAC)).

The complaint is focused on the fact that Enbridge (U.S.) Inc., which sponsors Enbridge-DCP PAC, is a subsidiary of Enbridge Inc., a Canadian company.

Enbridge Inc. is a Canadian corporation with its common shares publically traded on the Toronto and New York stock exchanges under the symbol "ENB." Enbridge Inc. is one of North America's largest energy infrastructure companies with strategic business platforms (owned and operated through its subsidiaries) that include an extensive network of crude oil, liquids and natural gas pipelines, regulated natural gas distribution utilities and renewable power generation assets. Enbridge (U.S.) Inc. is a Delaware corporation and a wholly owned subsidiary of Enbridge Inc. Enbridge (U.S.) Inc.'s principal place of business is located in Houston, Texas, and, through its subsidiaries, has approximately 3,500 employees in the U.S., who safely maintain and operate Enbridge's assets across 41 U.S. states.

Please be assured that the operations of the Enbridge-DCP PAC are in full compliance with federal law and regulations, which allow the U.S. subsidiaries of foreign companies to sponsor PACs, have such PACs solicit contributions from eligible U.S. citizens and green card holders, and have such PACs make contributions to U.S. political committees. Many U.S. subsidiaries of foreign companies sponsor PACs and engage in such activities. The law is clear in this area, and we are confident the complaint will be dismissed.

Unfortunately, the complaint identified not only the Enbridge-DCP PAC but also many of the federal and state political committees to which the Enbridge-DCP PAC made contributions to over several years. This included your committee, and the FEC was therefore obligated to notify your committee of the complaint. You likely received a letter from Jeff Jordan, the FEC's Assistant General Counsel, in recent days.

As the letter explains, at this preliminary stage the FEC is given an opportunity to determine if there is any reason to believe that a possible violation has occurred. Only if the FEC reach that conclusion would the FEC open an investigation into the matter.

Enbridge (U.S.) Inc. will respond to the complaint on our behalf and seek to demonstrate that there is no reason for the FEC to believe that any violation has occurred. Other parties mentioned in the complaint, including your committee, are provided a chance to respond at this preliminary stage too, but a response is not required. If your committee chooses to respond, as the letter explains, your committee may request an extension of the 15-day response deadline referenced in the letter.

If you have any questions about this matter, please feel free to contact me at [redacted] or bill.burlew@enbridge.com.

Sincerely,



Bill Burlew
Senior Manager Federal Government Affairs, U.S.
Enbridge