



April 22, 2020

Federal Election Commission
Office of Complaints Examination & Legal Administration
Via Email: cela@fec.gov

RE: MUR 7712; Response from Tom Steyer 2020

Dear Mr. Jordan,

I represent Tom Steyer 2020 and am writing in response to your letter of March 5, 2020. This letter concerns Matter Under Review 7712, initiated from a complaint by Richard Turner of Greenbank, Washington.

For the reasons set forth below, the complaint is completely meritless. No response to Mr. Greenbank's complaint should be necessary for the Commission to dismiss it insofar as it pertains to Tom Steyer 2020—and to make a finding that the Commission has no reason to believe a violation occurred. Nevertheless, I write to assist the Commission in swiftly making that finding.

Background

Tom Steyer 2020 is a mutual benefit corporation incorporated in the State of California operating under Section 527 of the Internal Revenue Code. In July 2019, Tom Steyer 2020 registered as a candidate committee with the Commission to support businessman and philanthropist Tom Steyer's campaign for President of the United States.

On March 12, 2020, Tom Steyer 2020 received correspondence from the Commission with copies of a complaint regarding Tom Steyer 2020's diverse hiring practices, along with complaints against three other organizations.

As relevant to Tom Steyer 2020, the complaint alleges that one of this organization's employees was an "illegal alien" and bases that claim on reporting from an Associated Press article.

The complaint alleges a violation of federal election law as a result of "illegal aliens ... provid[ing] 'a thing of value to' " Tom Steyer 2020.

The complaint also appears to allege a violation of federal election law as a result of Tom Steyer 2020 "using foreign national illegal aliens in their campaign office."

Argument

The Federal Election Campaign Act of 1971 (FECA)¹ and its implementing regulations² place restrictions on participation in elections by foreign nationals. It includes prohibitions on receiving contributions and “other thing[s] of value” from foreign nationals.³ It also prohibits foreign nationals from making “an expenditure, independent expenditure, or disbursement for an electioneering communication...”⁴

Under those prohibitions, a foreign national is any person who does not have U.S. citizenship or permanent residency status.⁵

Tom Steyer 2020 Did Not “Receive a Thing of Value” from a Foreign National

The complaint first appears to allege that Tom Steyer 2020 violated FECA as a result of: (1) an “illegal alien” having “provided ‘a thing of value’ ” to Tom Steyer 2020; and (2) Tom Steyer 2020 having accepted such thing of value.

That complaint is meritless because: (1) it was legally impossible for Tom Steyer 2020 to have received some illicit benefit as alleged given our employment arrangements; and (2) even assuming for sake of argument that a foreign national volunteered for Tom Steyer 2020, that activity would be wholly permissible under FECA.

As proof of his allegation, the complainant cites an Associated Press article reporting that Tom Steyer 2020 employed Karen Martinez. That article also reported Ms. Martinez as having immigrated to this country from Hidalgo, Mexico at the age of ten and having received permission to live and work in the United States under the Deferred Action for Childhood Arrivals program (commonly known as “DACA”). The complainant cites no further facts in support of his complaint, but does cite a statement by Commissioner Weintraub that includes a citation to 52 U.S.C. Section 30121(a)(2).⁶

Tom Steyer 2020 employed Ms. Martinez with the job title of Nevada Digital Director.⁷ Her salary was competitive; Tom Steyer 2020 offered above-market salaries to attract talented employee candidate pools, as in the case of Ms. Martinez.⁸

Section § 30121(a)(1)(A) prohibits any foreign national from making “a contribution or donation of money or other thing of value” in connection with any federal, state, or local election in the United States. Meanwhile, Section 30121(a)(2) bars a person from soliciting, accepting, or receiving such contributions or things of value in connection with a federal, state, or local election. FECA’s implementing regulations mirror those

¹ 52 U.S.C. § 30301 *et seq.*

² Tit. 11 C.F.R.

³ 52 U.S.C. § 30121(a)(1)(A), (a)(2).

⁴ 52 U.S.C. § 30121(a)(1)(C).

⁵ 52 U.S.C. § 30121(b).

