



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA EMAIL AND FIRST CLASS MAIL

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AUG 01 2019

RE: MUR 7624
Lady Diann Torres Foundation

Dear Mr. Long:

Commission became aware of information suggesting that your client, the Lady Diann Torres Foundation, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On May 16, 2018, the Commission notified your client of the allegations.

Upon further review of the allegations and information supplied by you, the Commission, on July 25, 2019, voted to dismiss the allegations as they pertain to the Lady Diann Torres Foundation. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or epaoli@fec.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran", is written over a horizontal line.

Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Lady Diann Torres Foundation MUR 7624

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (“Commission”) in the normal course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(2).

II. FACTS

The Lady Diann Torres Foundation (“LDTF”) formed in 2015 as a 501(c)(3) entity.¹ It is alleged to have accepted foreign national donations in connection with the elections in the Commonwealth of the Northern Mariana Islands (“CNMI”).

The CNMI is a commonwealth government comprised of 14 islands in the West Pacific. Following World War II, the United Nations established the “Trust Territory of the Pacific Islands,” which included the CNMI, the Republic of Palau, the Marshall Islands, and the Federated States of Micronesia. The United States initially functioned as a trustee over the Trust Territory, with the CNMI eventually seeking to form its own relationship with the United States, apart from the other islands. Negotiations between U.S. and CNMI representatives resulted in the creation of a governing document, the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the “Covenant”), which, *inter alia*, sets forth the applicability of U.S. laws to the CNMI. CNMI voters adopted

¹ Diann Torres Decl. ¶ 13.

1 the Covenant in 1975, and it was signed into law on March 24, 1976.²

2 The Covenant establishes that “[T]he CNMI is under the sovereignty of the United States
3 but retains ‘the right of local self-government.’”³ In relevant part, section 502(a) provides that
4 “laws of the United States in existence on the effective date of this Section and subsequent
5 amendments to such laws will apply to the Northern Mariana Islands, except as otherwise
6 provided in this Covenant.”⁴ The Covenant does not exclude the Federal Election Campaign Act
7 of 1971, as amended (“Act”), and states that the CNMI will be subject to U.S. laws “which are
8 applicable to Guam and which are of general application to the several States as they are
9 applicable to the several states.”⁵

10 The Commonwealth Election Commission is the government agency in charge of
11 election and voting matters in the CNMI, including collecting candidate financial statements and
12 processing voter registrations.⁶ It appears that the CNMI imposes no limitations on campaign
13 contributions, whether contribution amounts or particular sources.⁷

14 LDTF denied any involvement with the Ralph Torres reelection campaign, stating that
15 “LDTF has not had any involvement with fundraising for any political campaign during the

² See Covenant, 48 U.S.C. § 1801 et seq.

³ *CNMI v. United States*, 399 F.3d 1057, 1058 (9th Cir. 2005) (explaining that the United States has paramount interest in submerged lands adjacent to CNMI) (citations omitted).

⁴ Covenant, § 502.

⁵ *Id.* § 502(a)(2).

⁶ See COMMONWEALTH ELECTION COMMISSION, <https://www.votecnmi.gov.mp/> (last visited May 17, 2019).

⁷ See generally Commonwealth Election Commission Regulations, Part 700 et seq.

2014, 2016 and 2018 elections.”⁸ LDTF acknowledged what it categorized as Diann Torres’s “peripheral involvement” in her husband’s (Ralph Torres’s) campaign, which LDTF described as “donating beverages and food, selling tickets and selling one corporate table. . . . Those activities did not involve foreign nationals.”⁹ In a declaration submitted with the LDTF response, Diann Torres states that she founded LDTF to advance the well-being of Commonwealth residents.¹⁰ Diann Torres attached a purported checking account ledger to her declaration, showing income and expenditures since LDTF’s inception up to July 2018.

