FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 21, 2021

via email to
mdotts@dottslaw.law

Michael W. Dotts, Esq.
Dotts Law Office
Suite 208, DHL Building
Middle Road, Chalan Kiya, Saipan
96950 CNMI

RE: MUR 7624
CNMI Republican Party

Dear Mr. Dotts:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, the CNMI Republican Party, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). The Commission, on January 12, 2021, found reason to believe that the CNMI Republican Party violated 52 U.S.C. § 30121(a)(2) by accepting foreign national contributions. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

In order to expedite the resolution of this matter, 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 you 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 you violated the law. Enclosed is a conciliation agreement for your consideration.

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 you 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 you 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.

We look forward to your response.

On behalf of the Commission,

Shana M. Broussard
Chair

Enclosures
Factual and Legal Analysis
[redacted]

[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).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: CNMI Republican Party 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 Commonwealth of the Northern Mariana Islands ("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.[1]

[1] *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.'"[2] 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."[3] The Covenant does not exclude the 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."[4]

The Commonwealth Election Commission ("CEC") is the government agency in charge of election and voting matters in the CNMI, including collecting candidate financial statements and processing voter registrations.[5] It appears that the CNMI imposes no limitations on campaign contributions, whether contribution amounts or particular sources.[6]

The CNMI Republican Party is the commonwealth-wide Republican party committee. According to its publicly available CNMI financial disclosure reports, on December 30, 2016, the CNMI Republican Party accepted: (1) $10,000 from Alter City Group Holdings Ltd., which is registered in the British Virgin Islands ("BVI") and has its principal place of business in Macau, (2) $5,000 from Honest Profit International Ltd., a wholly owned domestic subsidiary of a Hong Kong corporation, and (3) $10,000 from Imperial Pacific International (CNMI) LLC

---

2 *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).

3 Covenant, § 502.

4 *Id.* § 502(a)(2).

5 *See* COMMONWEALTH ELECTION COMMISSION, https://www.votecnmi.gov.mp/ (last visited October 20, 2020).

6 *See generally* CNMI Admin. Code, Title 30-10 *et seq*.

("Imperial Pacific"), a domestic subsidiary of a BVI corporation.[7] In response to the Commission's notice that it may have accepted foreign national contributions, the CNMI Republican Party does not deny accepting the contributions, but asserts that the Commission has no jurisdiction over local election activity in the CNMI.[8] It further asserts that the donor corporations are U.S. subsidiaries of foreign corporations and properly made the contributions.[9]

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.[10] 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."[11]

---

[7] *See* CNMI Republican Party Campaign 2018 Statement of Account at 4, filed Jan. 18, 2019 [redacted] The CEC reporting regulations require political committees to file one report per election, which is due 50 days after the election. CNMI Admin Code, Title 30-10-40 (2018). Thus, even though the Party received the contributions at issue in December 2016, they were timely reported in January 2019.

[8] CNMI Republican Party Resp. at 2 (May 26, 2020).

[9] *Id*.

[10] 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).

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

In the Bipartisan Campaign Reform Act of 2002 ("BCRA"),[12] 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.[13]

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.[14]

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.[15]

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

---

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

[13] *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)).

[14] 11 C.F.R. § 110.20(i).

[15] 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.

clerical duties, such as online research and translations, during a one month-long internship with a party committee.[16] 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.[17] 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,[18] 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.[19]

---

[16] Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (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)).

[17] Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

[18] *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). 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.

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

A. The Foreign National Prohibition Applies to the CNMI

As an initial matter, the CNMI Republican Party 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 or the Party's campaign activities.[20]

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."[21] 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.[22] The Covenant also applies to "subsequent amendments to such laws."[23] Furthermore, the Commission has previously applied the Act's foreign national prohibition to corporate contributions of a respondent in Guam.[24]

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

---

[20] CNMI Republican Party Resp. at 2.

[21] Covenant § 502(a)(2).

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

[23] Covenant § 502(a)(2).

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

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.[25]

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.[26] 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.

B. The CNMI Republican Party Accepted Foreign National Contributions

The CNMI Republican Party argues that, even if the Act applies, the alleged foreign national contributions were made by local companies, specifically U.S. subsidiaries of foreign

---

[25] 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).

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

corporations.[27] It asserts, without substantiation, that all three companies had "substantial profits" in 2016 and that their decisions to contribute to the CNMI Republican Party were made by U.S. citizens or permanent residents.[28] The CNMI Republican Party cites Advisory Opinions 2006-15 (TransCanada) and 1992-16 (Nansay Hawaii, Inc.) in support of its argument that the contributions were permissible.[29]

In Advisory Opinions 2006-15 and 1992-16, the Commission, relying on information provided by the requestor corporations, determined that if the domestic subsidiary could show that the funds came from its domestic operations and that no foreign national participated in the decision-making process, then the contributions would be permissible under the Act.[30]

Here, information available to the Commission indicates that the CNMI Republican Party accepted foreign national contributions from Honest Profit, Alter City, and Imperial Pacific in connection with elections in the CNMI.

---

27 CNMI Republican Party Resp. at 2.

28 *Id*.

29 *Id*.

30 In the Trans-Canada advisory opinion, the Commission described the Nansay Hawaii advisory opinion as follows: "In Advisory Opinion 1992-16 (Nansay Hawaii), the Commission considered the same question at issue in this request — *i.e.*, which funds a domestic subsidiary of a foreign corporation may use to make political donations to State and local candidates. In that advisory opinion, the foreign parent corporation wholly owned the subsidiary, and it provided regular subsidies in the form of loans or capital contributions to the subsidiary. However, the domestic subsidiary proposed to use net earnings generated by the subsidiary in the United States and from segregated accounts that were not subsidized by the foreign corporate parent to make political donations. The Commission opined that such donations were permissible, provided the subsidiary could demonstrate through a reasonable accounting method that it had sufficient funds in its accounts, other than funds given or loaned by its foreign national parent corporation, from which the donations were made." Advisory Op. 2006-15 at 4. The Commission also noted that the foreign national parent corporation and domestic subsidiary should ensure that the contributions would not be replenished by the parent corporation in the future. *Id*. The Commission further determined that if a subset of the subsidiary's board of directors comprised entirely of U.S. citizens selected the individual or individuals who would exercise all decision-making regarding contributions, the contributions would be permissible. *Id*. at 5.

Therefore, the Commission finds reason to believe that the CNMI Republican Party accepted foreign national contributions in connection with elections in the CNMI in violation of 52 U.S.C. § 30121(a)(2).