

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR: 7696**

6 DATE COMPLAINT FILED: Feb. 11, 2020

7 DATE OF NOTIFICATION: Feb. 14, 2020

8 LAST RESPONSE RECEIVED: April 21, 2020

9 DATE ACTIVATED: May 1, 2020

10
11 EXPIRATION OF SOL: September 1, 2020 –
12 April 2022

13 ELECTION CYCLE: 2016, 2018

14
15 **COMPLAINANT:**

MJ for Texas¹

16
17 **RESPONDENTS:**

18 Texans for Senator John Cornyn and Kerry N.
19 Cammack in his official capacity as treasurer
20 Senator John Cornyn
21 Dannenbaum Engineering Corp.
22 James D. Dannenbaum
23 Richard Seitz
24 Louis H. Jones, Jr.
25 Eric Davila
26 David A. Garza

27 **RELEVANT STATUTES**
28 **AND REGULATIONS:**

52 U.S.C. § 30118(a)

52 U.S.C. § 30119(a)

52 U.S.C. § 30122

11 C.F.R. § 114.2(f)

31
32 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

33
34 **FEDERAL AGENCIES CHECKED:**

35
36 **I. INTRODUCTION**

37 The Complaint alleges that U.S. Senator John Cornyn and his campaign committee,

38 Texans for Senator John Cornyn and Kerry N. Cammack in his official capacity as treasurer (the

¹ “MJ” is Mary Jennings Hegar, a Democratic candidate for the U.S. Senate in Texas, and MJ for Texas is her principal campaign committee.

1 “Committee”), failed to timely disgorge prohibited contributions received from Dannenbaum
2 Engineering Corp. (“DEC”) as part of a contribution reimbursement scheme.² The Complaint
3 alleges that the Committee failed to timely disgorge \$10,000 in contributions after a November
4 2019 article detailing criminal charges related to the contributions put the Committee on notice
5 of the reimbursement scheme.³ The Committee responds that it did not know the amount to
6 disgorge at the time of the November 2019 article, the Department of Justice (“DOJ”) requested
7 that it wait to disgorge the funds, and it made the disgorgements as soon as it received guidance
8 from DOJ.⁴ DEC responds that it was not named in the Complaint, and the criminal
9 investigation of the company for reimbursing contributions resulted in a Deferred Prosecution
10 Agreement (“DPA”)⁵ that includes a \$1.6 million penalty, which counsels against the
11 Commission proceeding against it civilly.⁶ James Dannenbaum, DEC’s former CEO, and three
12 of the four other named individuals did not respond to the Complaint.⁷

² Compl. at 1 (Feb. 11, 2020).

³ *Id.*

⁴ Texans for Senator John Cornyn Response at 1 (April 8, 2020) (“Committee Resp.”).

⁵ A Deferred Prosecution Agreement (“DPA”) allows a corporate defendant to avoid entering a plea agreement or face a trial in exchange for admitting wrongdoing to uncontroverted facts, instituting remedial measures, complying with reporting requirements, and paying a fine. The DPA, which is filed in court along with the Information, has a term, after which DOJ may move to dismiss the Information with prejudice unless the DPA has been violated.

⁶ Dannenbaum Engineering Corp. Response at 1, 3 (March 30, 2020) (“DEC Resp.”). Although the Complaint does not make a specific allegation against DEC, it names DEC, Dannenbaum, and four conduits as carrying out the contribution reimbursement scheme. Compl. at 1-3.

⁷ On December 6, 2019, Dannenbaum pleaded guilty to one count of violating 52 U.S.C. § 30122 and on May 27, 2020, was sentenced to two years’ probation and a \$100,000 fine.

Senator Cornyn’s Designation of Counsel names the same attorney as the Committee’s Designation of Counsel, but the attorney’s Response only includes the Committee and does not include Senator Cornyn. The other named individual respondents were conduits connected to the Cornyn Committee contributions, although one, Louis H. Jones Jr., had an active role in DEC’s contribution reimbursement scheme. Mr. Jones passed away in October 2018. *See* Letter to Jeff Jordan from J.A. Canales, Esq., enclosing coroner’s certificate.

1 As explained below, DEC's and Dannenbaum's agreements with DOJ clearly establish
2 that DEC and Dannenbaum made \$323,300 in contributions in the name of others and that those
3 contributions were made with corporate funds. Moreover, DEC was a federal contractor when it
4 made the contributions. Therefore, we recommend that the Commission find reason to believe
5 that DEC knowingly and wilfully violated 52 U.S.C. §§ 30122, 30118(a), and 30119(a), and
6 proceed to pre-probable cause conciliation. We further recommend that the Commission dismiss
7 with admonishment the allegations as to Dannenbaum and the surviving known conduits, and
8 dismiss the complaint as to Senator Cornyn and the Committee.