⁶ All statutory references herein are to Title 52 unless otherwise stated.

⁷ See Exhibit A, Declaration of Mike De Bellis.

⁸ See Exhibit B, Declaration of Chris Fadeff.

prohibitions.⁹

Under FECA, the value of an individual's personal services volunteered to a committee without compensation does not constitute a contribution to that committee.¹⁰ In 1987, the Commission was asked whether that volunteer services exception applied to foreign nationals. The Commission responded:

[B]ecause uncompensated volunteer services are not considered to be a contribution under [FECA], any individual, including a foreign national, may volunteer his or her uncompensated services to a candidate without making a contribution to that candidate.¹¹

Authority from the Commission since 1987 has maintained that determination.¹² Anyone, irrespective of their immigration status, is free to volunteer their time, talents, and energy to candidates' political committees.

A complaint similar to the one here arose in MUR 6959 (DNC). In that matter, a complainant alleged that the Democratic National Committee violated FECA by hiring a summer intern who entered the United States at a young age but never obtained permanent residency or citizenship status.¹³ The internship paid \$1,000 per month.¹⁴ The complaint was also based on a news article, which stated the intern helped the Democratic Party mobilize Latino voters and assisted in drafting policies that affect women, children, and Latinos.¹⁵ The DNC responded to the complaint, explaining that the intern's work consisted of clerical duties, performing research, reviewing social media, and translating documents.¹⁶ The Commission found no reason to believe the DNC violated FECA because the intern's services did not qualify as a contribution.¹⁷

There is a key difference between this matter and MUR 6959 (DNC). In MUR 6959 (DNC), the intern appeared to be compensated *below* market rate, having received a \$1,000 stipend for a month's services. In this matter, Ms. Martinez was compensated *above* market rate.

That being the case, any excess benefit of Ms. Martinez's employment arrangement with Tom Steyer 2020 flowed to Ms. Martinez, not to Tom Steyer 2020. No portion of the services she provided to Tom Steyer 2020 were voluntary in nature—she was more than fully compensated. Therefore, it is legally impossible Tom Steyer 2020 received “a thing of value” as a result of its employment arrangement with Ms. Martinez.

⁹ 11 C.F.R. 110.20(b), (g).

¹⁰ 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.74.

¹¹ Advisory Op. 1987-25 at 2 (Otaola).

¹² See Factual & Legal Analysis at 6, MURs 5987, 5995, and 6015 (Hillary Clinton for President); Advisory Op. 2014-20 at 1-2 (Make Your Laws PAC); Advisory Op. 2007-22 at 3 (Hurysz); Advisory Op. 2004-26 at 2 (Weller).

¹³ Factual & Legal Analysis at 1, MUR 6959 (DNC).

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 5-6.

Even assuming, *arguendo*, that some portion of the services Ms. Martinez provided to Tom Steyer 2020 were not adequately compensated, no contribution would have occurred. Voluntary services by foreign nationals are not contributions under the Commission's longstanding interpretation of FECA. The matter at hand would be essentially the same as MUR 6959 (DNC): as with the intern there, the services provided by Ms. Martinez would not qualify as a contribution.

Accordingly, the Commission should find no reason to believe that a FECA violation occurred since Tom Steyer 2020 did not receive "a thing of value."

Ms. Martinez Did Not Direct, Control, or Participate in Decision-Making or Management Processes of Tom Steyer 2020

The complainant also alleges a FECA violation as a result of Tom Steyer 2020 "using foreign national illegal aliens in their campaign office."

That complaint is meritless because: (1) the complainant does not allege facts sufficient to establish that a FECA violation occurred; and (2) Ms. Martinez's involvement with Tom Steyer 2020 was well within FECA because her role was creative in nature and did not direct expenditures nor participate in management decisions.

The only evidence the complainant cites as proof of his allegation is from the AP article he attached. That article reported that Ms. Martinez was employed as the Nevada Digital Director for Tom Steyer 2020 and that she is a foreign national.

