FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA EMAIL AND FIRST CLASS MAIL

AUG 0 1 2019

George Anthony Long, Esq.
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RE: MUR 7624

Dear Mr. Long:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your clients, Angel A. Demapan, Angel Demapan for House, Demapan for Congress and Geralyn C. Delacruz in her official capacity as treasurer, and Friends of Ralph may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). The Commission, on July 25, 2019, found reason to believe that Angel A. Demapan and Angel Demapan for House violated 52 U.S.C. § 30121(a)(2) by accepting foreign national contributions and Friends of Ralph violated § 30121(a)(1)(A) and 11 C.F.R. § 110.20(h) by accepting foreign national donations in connection with a federal election. Further, the Commission found no reason to believe that the Demapan for Congress and Geralyn C. DelaCruz in her official capacity as treasurer violated 52 U.S.C. § 30121(a)(1)(A) by accepting foreign national contributions. The Factual and Legal Analyses, which formed a basis for the Commission's findings, are enclosed for your information.

In order to expedite the resolution of this matter as to Angel A. Demapan, Demapan for House, and Friends of Ralph, the Commission has authorized the Office of the General Counsel to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law. Enclosed are conciliation agreements for your consideration [redacted]

[redacted]

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or (800) 424-9530, or epaoli@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a); 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/respondent.guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.[1]

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

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[1] The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

We look forward to your response.

On behalf of the Commission,

Ellen L. Weintraub

Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analyses

[redacted]

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Friends of Ralph 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

Friends of Ralph is a non-profit entity formed in 2017 to raise funds and promote Ralph G. Torres's reelection candidacy for governor of the Commonwealth of the Northern Mariana Islands ("CNMI") in 2018.[1] It was reorganized in 2018 as a 527 group.[2] [redacted] alleges that Friends of Ralph funnels money from foreign corporations to the Torres campaign. [redacted] notes that Friends of Ralph's vice president, Glenna SP Reyes, and secretary and treasurer, Frances Dela Cruz, both work for Torres.

Reyes submitted a declaration in which she states that she planned, organized, and facilitated Friends of Ralph fundraising activities for the 2018 gubernatorial ticket.[3] Friends of Ralph conducted two fundraisers for Torres in 2017 but has not conducted any fundraisers in 2018, following Torres's formation of his own 2018 campaign committee.[4] Friends of Ralph's

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1 Glenna Reyes Decl. ¶ 13.

2 *Id.* ¶ 12 and Attach. 1 (Friends of Ralph Amended Articles of Incorporation).

3 Glenna Reyes Decl. ¶ 13.

4 *Id.* ¶¶ 14-15.

August 4, 2017, "Birthday" fundraiser reportedly raised approximately $190,000, including $10,000 from Imperial Pacific International (CMNI) LLC, which was refunded in October 2017, and $10,000 from Alter City Group Holdings Limited, which is registered in the British Virgin Islands and has its principal place of business in Macau.[5] Friends of Ralph's December 29, 2017, "Masquerade Ball" appears to have raised approximately $250,000, including $5,000 from Alter City.[6] Friends of Ralph does not deny accepting foreign national donations, and although Torres's campaign finance statements do not disclose direct contributions from Friends of Ralph, Friends of Ralph does not deny using its funds to support the Torres campaign.[7]

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 the Covenant in 1975, and it was signed into law on March 24, 1976.[8]

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5 *See id.*, Attach 2. Information in the record suggests that foreign nationals may have participated in the decision for Imperial Pacific International (CMNI) LLC to make the August 2017 donations.

6 *See id.*, Attach. 3.

7 Friends of Ralph Resp. at 5-6 (Aug. 7, 2018).

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

The Covenant establishes that "[T]he CNMI is under the sovereignty of the United States but retains 'the right of local self-government.'"[9] In relevant part, section 502(a) provides that "laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant."[10] The Covenant does not exclude the Federal Election Campaign Act of 1971, as amended ("Act"), and states that the CNMI will be subject to U.S. laws "which are applicable to Guam and which are of general application to the several States as they are applicable to the several states."[11]

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

Friends of Ralph argues that because CNMI elections are a matter of local self-governance, the foreign national prohibition of the Act cannot apply to them.[14] Friends of Ralph asserts that foreign national contributions are not prohibited under CNMI law and that the

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9 *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).

10 Covenant, § 502.

11 *Id.* § 502(a)(2).

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

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

14 Friends of Ralph Resp. – Anthony Long Memo at 4-6.

contributions at issue are permissible.[15] In the alternative, it argues that if the Commission disagrees, the prohibition should only be enforced prospectively. Friends of Ralph asserts that although the CNMI elections office presented campaign finance training, it was not aware that foreign national contributions were prohibited at the state and local level until August 2018.[16] It argues that this matter should be dismissed, that it can refund past contributions, and that it will not accept foreign national contributions in the future.[17] Friends of Ralph also acknowledges, however, that the group is unsure of the nationalities of some of the contributors.[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 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,

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15 *Id.* at 7-8.