9 **II. FACTUAL BACKGROUND**

10 **A. DEC and the Reimbursement Scheme**

11 DEC is a privately owned engineering firm in Houston, Texas, and James D.
12 Dannenbaum, its controlling shareholder, was president and chief executive officer of the firm at
13 the time of the contributions at issue.⁸ In April 2017, the FBI raided multiple DEC offices in
14 South Texas as well as the offices of several members of the Laredo, Texas, city council in
15 connection with DEC's pursuit of infrastructure construction projects, including the wall at the
16 U.S./Mexico border.⁹ According to DEC's Response, the resulting investigation included review
17 of voluminous documentation and interviews with many witnesses,¹⁰ culminating in a Deferred

⁸ See Deferred Prosecution Agreement, *United States v. Dannenbaum Engineering Corp. and Engineering Holding Corp.*, 19-CR 795 (S.D. Tex. Nov. 22, 2019) ("DPA") at 29 (available in the Voting Ballot Matters folder).

⁹ See Gabrielle Banks and Stephanie Lamm, *Former UT regent, engineering CEO resigns after admitting to illegal contributions*, HOUSTON CHRONICLE, Nov. 7, 2019, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Former-UT-regent-engineering-CEO-resigns-after-14817897.php> (cited in Complaint); Richard Webner, *Dannenbaum, target of FBI probe, has controversial history along border*, SAN ANTONIO EXPRESS, June 23, 2017, <https://www.expressnews.com/business/local/article/Dannenbaum-target-of-FBI-probe-has-11242963.php> ("Webner Article").

¹⁰ DEC Resp. at 3.

1 Prosecution Agreement between DEC and DOJ and a plea agreement with Dannenbaum. The
2 agreements outline the use of DEC funds to advance or reimburse contributions to straw donors
3 for \$323,000 in contributions to federal candidates over a period of approximately two years.¹¹

4 Under the terms of the Deferred Prosecution Agreement, DEC agreed that DOJ would
5 file a criminal information charging DEC with one count of knowingly and willfully making
6 contributions in the names of others in violation of 52 U.S.C. §§ 30109(d)(1)(D)(1) and 30122 in
7 connection with the reimbursement scheme, but DOJ would defer prosecution of the company on
8 the charge for three years.¹² As part of the DPA, DEC “admits, accepts, and acknowledges that
9 it is responsible under United States law for the acts of its officers, directors, employees and
10 agents” and agrees that the criminal Information and Statement of Facts accurately describe the
11 company’s conduct.¹³ In Dannenbaum’s Plea Agreement, which contains a virtually identical
12 recitation of facts as the DPA, he acknowledges his guilt.¹⁴

13 As detailed in the DPA and Dannenbaum’s Plea Agreement, starting around March 2015,
14 DEC, through Dannenbaum, with help from “Former Employee A” [apparently Louis H. Jones,
15 Jr.¹⁵], and an assistant of Dannenbaum’s, began to solicit DEC employees and their family
16 members to make contributions to various federal political committees with the understanding

¹¹ See DPA and Plea Agreement, *United States v. James D. Dannenbaum*, 19-CR-794 (S.D. Texas Dec. 6, 2019) (available in the Voting Ballot Matters folder).

¹² DPA at 2-3. If DEC violates any term of the DPA, it may, *inter alia*, be extended for up to one year. *Id.* at 3.

¹³ *Id.* at 2, 28.

¹⁴ Plea Agreement at 6-22.

¹⁵ *See supra*, n. 7.

1 that DEC would reimburse or advance the funds for the contributions.¹⁶ Dannenbaum and his
2 helpers collected the employees' checks and donor contribution forms, or they completed the
3 forms themselves, and then delivered, or caused to be delivered, the checks to the recipient
4 political committees.¹⁷ Respondents Seitz, Jones, Davila, and Garza served as conduits for
5 DEC's contributions to the Cornyn Committee on at least one occasion, although Jones appears
6 to be "Former Employee A" and had a more extensive role, as described below.¹⁸

7 Dannenbaum then had DEC issue reimbursements to the conduits, including to himself.¹⁹
8 On its books, DEC treated the reimbursements as compensation, and it included extra amounts to
9 account for any income tax withheld.²⁰ Over the approximately two-year period, DEC
10 reimbursed \$323,300 to 31 individuals for 95 conduit contributions to 24 separate political
11 committees.²¹

¹⁶ DPA at 30-31; Plea Agreement at 7-8.

¹⁷ DPA at 31.

¹⁸ For the purposes of this report, we refer to "Former Employee A" as "Jones."

¹⁹ *Id.*, and Plea Agreement at 8. DOJ's Sentencing Memorandum states that Dannenbaum reimbursed some contributions from his personal accounts, but he would then get reimbursement from DEC. *See* Sentencing Memorandum of the United States, *United States v. James D. Dannenbaum*, 4:19-CR-00794-001 (S.D. Texas May 20, 2020) at 3 ("DOJ Sentencing Memorandum") (available in VBM).

