



One American Center
600 Congress
Suite 1900
Austin, TX 78701

March 27, 2020

P O Box 1149
Austin, TX 78767

VIA EMAIL

p: 512 744 9300
f: 512 744 9399
www.dwmrlaw.com

Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination and Legal
Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

RE: MUR 7696

Mr. Jordan:

I write as counsel to Dannenbaum Engineering Corp. (“DEC”) in response to the Complaint filed by MJ Heger dated February 6, 2020 (the “Complaint”). The Complaint raises a straightforward and readily resolved question: whether Ms. Heger’s prospective 2020 general election opponent, Senator John Cornyn, and his campaign committee and treasurer timely disgorged four contributions totaling \$10,000 that were received in 2017, after those contributions had been identified in a plea and deferred prosecution agreement with the U.S. Attorney’s Office for the Southern District of Texas (the “USAO”) and the Public Integrity Section of the U.S. Department of Justice (“DOJ”).¹

Notwithstanding the narrow allegation that is the subject of the Complaint, DEC and other subjects in the criminal proceeding have been generated as respondents in this Matter Under Review (“MUR”).² The Commission should dismiss the MUR as to each of those respondents. The USAO and DOJ conducted an exhaustive investigation and resolved the alleged violations of the Federal Election Campaign Act in a separate criminal case, imposing substantial financial penalties and other remedial measures and obligations on DEC and its former President and CEO, Jim Dannenbaum (“Dannenbaum”). All of the relevant facts related to the campaign finance violations are now a matter of public record as a result of the criminal action. Moreover, Mr. Dannenbaum, the individual involved, is 80 years old, suffers from serious medical infirmities, has entered a guilty plea in which he has taken full responsibility for his conduct, has been precluded from leading the business that was his life’s work, and is

¹ Compl. at 5; see *United States v. Dannenbaum Eng’g Corp.*, 4:19-cr-00795 (S.D. Tex. Nov. 4, 2019); *United States v. James D. Dannenbaum*, Case No. 4:19-cr-00794 (S.D. Tex. Nov. 4, 2019).

² See, e.g., Letter from Jeff S. Jordan to Louis H. Jones, Jr. (Feb. 14, 2020) (mailed to DEC address). We note that putative respondent Mr. Jones, a former DEC employee, is now deceased.



Federal Election Commission
March 27, 2020
Page 2

subject to a criminal sentence that includes potential incarceration or payment of an additional fine.³ For these reasons, no government interest remains unaddressed that would warrant the Commission investing its limited resources to extract yet additional civil penalties from DEC, Mr. Dannenbaum, or the alleged DEC conduits. To do so would be inconsistent with the Commission's recent practice in similarly situated matters and with the comprehensive resolution DEC entered into with the USAO and DOJ. Consequently, upon restoration of a quorum, the Commission should vote to dismiss the MUR as to Respondent DEC and the related respondents and close the file as to them.

BACKGROUND

A. Relevant Parties

DEC is a privately-owned civil engineering firm located in Houston, Texas, with offices in Austin, Dallas, Fort Worth, San Antonio, El Paso, and McAllen. DEC employs about 230 people. Mr. Dannenbaum was the largest individual owner of DEC and the holding company for DEC, and served as President and CEO of DEC.

Mr. Dannenbaum began his work at DEC, the engineering company his father founded, after graduating from the University of Texas as a civil engineering major. Mr. Dannenbaum assumed leadership of DEC in 1975 after his father's death. Mr. Dannenbaum is now 80 years old.

Beyond his stewardship of DEC over the last 45 years, Mr. Dannenbaum has been a community leader in Houston and Texas his entire adult life. His extensive history of public service extends far beyond his generous financial support of dozens of charitable organizations. His good works include his personal, active commitment for over five decades in efforts to help the community through volunteerism—personally organizing meetings, recruiting members, raising funds, and making and implementing policy. He has assumed roles in numerous charitable organizations and boards, including medical and healthcare societies, such as the March of Dimes and medical colleges and universities, and in a variety of environmental organizations, educational institutions, and faith-based organizations. Illustrative of his many other public works and philanthropic endeavors, Mr. Dannenbaum helped the city of Houston fight a serious measles outbreak by, among other things, establishing an emergency room fund so that patients who could not afford medical care would not be turned away from private hospitals' emergency

³ Mr. Dannenbaum is represented before the Commission by separate counsel. Because the allegations involve his conduct as well as that of DEC, this Response will address both.



Federal Election Commission
March 27, 2020
Page 3

rooms. This and his many other public service activities have helped to shape Houston over the last half century.

B. The Criminal Matter

The USAO and DOJ have conducted an extensive investigation into allegations that Mr. Dannenbaum and DEC made contributions through straw donors to various federal candidates and committees. The investigation was comprehensive and included the review of voluminous company and financial records and multiple witness interviews. DEC cooperated with the government's inquiry, conducted a thorough internal investigation, made witnesses available to DOJ and collected and produced records for the government.⁴ DEC and the government ultimately entered into a three-year deferred prosecution agreement, while Mr. Dannenbaum took responsibility for his actions and entered a guilty plea. In the plea and deferred prosecution agreements, Mr. Dannenbaum and DEC admitted that they made \$323,300 in contributions in the names of DEC employees and their family members to federal candidates and their committees using DEC corporate funds to advance or reimburse the employees for those contributions.