16 *Id.*

17 *Id.* at 5-6.

18 *Id.* at 5.

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

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. 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, 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 disbursements. . . or decisions concerning the administration of a political committee.[23]

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[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).

[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 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.").

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,[24] 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.[25]

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.[26] The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.[27]

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[24] *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).

[25] *See* MUR 6203 (Itinere North America).

[26] 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) ("Foreign National E&J"). 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.

[27] 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).

A. The Foreign National Prohibition Applies to the CNMI

As an initial matter, Friends of Ralph 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.[28] Instead, Friends of Ralph 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.[29]

Friends of Ralph 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.[30] 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 CNMI nor certain aspects of the Equal Protection Clause.[31] Friends of Ralph 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.[32] In support, Friends of Ralph 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

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28 Friends of Ralph Resp. - Long Memo at 5-6.

29 *Id.* at 7-9.

30 *Id.* 1-3.

31 *Id.* at 3 (citations omitted).

32 *Id.* at 4.

special election could be conducted, and how ties between candidates could be resolved in addition to "all other matters of local application."[33]

These subject matter jurisdiction arguments asserted by Friends of Ralph 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."[34] 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.[35] The Covenant also applies to "subsequent amendments to such laws."[36] Furthermore, the Commission has previously applied the Act's foreign national prohibition to corporate contributions of a respondent in Guam.[37]

In addition, Friends of Ralph'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

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33 *Id.* at 5.

34 Covenant § 502(a)(2).

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

36 Covenant § 502(a)(2).

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

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.[38]

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.[39] But Congress's interest in in protecting the political process from foreign influence is as important to democratic self-governance in the CNMI, as it is everywhere else in the United States. Like the District of Columbia, the CNMI elects a non-voting Member of the U.S. House of Representatives. Thus, the Act, its amendments, and corresponding Commission regulations are applicable to the financing of local elections in the CNMI, including the prohibition regarding foreign national contributions, and Friends of Ralph's jurisdictional arguments regarding the administration of CNMI elections are without merit.

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[38] 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).

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

B. Foreign National Donations

In the alternative, Friends of Ralph argues that if the Commission concludes that the foreign national prohibition applies to CNMI local elections, then this matter should be dismissed because it was unaware that such contributions were prohibited.[40]

As Torres's fundraising entity prior to forming his own campaign committee, Friends of Ralph raised hundreds of thousands of dollars for his reelection campaign, some of which came from foreign national corporations. Friends of Ralph does not deny accepting donations from foreign nationals or spending those funds on Torres's campaign. Rather, Friends of Ralph objects to the use of the term "funneling" as "an unnecessary inflammatory term in as much as Commonwealth law allows contributions by foreign nationals and that foreign national contributions in local Commonwealth elections are and always have been above board and have never been hidden, masked or otherwise disguised."[41]

Thus, Friends of Ralph acknowledges knowingly accepting foreign national funds for the purpose of reelecting Torres. Besides the Imperial Pacific and Alter City donations to Friends of Ralph, we do not know the extent of other foreign national funds knowingly accepted by Friends of Ralph. Friends of Ralph Vice-President Reyes stated that since receiving the Commission's notification, Friends of Ralph stopped spending funds collected at the 2017 events.[42] Reyes also stated that it has always been her belief that foreign national contributions were permitted under

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40 *See* Friends of Ralph Resp. at 4-6.

41 *Id.* at 5-6.

42 Reyes Decl. ¶ 16.

CNMI law.[43] The available information sufficiently supports the conclusion that Friends of Ralph accepted foreign national donations and spent those funds in connection with the election of Torres, thereby substantially assisting the Torres campaign as an intermediary in collecting foreign national donations and using them in connection with the election of Torres.[44] Accordingly, the Commission finds reason to believe that Friends of Ralph violated 52 U.S.C. § 30121(a)(2) by accepting foreign national donations in connection with an election.

43 *Id.* ¶ 30.

44 *See* Foreign National E&J, 67 Fed. Reg. at 66,945.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Angel A. Demapan
Angel Demapan for House
Demapan for Congress and Geralyn C. DelaCruz in her official capacity as treasurer

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

In 2014, Angel A. Demapan was elected to the Commonwealth of the Northern Mariana Islands ("CNMI") House of Representatives. He was reelected in 2016. In 2018, Demapan ran for the position of CNMI's Delegate to the U.S. House of Representatives[1] but lost. His federal campaign committee was Demapan for Congress and Geralyn C. DelaCruz in her official capacity as treasurer.

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

[1] The Delegate for the Northern Mariana Islands is one of five non-voting members of the U.S. House of Representatives. The other delegates represent the District of Columbia, America Samoa, Guam, and the Virgin Islands. With the principal exception of the right to vote on matters before the House, delegates have most of the same authorities as other Members of Congress.