²⁰ DPA at 31.

²¹ *Id.* at 31-32. The Sentencing Memorandum states that 45 employees and family members contributed 95 contributions to 26 federal political committees. DOJ Sentencing Memorandum at 1.

1

Year	Conduits	Total Contributed	Committees	Contributions
2015	15	\$170,800	8	42
2016	26	\$130,000	15	44
2017	4	\$22,500	3	9

2

3 The contributions went to presidential, senatorial, and house candidates, as well as \$90,000 to an
 4 independent expenditure-only political committee (“IEOPC”).²² The committees were not told
 5 that the contributions would be reimbursed by DEC.²³

6 The DEC investigation revealed that Jones assisted Dannenbaum in soliciting employee
 7 contributions and telling them that their contributions would be reimbursed.²⁴ Jones also
 8 discussed with Dannenbaum on at least one occasion the plan for splitting a large check among
 9 several conduits to comply with federal contribution limits and reimbursed employees with his
 10 own personal checks after receiving funds for such reimbursements from DEC.²⁵ Dannenbaum
 11 told Jones that he would bundle contribution checks together and then staple Dannenbaum’s
 12 business card to them “so there’s no confusion about ... where they came from.”²⁶ Dannenbaum

²² The criminal documents do not specify the names of the conduits or the recipient political committees. *See* DPA at 32-43; Plea Agreement at 9-20. It is not clear from the FEC disclosure database which contributions from DEC employees were reimbursed because there are more contributions in the database than are identified in the criminal documents.

²³ DPA at 32; Plea Agreement at 10.

²⁴ The DPA identifies Former Employee A as having been the “lead project manager on most of DEC’s South Texas work.” DPA at 29. Louis was identified in a 2017 news article as the head of DEC in South Texas. *See* Webner Article.

²⁵ DPA at 43-44.

²⁶ *Id.* at 44.

1 would also submit check requests noting “marketing advance” or “marketing expense” as the
2 purpose.²⁷

3 According to the DPA, the goal of the reimbursement scheme was to “gain access to and
4 potential influence with various candidates for federal office.”²⁸ Dannenbaum’s political activity
5 “overlapped with his business interests, as DEC’s success hinged largely upon its ability to win
6 public contracts,” which account for more than 80 percent of DEC’s business.²⁹ During the time
7 it was reimbursing contributions, DEC had in place multiple and overlapping contracts with the
8 U.S. Defense Department.³⁰ DEC’s website also lists the Army Corps of Engineers and the
9 Agriculture Department as clients.³¹

10 The DPA provides that DOJ agreed to defer prosecution of DEC for three years because
11 DEC cooperated extensively by conducting an internal investigation, making witnesses and
12 documents available, and helping organize and analyze those documents and information.³² The
13 DPA states that DEC’s remedial measures, including Dannenbaum’s removal from office, the
14 Board’s restructuring, terminating questionable relationships with third parties, educating
15 employees about political contributions, hiring compliance personnel, and ceasing to reimburse

²⁷ *Id.*; DOJ Sentencing Memorandum at 4.

²⁸ DPA at 30.

²⁹ DOJ Sentencing Memorandum at 4.

³⁰ Search results for DEC contracts, USASPENDING,
<https://www.usaspending.gov/#/search/8f8c32f7f4c41352ec1c513270199d05> (last visited Aug. 5, 2020).

³¹ Representative list of DEC clients, DANNENBAUM ENGINEERING CORP.,
<https://www.dannenbaum.com/clients> (last visited Aug. 5, 2020).

³² DEC DPA at 4.

1 political contributions were important in DOJ's decision to enter into a DPA.³³

2 The DPA requires DEC to amend its tax returns in connection with the reimbursed
3 contributions and file annual compliance reports with DOJ during its term. Further, the DPA
4 requires DEC to cooperate "fully with other law enforcement and regulatory authorities and
5 agencies" in connection with "any and all matters."³⁴ DEC agreed to pay \$1 million 10 days
6 after the DPA was filed in court, and then \$300,000 on the first and second anniversaries of the
7 first payment.³⁵ If DEC violates the DPA, DOJ could commence prosecution and DEC would
8 not be able to contradict any facts contained in the Statement of Facts.³⁶

9 On December 6, 2019, Dannenbaum pleaded guilty to one count of knowingly and
10 willfully violating section 30122.³⁷ Although prosecutors recommended two years'
11 incarceration, on May 27, 2020, he was sentenced to two years' probation and fined \$100,000.³⁸
12 According to news reports, the sentencing judge said the decision was difficult but noted
13 Dannenbaum's fragile health and life-long philanthropy.³⁹

14 **B. Cornyn Committee Disgorgements**

15 The Complaint alleges that when news of Dannenbaum's impending guilty plea emerged,

³³ *Id.* at 4-5.