The deferred prosecution agreement requires DEC to pay a \$1.6 million penalty, approximately five times the amount in violation.⁵ It obligates DEC to satisfy its terms over a three-year period, absent which the company is subject to prosecution under a criminal information that was filed with the agreement, alleging violations of 18 U.S.C. § 2 and 52 U.S.C. §§ 30109 and 30122.⁶ In the deferred prosecution agreement, DEC further agreed to institute aggressive internal controls to prevent future non-compliance. Among other things, DEC agreed to remove Mr. Dannenbaum from his executive positions, to stop all politically related payments to its employees, to retain a full-time chief governance and compliance professional, and to provide training to its workforce concerning the political contribution process.⁷

⁴ Deferred Prosecution Agreement, *Dannenbaum Eng'g Corp.*, 4:19-cr-00795, at 4, ¶ 4.b.

⁵ *Id.* at 10, ¶ 7.

⁶ See Information, *Dannenbaum Eng'g Corp.*, 4:19-cr-00795.

⁷ Deferred Prosecution Agreement, *Dannenbaum Eng'g Corp.*, 4:19-cr-00795, at 4-5, ¶¶ 4.d-e.



Federal Election Commission
March 27, 2020
Page 4

ANALYSIS

The Commission Should Dismiss as to DEC and Related Respondents as a Matter of Prosecutorial Discretion, Consistent with Its Prior Practice

The Complaint fails to assert any allegation against DEC or Mr. Dannenbaum. Instead, it asks the Commission to review whether Senator Cornyn and his campaign committee and treasurer complied with Commission regulations concerning the timely disgorgement of four campaign contributions made in violation of the Act.⁸ Nonetheless, DEC, Mr. Dannenbaum, and other DEC employees were named as respondents presumably as a result of their involvement in the underlying criminal case. Generating DEC and these additional parties as respondents therefore expanded the scope of the Complaint significantly from a straightforward question about the timing of a \$10,000 disgorgement to a much broader potential enforcement inquiry. But the Complaint was framed as it was for good reason: Mr. Dannenbaum and DEC each have already admitted to and taken responsibility for their actions through a global plea and deferred prosecution agreement with the USAO and DOJ, are already the subject of significant financial and potential criminal penalties as a result, and no reasonable policy rationale would justify pursuing additional civil enforcement remedies against them at this point.

As explained, DOJ and the USAO already have conducted an exhaustive criminal investigation of the allegation that Mr. Dannenbaum and DEC used corporate resources to advance or reimburse contributions from certain employees and their family members to federal candidates and committees. That investigation spanned several years, involved the coordinated execution of search warrants on DEC's various offices and numerous interviews of witnesses and DEC employees, and was resolved after Respondent DEC participated in lengthy additional cooperative proffers of information and settlement negotiations with the government. The findings of the criminal investigation have been made a matter of public record in the cases associated with the criminal prosecution of Mr. Dannenbaum and DEC in the Southern District of Texas. In their plea and deferred prosecution agreements, Mr. Dannenbaum and DEC have acknowledged their conduct and accepted responsibility for violations of the Act under 52 U.S.C. §§ 30109(d)(1)(D)(i) and 30122 (contributions in the name of another). DEC has also agreed to pay a substantial monetary penalty, \$1.6 million, or nearly five times the amount in violation, in addition to any monetary penalty imposed on Mr. Dannenbaum when sentenced.⁹

⁸ Compl. at 5.

⁹ The \$1.6 million penalty imposed on DEC was premised on DOJ and the USAO's conclusion that the amount "is appropriate given the facts and circumstances of this case" taking into account the sentencing factors at 18 U.S.C. § 3553, including an assessment of what penalty DEC has the ability to pay without "substantially jeopardizing the continued viability of the Company." Deferred Prosecution Agreement,



Federal Election Commission
March 27, 2020
Page 5

Given the extensive DOJ investigation and judicial proceedings already conducted, and the penalties already imposed, expending further Commission resources to obtain an additional civil penalty from DEC would serve no purpose. The relevant substantive violations of the Act were included in the criminal disposition.¹⁰ The relevant parties have been subjected to criminal fines and penalties for their violations of the Act. That criminal resolution will serve to deter violations by others, and the public admissions of DEC and Mr. Dannenbaum further satisfy any informational interests that could warrant Commission action under other circumstances. Nor is there any legitimate policy interest in satisfying the Complainant's request for Commission action where the Complaint does not ask the Commission to address the conduct of DEC or Mr. Dannenbaum. In short, there is nothing left to do, and no policy justification for Commission action against DEC or Mr. Dannenbaum.