The ledger shows that “Imperial Pacific Inc. – Best Sunshine” donated \$35,000 to LDTF, \$20,000 in 2015 and \$15,000 in 2016.¹¹ Imperial Pacific Best Sunshine was the name of the temporary casino built and operated by Imperial Pacific, a Chinese company, from 2015 to 2017.¹² The ledger also shows that LDTF has taken in approximately \$49,000 in cash, out of approximately \$120,000 in total income, without further explanation as to the source of the cash.¹³ There are no expenditures shown to CNMI political committees.

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,

⁸ LDTF Resp. at 4 (Aug. 7, 2018).

⁹ *Id.*

¹⁰ Diann Torres Decl. ¶¶ 13, 16.

¹¹ Diann Torres Decl., Attach. 3.

¹² See Imperial Pacific, 2017 Annual Finance Report at 6 (Mar. 28, 2018), available at <http://www.imperialpacific.com/uploads/attachment/2018-04/303515ae35e87840b4.pdf>.

¹³ Diann Torres Decl., Attach 3.

independent expenditure, or disbursement, in connection with a federal, state, or local election.¹⁴

The Act's definition of "foreign national" includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a "foreign principal" as defined at 22 U.S.C. § 611(b), which, in turn, includes a "partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."¹⁵

In the Bipartisan Campaign Reform Act of 2002 ("BCRA"),¹⁶ 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.¹⁷

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, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or

¹⁴ 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* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

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

¹⁶ Pub. Law 107-155, 116 Stat. 81 (Mar. 27, 2002).

¹⁷ *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)).

disbursements . . . or decisions concerning the administration of a political committee.¹⁸

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,¹⁹ 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.²⁰

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

¹⁸ 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 69946; *see also* Advisory Op. 2004-26 at 2-3 (Weller) (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.”).

¹⁹ *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) (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 nonfederal 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).

²⁰ *See* MUR 6203 (Itinere North America).

expenditure, or disbursement.²¹ The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.²²

A. The Foreign National Prohibition Applies to the CNMI

As an initial matter, LDTF challenges the application of the foreign national prohibitions of the Act to the CNMI on jurisdictional grounds. It argues that the Commission does not have jurisdiction over CNMI local elections, specifically, the CNMI gubernatorial and representative races.²³ Instead, LDTF cites to the Covenant to argue that the CNMI is not a “state” as defined in the Act and that CNMI elections are internal matters guaranteed to be part of CNMI’s self-governance.²⁴

LDTF recites the history of the relationship with the United States to argue that it is unique among the other non-state jurisdictions subject to U.S. sovereignty by virtue of the Covenant.²⁵ For example, it argues that “consistent with the Covenant’s fundamental provisions,” courts have ruled that the constitutional right to a jury trial does not apply in the

²¹ 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.” Assisting Foreign National Contributions or Donations, 67 Fed. Reg. 66928, 66945 (Nov. 19, 2002). Moreover, substantial assistance “covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations.” *Id.* at 66945.

²² 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. 11 C.F.R. § 110.20(a)(4).

²³ LDTF Response - Long Memo at 5-6.

²⁴ *Id.* at 7-9.

²⁵ *Id.* 1-3.

CNMI nor certain aspects of the Equal Protection Clause.²⁶ LDTF asserts that under Section 103 of Covenant Article 1, the people of the Commonwealth have “the right of local self-government” and the application of the Act “is not sustainable” under it.²⁷ In support, LDTF points to the 2008 legislation that created the congressional Delegate position, which also established that the CNMI could determine the order of names on the ballot, how a special election could be conducted, and how ties between candidates could be resolved in addition to “all other matters of local application.”²⁸

These subject matter jurisdiction arguments asserted by LDTF lack merit. On its face, Section 502 of the Covenant provides that the CNMI is subject to laws “in existence on the effective date of this Section and subsequent amendments to such laws . . . which are applicable to Guam and which are of general application the several States as they are applicable to the several States.”²⁹ The Act, including the provision containing the prohibition on foreign national contributions in local elections, applies to “the several states,” was enacted prior to the March 24, 1976 effective date of the Covenant, and was not specifically excluded in the Covenant.³⁰ The Covenant also applies to “subsequent amendments to such laws.”³¹

²⁶ *Id.* at 3 (citations omitted).

²⁷ *Id.* at 4.