³⁴ *Id.* at 7. It also provides that the DPA does not bind other federal agencies. *Id.* at 22.

³⁵ *Id.* at 10.

³⁶ *Id.* at 14-18. DEC also has tolled the statute of limitations for the term of the DPA plus one year. *Id.* at 16.

³⁷ Plea Agreement at 7.

³⁸ Dannenbaum Judgment (May 29, 2020).

³⁹ Gabrielle Banks, *Houston engineering tycoon, ex-UT regent James Dannenbaum sentenced for illegal campaign donations*, THE HOUSTON CHRONICLE (May 27, 2020), available at <https://myconvergence.bna.com/ContentItem/ArticlePublic/253306532000000277?redirect=1&noLog=true&DashboardId=9a4ac136-8616-4e37-8914-26123e3af3fa>. The judge's sentencing memorandum is filed under seal.

1 the Committee should have been able to determine that it received \$10,000 in reimbursed
2 contributions from DEC employees.⁴⁰ The Complaint alleges that the charging documents made
3 clear that only one Senate committee from Texas had received illegal contributions in the
4 scheme, asserting that fact gave sufficient notice to the Cornyn Committee to disgorge, but the
5 Committee failed to do so in the required 30 days.⁴¹

6 The DPA describes “Candidate C” as a candidate for the U.S. Senate and “Committee C”
7 as that candidate’s principal campaign committee, and states that “at Dannenbaum’s solicitation
8 and direction, four DEC employees and their family members each contributed to Committee C
9 in their own names, for a total of \$10,800.”⁴² Dannenbaum then reimbursed each contributor
10 with DEC funds.⁴³

11 The Committee states that it disgorged \$10,800 on Feb. 6, 2020.⁴⁴ It also argues that it
12 did not know the names of the conduit contributors or the exact amounts of their contributions
13 until recently.⁴⁵ It further argues that as early as November 7, 2019, DOJ told the Committee
14 that information about the contributions would not be released until the end of the investigation
15 and that the Committee should wait to disgorge the reimbursed contributions.⁴⁶ The Committee

⁴⁰ Compl. at 4-5.

⁴¹ *Id.* at 2-3, 5.

⁴² DPA at 33-34.

⁴³ *Id.* at 34.

⁴⁴ It is not clear why the Committee states it disgorged \$10,800 or why the Complaint alleged that the Committee should have disgorged \$10,000. In fact, in a news article, the Committee said it disgorged \$15,400, and that is confirmed by FEC records. *See* Committee 2020 Pre-Primary Report at 2252 (Feb. 20, 2020), <https://docquery.fec.gov/cgi-bin/fecimg/?202002209186576532>.

⁴⁵ Committee Resp. at 2.

⁴⁶ *Id.*

1 maintains that it was not in a position to comply with the regulation, and it attaches a letter dated
2 February 4, 2020, in which it repeated its request to DOJ for the contribution information.⁴⁷
3 Thus, the Committee argues that it could not comply with the Commission's 30-day regulation
4 because of DOJ's "stand-down" order and concludes that the Complaint should be dismissed.⁴⁸

5 **III. LEGAL ANALYSIS**

6 **A. DEC Illegally Reimbursed Contributions with Corporate Funds While a** 7 **Federal Contractor**

8
9 The Federal Election Campaign Act of 1971, as amended ("Act") and Commission
10 regulations prohibit corporations from making contributions to political committees (other than
11 an independent-expenditure-only political committee ("IEOPC")), in connection with a federal
12 election.⁴⁹ In addition, no officer or director of a corporation may consent to a corporate
13 contribution to a federal candidate or their campaign.⁵⁰

14 The Act and Commission regulations also prohibit any person, including a corporation,
15 from making a contribution in the name of another to a federal political committee or allowing
16 their name to be used in the making of a contribution.⁵¹ Concealed conduit contributions are
17 prohibited regardless of whether the true source of the donation provides the funds to the conduit
18 in advance of the contribution or as a reimbursement after the fact.⁵²

⁴⁷ *See id.*, Attach.

⁴⁸ Committee Resp. at 3-4.

⁴⁹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b); Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

⁵⁰ 52 U.S.C. §§ 30118(a) and 30122.

⁵¹ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i), (ii).

⁵² *United States v. O'Donnell*, 608 F.3d 546, 550-51 (9th Cir. 2010) (concluding that the plain language of section 30122 [formerly section 441f] encompasses straw donor contributions whether accomplished through the advancement or reimbursement of funds).