To be sure, the Commission has exclusive jurisdiction over civil enforcement of the Act, regardless of the parallel law enforcement activities of DOJ.¹¹ But the Commission often has declined to exercise that jurisdiction as a matter of prosecutorial discretion under circumstances not materially different—*i.e.*, where the respondent has already been adequately penalized for criminal violations of the Act.¹² The Commission should follow suit here. Mr. Dannenbaum is 80 years old, has accepted responsibility for his actions without trial, and now faces a criminal sentence, including the possibility of a term of confinement for up to two years, in addition to his public acknowledgment of a felony conviction after a lifetime of public service in his community. DEC already has agreed to pay a fine of \$1.6 million in connection with its violations of the Act.

Dannenbaum Eng'g Corp., 4:19-cr-00795, at 10, ¶7. Imposing additional civil penalties in the Commission's process therefore would be not only unnecessary, it would put at risk the careful balance struck in the negotiated agreement with the government.

¹⁰ See Information, *James D. Dannenbaum*, Case No. 4:19-cr-00794 (charging violations of 52 U.S.C. §§ 30109(d)(1)(D)(i) and 30122); Information, *Dannenbaum Engineering Corp.*, Case No. 4:19-cr-00795 (same, as well as 18 U.S.C. § 2).

¹¹ 52 U.S.C. §§ 30106(b)(1), 30107(e).

¹² See, e.g., MUR 7072 (Babulal Bera) (dismissing matter with admonishment where elderly respondent pleaded guilty to reimbursing over 130 contributions using personal and company funds); MUR 6233 (Norman Hsu) (dismissing matter where respondent was convicted, after trial, for reimbursing over \$100,000 in federal contributions); MUR 6231 (Glenn A. Marshall) (dismissing allegations of reimbursed contributions where respondent pleaded guilty to making criminal corporate contributions); MUR 6232 (Gladwin Gill) (dismissing matter where respondent pleaded guilty to reimbursing approximately \$67,000 in federal contributions).



Federal Election Commission
March 27, 2020
Page 6

These circumstances track those in MUR 7072, which the Commission recently dismissed, and differ markedly from prior instances in which the Commission concluded that it would proceed despite parallel criminal proceedings. In those matters, often respondents were either not charged or not convicted in the criminal case for campaign finance violations,¹³ refused to cooperate or concede a violation,¹⁴ or involved other factors that the Commission felt necessary to address through the civil enforcement process.¹⁵ But there are no such considerations that would warrant instituting a duplicative civil enforcement action in the present matter for the many reasons discussed above.

Moreover, the deferred prosecution agreement between DEC and the USAO and DOJ expressly stipulated that the USAO and DOJ would take no further action—criminal *or civil*—against DEC in connection with the campaign finance allegations, so long as DEC satisfies the terms of that agreement.¹⁶ To be sure, the USAO and DOJ lack statutory authority to bind the Commission by entering into such an agreement, but the fact that they expressly undertook that guarantee reflects that DEC reasonably contemplated that it

¹³ MUR 6528 (Michael Grimm) (convicted on federal tax charges); MUR 6526 (Cora Carper) (guilty plea to federal embezzlement charges under federal labor union statutes); MUR 5818 (Feiger) (acquittal on campaign finance charges after trial).

¹⁴ MUR 5818 (Feiger) (refusing to concede reimbursement of contributions constitutes contribution “in the name of another” until following probable cause findings).

¹⁵

¹⁶ See Deferred Prosecution Agreement, *Dannenbaum Eng’g Corp.*, 4:19-cr-00795, at 11, ¶ 8 (“[T]he Offices agree, except as provided in this Agreement and in the plea agreement between the Offices and James Dannenbaum dated October 31 2019, that they will not bring any criminal *or civil* case against the Company.”) (emphasis added).



Federal Election Commission
March 27, 2020
Page 7

was resolving all of its federal liabilities, both criminal and civil, when it accepted the terms of the agreement, accepted full responsibility for its conduct, undertook significant remedial measures, and agreed to pay a \$1.6 million penalty to address its conduct. It would be grossly unfair under these circumstances to seek now to impose yet additional civil penalties on DEC for the same conduct—particularly so in response to a Complaint that asserted no claim against DEC or Mr. Dannenbaum themselves.

CONCLUSION

No complainant has sought to enlist the Commission's civil enforcement authority against Respondent DEC or its former employees. No new information would be revealed to the public as the result of a Commission enforcement proceeding against those respondents. Further Commission action in this matter would not serve any specific or general deterrence interests not already satisfied in the related criminal action. Respondent DEC has publicly admitted its prior conduct and violations of the Act, has instituted comprehensive reforms to eliminate the risk of recurrence, and has subjected itself to considerable criminal and monetary sanctions, including payment of a \$1.6 million penalty and other continuing obligations through its deferred prosecution agreement with DOJ.¹⁷ The Commission therefore should exercise its prosecutorial discretion and dismiss the Complaint against Respondents DEC, Mr. Dannenbaum, and the related respondents, just as it has done recently in matters involving similarly situated parties.

Very truly yours,

Daniel A. Petalas

¹⁷

Id.