²⁸ *Id.* at 5.

²⁹ Covenant § 502(a)(2).

³⁰ *See also* FEC Act Amendments of 1974, Pub. L. No. 93-443, § 101(d), 88 Stat. 1263, 1267.

³¹ Covenant § 502(a)(2).

Furthermore, the Commission has previously applied the Act's foreign national prohibition to corporate contributions of a respondent in Guam.³²

In addition, LDTF's jurisdictional arguments erroneously conflate the administration of local elections with the U.S. government's interest in the funding of the political process. The Act does not attempt to regulate how local communities conduct their elections; it instead regulates the financing of such elections, in all States and territories to which the Act applies, in service of a compelling Congressional purpose. As the court in *Bluman v. FEC* explained:

[P]olitical contributions . . . are an integral aspect of the process by which Americans elect officials to federal, state, and local government offices. . . . [Section 30121] serves the compelling interest of limiting the participation of *non-Americans* in the activities of democratic self-government. A statute that excludes foreign nationals from political spending is therefore tailored to achieve that compelling interest.³³

Here, not only has CNMI accepted the application of the Act through the Covenant, but the Act's purposes are furthered by such application. Just like in the 50 states, the CNMI holds elections for governor and lieutenant governor every four years and for representatives to its lower house every two years, and the CNMI and the states administer their elections as they desire, limited by Constitutional considerations.³⁴ But Congress's interest in protecting the political process from foreign influence is as important to democratic self-governance in the

³² See MUR 3437 (The Guam Tribune) (Commission found reason to believe that respondent violated prohibition on corporate contributions; closed after investigation).

³³ 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012) (emphasis added); *see also Singh*, 924 F.3d 1030 (upholding constitutionality of section 30121(a)(1) as to state and local elections based on Congress's broad powers over foreign affairs and immigration and citing *Bluman* as precluding appellant's First Amendment challenge).

³⁴ See, e.g., *Bush v. Gore*, 531 U.S. 98 (2000) (holding, in part, that Florida's method of selecting electors violated the Constitution).

1 CNMI, as it is everywhere else in the United States. Like the District of Columbia, the CNMI
2 elects a non-voting Member of the U.S. House of Representatives. Thus, the Act, its
3 amendments, and corresponding Commission regulations are applicable to the financing of local
4 elections in the CNMI, including the prohibition regarding foreign national contributions, and
5 LDTF's jurisdictional arguments regarding the administration of CNMI elections are without
6 merit.

7 **B. Foreign National Donations**

8 In the alternative, LDTF argues that if the Commission concludes that the foreign
9 national prohibition applies to CNMI local elections, then this matter should be dismissed
10 because it was unaware that such contributions were prohibited.³⁵

11 The LDTF Response and declaration of Diann Torres state that, as a non-profit entity
12 organized under CNMI's equivalent of 501(c)(4), LDTF does not engage in political activities,
13 including raising money for political campaigns or making contributions to them.³⁶ The LDTF
14 Response and Torres declaration do acknowledge, however, that Diann Torres assisted in the
15 preparation of two Friends of Ralph fundraisers for Ralph Torres and sold tickets to the second
16 fundraiser.³⁷ They also acknowledge that in-kind contributions were made in the form of wine,
17 liquor, a cake, and cupcakes, but neither the Response nor the Declaration make clear whether
18 Diann Torres made those contributions or whether LDTF did.³⁸ Although it appears that LDTF

³⁵ See LDTF Resp. at 4-6.

³⁶ LDTF Resp. at 4; Torres Decl. ¶ 16.

³⁷ LDTF Resp. at 4; Torres Decl. ¶ 11.

³⁸ See *id.*

MUR 7624 (Lady Diann Torres Foundation)

Factual and Legal Analysis

Page 10 of 10

1 has accepted foreign national donations to support its operations, we do not have information
2 that LDTF spent those funds in connection with an election.

3 Therefore, based on the available record, the Commission dismisses the allegation that
4 LDTF violated 52 U.S.C. § 30121 by accepting foreign national contributions or donations in
5 connection with an election.