1 In addition, a federal contractor may not make contributions to political committees.⁵³
2 Specifically, the Act prohibits “any person . . . [w]ho enters into any contract with the United
3 States . . . for the rendition of personal services or furnishing any material, supplies, or
4 equipment to the United States or any department or agency thereof” from making a contribution
5 “if payment for the performance of such contract . . . is to be made in whole or in part from funds
6 appropriated by the Congress.”⁵⁴ These prohibitions begin to run at the beginning of contract
7 negotiations or when proposal requests are sent out, whichever occurs first, and end upon the
8 completion of performance of the contract or the termination of negotiations, whichever occurs
9 last.⁵⁵ And these prohibitions apply to a federal contractor who makes contributions to any
10 political party, political committee, federal candidate, or “any person for any political purpose or
11 use.”⁵⁶

12 DEC’s DPA establishes that it knowingly and willfully made \$323,300 in contributions
13 in the name of another, in violation of 52 U.S.C. § 30122.⁵⁷ Those documents also establish that
14 those contributions were made with funds from DEC’s general treasury, meaning that the non-
15 IEOPC contributions, \$233,300, were made in violation of 52 U.S.C. § 30118(a).⁵⁸ Accordingly,

⁵³ 52 U.S.C. § 30119(a); 11 C.F.R. § 115.2.

⁵⁴ 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. pt. 115.

⁵⁵ 52 U.S.C. § 30119 (a)(1); 11 C.F.R. § 115.1(b).

⁵⁶ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2; *see also* MUR 7099 (Suffolk Construction Company)
(Commission found reason to believe that federal government contractor made contribution to IEOPC and entered
into conciliation agreement with Suffolk Construction).

⁵⁷ DPA at 30.

⁵⁸ *Id.*

1 we recommend that the Commission find reason to believe that Dannenbaum Engineering Corp.
2 violated 52 U.S.C. §§ 30122 and 30118(a).

3 Further, as publicly available information confirms, DEC was a federal contractor when it
4 made the contributions at issue. DEC has provided engineering services to local, state, and
5 federal governments for decades, and had multiple, active federal contracts during this time
6 period. Specifically, as part of a joint venture, DEC's contract with the Department of State
7 started May 30, 2014, and ended November 17, 2017, encompassing the entire time period
8 during which DEC made prohibited conduit contributions with corporate funds.⁵⁹ And, unlike
9 the analysis regarding section 30118, all of the contributions involved in the reimbursement
10 scheme, including the ones made to the IEOPC, violate the federal contractor ban. Accordingly,
11 we recommend that the Commission find reason to believe that DEC violated 52 U.S.C.
12 § 30119(a)(1).

13 Moreover DEC's violations of the Act were knowing and willful.⁶⁰ A violation of the
14 Act is knowing and willful when the respondent acts "with full knowledge of all the relevant
15 facts and a recognition that the action is prohibited by law."⁶¹ This standard does not require

⁵⁹ See, Contract Spending Summary, USASPENDING.GOV, https://www.usaspending.gov/#/award/CONT_AWD_IBM14C0007_19BM_-NONE_-NONE- (last visited Aug. 5, 2020).

⁶⁰ The Act prescribes additional penalties for violations of the Act that are knowing and willful. See 52 U.S.C. § 30109(a)(5)(B), (d).

⁶¹ 122 Cong. Rec. 12197, 12199 (daily ed. May 3, 1976) (defining phrase "knowing and willful"); see also *FEC v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Tex. 2010) (granting Commission's motion for summary judgment where there were no genuine issues of material fact as to the knowing and willful allegations). The Commission has made knowing and willful findings against respondents who have admitted to criminal violations related to the same activity at issue in the enforcement matter. See, e.g., MUR 7225 (Jack Wu); MUR 7132 (Michael David Pitts); MUR 6597 (Kinde Durkee); MUR 6475 (Andrew McCrosson), MUR 6179 (Christopher Ward), MUR 5971 (Jennifer Adams), MURs 5721/5772 (Kenneth Phelps); MUR 5610 (Earl Allen Haywood).

1 proving knowledge of the specific statute or regulation the respondent allegedly violated.⁶²
2 Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his
3 conduct was unlawful.”⁶³ This awareness may be shown through circumstantial evidence, such
4 as a “defendant’s elaborate scheme for disguising” her actions, or other “facts and circumstances
5 from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized
6 and illegal.”⁶⁴ The Commission has found violations involving corporate reimbursement
7 schemes to be knowing and willful when respondents falsified documents, took active steps to
8 conceal illegal activities, kept multiple sets of financial records, or were deemed to be in
9 possession of information warning that their conduct was illegal.⁶⁵

10 In its DPA, DEC acknowledged that its reimbursement of political contributions with
11 corporate funds was knowing and willful.⁶⁶ Its activities included rounding up reimbursements
12 and falsifying the reason for the reimbursements on checks and in corporate financial documents,
13 which are hallmarks of knowing and willful conduct.