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 the Covenant in 1975, and it was signed into law on March 24, 1976.[2]

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

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

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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.*

Publicly available campaign finance reports indicate that Demapan held a fundraiser on August 22, 2016, and accepted $500 from Honest Profit, a Hong Kong-based business, and $1,000 from Imperial Pacific International (CNMI) LLC.[8] Demapan also appears to have accepted $2,100 from Honest Profit in January 2015. A review of Demapan's reports filed with the Commission for his 2018 federal campaign do not identify contributions from any foreign national corporations.

Demapan argues that because CNMI elections are a matter of local self-governance, the foreign national prohibition of the Act cannot apply to him.[9] He asserts that foreign national contributions are not prohibited under CNMI law and that the contributions at issue are permissible.[10] In the alternative, he argues that if the Commission disagrees, the prohibition should only be enforced prospectively. Demapan asserts that although the CNMI elections office presented campaign finance training, he was not aware that foreign national contributions were prohibited at the state and local level until August 2018.[11] He argues that this matter should be dismissed, that he can refund past contributions, and that he will not accept foreign national

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8 *See* Demapan CNMI Campaign Finance Disclosure, August 22, 2016, Fundraising Event Report (Jan. 10, 2017) (identifying a $1,000 donation from "Imperial Pacific International (CNMI) LLC," which is a domestic subsidiary of Imperial Pacific International Holdings, a Chinese corporation). Information in the record suggests that foreign nationals may have participated in the decision to make the August 2016 donation.

9 Demapan Resp. – Anthony Long Memo at 4-6.

10 *Id.* at 7-8.

11 *Id.*

contributions in the future.[12] Demapan also acknowledges, however, that he is unsure of the nationalities of some of the contributors.[13]

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.[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.

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12 *Id.* at 5-6.

13 *Id.* at 5; Demapan Resp. (Aug. 7, 2018), Attach. 3, Geralyn DelaCruz Decl. at 8 ("[T]here are some persons and corporations who I cannot verify as of yet, if they are a U.S. citizen, permanent resident or foreign national.").

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).

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 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

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[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)).

[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).

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 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, Demapan challenges the application of the foreign national prohibitions of the Act to the CNMI on jurisdictional grounds. He argues that the Commission does not have jurisdiction over CNMI local elections, specifically, the CNMI representative race.[23] Instead, he 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]

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

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 Demapan Resp.– Long Memo at 5-6.

24 *Id.* at 7-9.

Demapan 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, he 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 CNMI nor certain aspects of the Equal Protection Clause.[26] He 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, Demapan 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 Demapan 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

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25 *Id.* 1-3.

26 *Id.* at 3 (citations omitted).

27 *Id.* at 4.

28 *Id.* at 5.

29 Covenant § 502(a)(2).

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

In addition, Demapan'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

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

31 Covenant § 502(a)(2).

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).

desire, limited by Constitutional considerations.[34] But Congress's interest in in protecting the political process from foreign influence is as important to democratic self-governance in the CNMI, as it is everywhere else in the United States. Like the District of Columbia, the CNMI elects a non-voting Member of the U.S. House of Representatives. Thus, the Act, its amendments, and corresponding Commission regulations are applicable to the financing of local elections in the CNMI, including the prohibition regarding foreign national contributions, and Demapan's jurisdictional arguments regarding the administration of CNMI elections are without merit.

B. Foreign National Contributions

In the alternative, Demapan argues that if the Commission concludes that the foreign national prohibition applies to CNMI local elections, then this matter should be dismissed because he was unaware that such contributions were prohibited.[35]

The available information indicates that Demapan knowingly accepted three contributions totaling $3,600 from Honest Profit and Imperial Pacific in connection with his 2014 and 2016 races for CNMI house.[36]

Contributions to Demapan Campaigns		
Date	**Source**	**Amount**
January 2015	Honest Profit	$2,100
August 22, 2016	Imperial Pacific	$1,000
	Honest Profit	$500
	Total Contributions	**$3,600**

[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).

[35] *See* Demapan Resp. at 4-6.

[36] *See* Angel Demapan 2016 Campaign Statement of Account (Jan. 10, 2017).

Therefore, the Commission finds reason to believe that Angel A. Demapan and Angel Demapan for House accepted at least $3,600 in prohibited foreign national contributions from two corporations, in violation of 52 U.S.C. § 30121(a)(2).

C. Federal Committee

A review of Demapan's federal committee's receipts does not indicate that it accepted prohibited contributions from the foreign national corporations.[37] Thus, the Commission finds no reason to believe that Demapan for Congress and Geralyn C. DelaCruz in her official capacity as treasurer violated 52 U.S.C. § 30121(a)(2) by accepting foreign national contributions.

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[37] *See* Demapan for Congress 2017-18 receipts, *available at* https://www.fec.gov/data/committee/C00657551/?cycle=2018&tab=raising; *see also* Demapan Resp. at 3-4.