⁶² See *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated)).

⁶³ *Id.* (internal quotation marks omitted).

⁶⁴ *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁶⁵ See MUR 7027 (MV Transportation, Inc., *et al.*); MUR 6465 (The Fiesta Bowl, Inc.); MUR 6143 (Galen Capital); MUR 5818 (Feiger, Feiger, Kenney, Johnson and Giroux, P.C.).

⁶⁶ See DPA at 2, 30. Besides section 30122, the DPA and Plea Agreement cite to 52 U.S.C. § 30109(d)(1)(D)(i), signifying that the violations were knowing and wilful. See DPA at 2, Plea Agreement at 1.

1 DEC argues, however, that a civil proceeding is unnecessary because the criminal
2 proceeding was extensive and severe penalties were imposed.⁶⁷ While acknowledging the
3 Commission's jurisdiction, DEC requests the Commission exercise its prosecutorial discretion
4 and dismiss the Complaint, which it argues only makes allegations against the Committee.⁶⁸

5 The Commission has previously exercised its prosecutorial discretion and declined to
6 pursue matters where it determined that a related criminal conviction adequately vindicated its
7 civil enforcement interests under the Act. The Commission has taken this approach in a few
8 matters within the following parameters: the respondent pleaded guilty or was convicted of at
9 least one criminal count directly relating to a federal campaign finance law violation; the facts in
10 the civil matter under review relate to the count(s) to which the respondent pleaded guilty in the
11 criminal matter; and the respondent received substantial criminal punishment.⁶⁹ By contrast, the
12 Commission has taken further action, notwithstanding a criminal conviction, when the criminal

⁶⁷ DEC Resp. at 5.

⁶⁸ *Id.* at 4-5.

⁶⁹ See MUR 6865 (Jose Susumo Azano Matsura) (declining to further pursue Azano's 52 U.S.C. §§ 30121 and 30122 knowing and willful RTB findings after criminal prosecution for same activity, and sentence of three years' incarceration, assessment of \$3,700, and additional restitution of \$560,995); MUR 6761 (Kenneth A. Barfield) (declining, after RTB finding of Barfield's knowing and willful violation of 52 U.S.C. §§ 30102(b), 30102(c), 30114, 30116, 30122, and 30125(e), to further pursue action against Barfield, who had pleaded guilty to three criminal counts, including "Embezzlement of Funds Contributed to a Federal Candidate," was sentenced to 87 months in federal prison, and was ordered to pay \$2,940,821 in restitution); Factual & Legal Analysis at 1-2, MUR 7072 (Babulal Bera) (Jan. 4, 2017) ("F&LA") (declining to pursue further action against perpetrator of conduit scheme "among the largest [ever] considered" after Bera pleaded guilty to one criminal count each under 52 U.S.C. §§ 30116(a)(1)(A) and 30122 and was sentenced to a prison term of one year and one day, supervised release for a term of 36 months, and a criminal fine of \$100,000, while also noting statute of limitations concerns and respondent's advanced age); F&LA at 2, 5, MUR 6231 (Glenn Marshall) (Nov. 17, 2009) (declining to further pursue action against Marshall, who had pleaded guilty to five criminal counts for knowing and willful violations of provisions now codified at 52 U.S.C. §§ 30118 and 30122 and was sentenced to 41 months in federal prison and ordered to pay restitution of \$467,612.62); F&LA at 1, MUR 6232 (Gladwin Gill) (Nov. 17, 2009) (declining to further pursue action against Gill who had pleaded guilty to one criminal count of making contributions in the name of another in violation of the provision now codified at 52 U.S.C. § 30122 and was sentenced to one year and one day in federal prison, followed by three years of supervised release, and was fined \$200,100).

1 conviction or plea did not specifically vindicate the Act's discrete civil enforcement interests,
2 *e.g.*, where the criminal count(s) to which the respondent pleaded guilty or was convicted of did
3 not directly relate to the facts of the civil matter under review, or did not directly relate to a
4 federal campaign finance law violation.⁷⁰

5 Here, although DEC has been charged in connection with the conduit reimbursement
6 scheme, it has not entered a plea or been convicted of violations of the Act. Additionally, while
7 the uncontested facts establish that DEC's reimbursements also resulted in violations of the
8 prohibitions on corporate and government contractor contributions, DEC was not charged with
9 violations of sections 30118 and 30119. Thus, notwithstanding DEC's criminal proceeding, we
10 believe that civil enforcement against DEC is necessary to vindicate the Commission's interests.

11 The DPA does not address DEC's clear violation of the federal contractor contribution
12 prohibition, nor does DEC specifically acknowledge violating the Act's corporate contribution
13 violation provision. These significant violations should not be subsumed by the DPA, especially
14 when DEC's business depends significantly on government contracts, and a primary purpose of
15 the reimbursement scheme was to win such contracts through corrupt contributions. This long-
16 running, extensive scheme sought to undermine basic principles underlying the Act, and the
17 violations should be appropriately vindicated through the Enforcement process.

⁷⁰ See Conciliation Agreement, MUR 6465 (John Junker) (Nov. 7, 2013) (conciliating penalties, including \$25,000 civil penalty, after RTB finding of knowing and willful violation of provisions now codified at 52 U.S.C. §§ 30118(a), 30122 with respondent who would later plead guilty to one count of criminal conspiracy under 18 U.S.C. § 371, rather than campaign finance violation); Conciliation Agreement at 1, MUR 6179 (Christopher Ward) (Nov. 29, 2010) (conciliating after RTB finding of knowing and willful violation of provisions now codified at §§ 30102(b)(3), (c), (d), (h)(1), and 30104(b), as well as 11 C.F.R. § 104.14(d), with respondent who pleaded guilty to one count of criminal "Interstate Transportation of Stolen Property" in violation of 18 U.S.C. § 2314, rather than campaign finance violation); Conciliation Agreement at 1, MUR 5971 (Mary Jennifer Adams) (Feb. 13, 2009) (conciliating after RTB finding of knowing and willful violation of provisions now codified at 52 U.S.C. §§ 30102(b)-(c), 30104(b), and 30114 with respondent who pleaded guilty to five counts of "Breach of Trust with Fraudulent Intent" and one count of "Financial Identity Fraud" in violation of state law, S.C. Code Ann. §§ 16-13-230 and 16-13-510 (1976), rather than federal campaign finance violation).

1 In addition, without civil enforcement, there will be no final judgment against DEC
2 should it comply with the DPA. This likely result distinguishes DEC's case from others in
3 which the Commission did not proceed further on apparent violations of the Act following the
4 Respondent's criminal conviction.⁷¹

5 With respect to Dannenbaum, the record amply supports reason to believe that he
6 violated the Act by making contributions in the name of another and by consenting to corporate
7 contributions. However, under the specific circumstances and the Commission's precedents, it
8 appears that the criminal process has sufficiently addressed his FECA violations. Unlike DEC,
9 Dannenbaum pled guilty to knowingly and willfully violating the Act. Dannenbaum was also
10 forced to resign from his family-founded company and was sentenced to probation for one year
11 and fined \$100,000 in connection with his violations of the Act. He also is reportedly not
12 physically well.⁷² In MUR 7072, the Commission dismissed section 30122 violations as to
13 Balubal Bera primarily because he received one year and a day of prison and paid a \$100,000
14 penalty. Although Dannenbaum was not incarcerated as part of his sentence, he is paying
15 \$100,000 and his corporation agreed to pay \$1.6 million in connection with the reimbursement
16 scheme. Moreover, we are recommending proceeding civilly against DEC, whereas there was no
17 similarly situated respondent in MUR 7072. Thus, we believe that dismissal with a letter of

⁷¹ See note 69. See also MUR 6865 (Azano) Second Gen. Counsel's Rpt. at 12 (April 27, 2018) (recommending RTB finding), Cert. (July 18, 2018) (adopting OGC's recommendations); Memorandum to the Commission at 2 (May 31, 2019) (recommending taking no further action and closing the file), Cert. (June 12, 2019) (adopting OGC's recommendations). In that case, the Commission delayed closing the file on foreign national and reimbursement violations until Azano's criminal appeal was final, thus assuring that the Commission's interests had been vindicated.

⁷² DEC Resp. at 2, 5.

1 admonishment to Dannenbaum is appropriate under the circumstances, and is consistent with
2 Bera.⁷³

3 **B. Late Disgorgement by the Cornyn Committee**

4 Commission regulations provide that committee treasurers are responsible for examining
5 all contributions for evidence of illegality.⁷⁴ Commission regulations also provide that an
6 apparently legal contribution accepted by a committee that is later determined to be illegal
7 “based on new evidence not available to the political committee at the time of receipt and
8 deposit” must be refunded “within 30 days of the date on which the illegality is discovered.”⁷⁵
9 Alternatively, instead of issuing a refund, the committee may disgorge a prohibited contribution
10 to the U.S. Treasury.⁷⁶

11 The Complaint alleges that DEC could have identified the illegal contributions to the
12 Committee, apparently based on news articles and by searching the FEC disclosure database.
13 Nevertheless, DOJ specifically asked the Committee not to disgorge the contributions until a
14 later time. Under these circumstances, we recommend that the Commission dismiss the
15 allegation that the Cornyn Committee and Senator Cornyn violated 11 C.F.R § 103.3(b)(2).

16 **C. Conduits**

17 The prohibition on making contributions in the name of another extends to “knowingly
18 permit[ting]” one’s name to be used to effect the making of a contribution in the name of another

⁷³ In MUR 7072, the Commission also noted Bera’s age (83) and that most of the amount in violation had expired due to the statute of limitations. *See* F&LA at 6, MUR 7072 (Babulal Bera).

⁷⁴ 11 C.F.R. § 103.3(b).

⁷⁵ 11 C.F.R. § 103.3(b)(2).

⁷⁶ Advisory Op. 1996-05 (Kim).

1 or, under the Commission's implementing regulation, to "knowingly help[ing] or assist[ing] any
2 person in making a contribution in the name of another."⁷⁷ The Commission has explained that
3 the provisions addressing those who knowingly assist a conduit-contribution scheme apply to
4 "those who initiate or instigate or have some significant participation in a plan or scheme to
5 make a contribution in the name of another."⁷⁸ In past matters, the Commission has typically
6 declined to pursue individual conduits who did not play some significant role in carrying out the
7 conduit scheme. In more recent matters, it has done so by declining to take action against such
8 individuals at the RTB stage.⁷⁹

9 The DPA establishes that 31 individuals served as conduits to effectuate DEC's
10 contribution scheme, although it does not name any, and only notes the efforts of one, Former
11 Employee A. The Complaint, however, identified four conduits who made the contributions to
12 the Cornyn Committee, a group that includes Former Employee A, Robert Louis. As noted
13 earlier, Louis is deceased. Based on the record, it does not appear that the three other named

⁷⁷ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(ii), (iii).

⁷⁸ *Explanation and Justification for 11 C.F.R. § 110.4*, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

⁷⁹ See MUR 7248 (Cancer Treatment Centers of America) (Commission took no action against conduits who only received reimbursement); MUR 6889 (Nat'l Air Transp. Ass'n) (taking no action against the conduits who were reimbursed by corporate funds for contributions to SSF); MUR 6623 (William A. Bennett) (taking no action against "lower-level conduit employees" who did not actively participate in the reimbursement scheme); MUR 6465 (The Fiesta Bowl, *et al.*) (taking no action against the "subordinate employees" and "employee spouses" who were not actively involved the scheme and were acting under the direction of corporate officers). Prior to the more recent practice, the Commission in many instances initially found reason to believe but then took no further action at later stages of the respective matter. See *e.g.*, MUR 6223 (Edward St. John, *et al.*) (initially finding RTB against six conduits on the grounds that they had an "expectation of reimbursement"; later taking no further action after finding no evidence that they "were told or expected that they would be reimbursed at the time they made the contributions"); MUR 6143 (Galen Capital) (finding RTB that conduits violated the Act; later recommending no further action even though conduits "consented" to reimbursement of contributions, because a single individual was deemed to have directed the reimbursement scheme); MUR 5818 (Feiger, Feiger, Kenny, Johnson and Giroux, P.C.) (initially finding RTB against conduits but ultimately taking no action); MUR 5765 (Crop Production Services, Inc.) (finding RTB that all conduits violated the Act and conciliating with all except two conduits, who were deemed to have little involvement in the scheme); MUR 5666 (MZM, Inc.) (finding RTB that all conduits violated the Act; later taking no further action after determining that a single officer exercised almost total control over the scheme).

1 respondent individuals initiated, instigated, or had significant participation in DEC's scheme, and
2 we do not believe that an investigation is warranted or that action should be taken as to them.
3 Thus, we recommend that the Commission dismiss, with a letter of admonishment, the
4 Complaint as to the surviving conduits.

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1 **V. RECOMMENDATIONS**

- 2 1. Find reason to believe that Dannenbaum Engineering Corp. knowingly and
3 willfully violated 52 U.S.C. §§ 30118(a), 30119(a)(1), and 30122;
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5 2. Dismiss with admonishment as to James D. Dannenbaum, Richard Seitz, Eric
6 Davila, and David A. Garza;
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8 3. Dismiss the Complaint as to Texans for John Cornyn and Kerry N. Cammack in
9 his official capacity as treasurer and Senator John Cornyn;
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11 4. Take no further action as to Louis H. Jones, Jr.;
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13 5. Enter into pre-probable cause conciliation with Dannenbaum Engineering Corp.;
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15 6. Approve the attached conciliation agreement;
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17 7. Approve the attached Factual and Legal Analyses;
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19 8. Approve the appropriate letters; and
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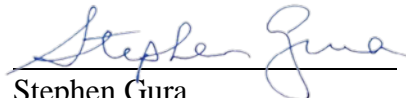
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9. Close the file as to James D. Dannenbaum, Texans for John Cornyn and Kerry N. Cammack in his official capacity as treasurer, Senator John Cornyn, Richard Seitz, Louis H. Jones, Jr., Eric Davila, and David A. Garza.


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08.05.20
Date


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