Tom Steyer 2020 indeed employed Ms. Martinez as its Nevada Digital Director, a creative position.¹⁸ That position had responsibilities for: creating social media content for Tom Steyer 2020's social media outlets in Nevada; training other staff and volunteers on best social media practices; and collaborating with the campaign's Digital Team at Tom Steyer 2020's headquarters.¹⁹ At no point did Ms. Martinez take part in directing contributions, expenditures, or disbursements for Tom Steyer 2020.²⁰ Nor did Ms. Martinez participate in the decision-making or management processes of Tom Steyer 2020.²¹

The complainant appears to allege a violation of Section 30121(a)(1)(C). As relevant here, that section prohibits a foreign national from "making an expenditure [...] or disbursement for an electioneering communication..."

The Commission's regulations further implement that prohibition. They specify:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any ... political committee, [...] such

¹⁸ See Exhibit A, Declaration of Mike De Bellis.

¹⁹ *Id.*

²⁰ See Exhibits A, B, Declarations of Mike De Bellis and Chris Fadeff.

²¹ See Exhibit B, Declaration. of Chris Fadeff.

as decisions concerning the making of contributions, donations, or expenditures, or disbursements in connection with elections... or concerning the administration of a political committee.²²

The Commission also once explained in more plain terms:

This broad prohibition encompasses foreign national involvement in the management of any political committee, and its decisions regarding its receipts and disbursements in connection with Federal and non-Federal elections.²³

The Commission has had opportunity to apply the prohibition to particular circumstances. In AO 2014-26 (Weller) at 1-2, a congressional candidate asked the Commission about which campaign activities his spouse, a foreign national, could partake in without triggering the prohibition. The Commission determined that his spouse could: attend the campaign's public events; solicit funds from persons who are not foreign nationals; give speeches; attend meetings regarding events and political strategy; and attend fundraisers.²⁴

Similarly, in MURs 5987, 5995, and 6015 (Hillary Clinton for President), the Commission determined that when Sir Elton John, a foreign national, allowed use of his likeness in committee emails, he did not participate in campaign decision-making.²⁵

The issue also arose in MUR 6959 (DNC), where the facts were very similar to the matter here. There, a complainant alleged that the DNC's intern participated in decision-making and management process of the DNC.²⁶ That complaint was based on a news article which stated the intern helped the Democratic Party mobilize Latino voters and assisted in drafting policies that affect women, children, and Latinos.²⁷ The DNC responded to the complaint, explaining that the intern's work consisted of clerical duties, performing research, reviewing social media, and translating documents.²⁸ The DNC also provided a sworn affidavit that the intern "did not direct, control, or participate in the decision-making or management processes of the DNC."²⁹ As a result of the complainant not alleging facts sufficient to establish that the intern participated in any decision-making or management processes at the DNC, the Commission found no reason to believe a FECA violation occurred.³⁰

In this matter, the complainant also did not allege any facts to indicate that Ms. Martinez violated Section 30121(a)(1)(C) nor 11 C.F.R. § 110.20(i). The complainant only alleges that Ms. Martinez was employed by Tom Steyer 2020 in the role of Nevada Digital

²² 11 C.F.R. § 110.20(i).

²³ Advisory Op. 2004-26 at 2 (Weller) (citing Explanation and Justification for Regulations on Contribution Limitations and Prohibitions, 67 Fed. Reg. 69946 (Nov. 19, 2002)).

²⁴ Advisory Op. 2004-26 at 3 (Weller).

²⁵ Factual & Legal Analysis at 7, MURs 5987, 5995, and 6015 (Hillary Clinton for President)

²⁶ Factual & Legal Analysis at 1, MUR 6959 (DNC).

²⁷ *Id.*

²⁸ *Id.* at 2.

²⁹ *Id.* at 3.

³⁰ *Id.* at 5.

Director. Those basic facts alleged, without more, are simply not enough to substantiate a finding that a FECA violation may have occurred as a result of a foreign national directing expenditures or participating in management decisions.

Further, the duties Ms. Martinez actually carried out are clearly not in violation of Section 30121(a)(1)(C) nor 11 C.F.R. § 110.20(i). None of her duties involved directing funds nor taking part in management or decision-making processes. Her duties were on par with the candidate's spouse in AO 2014-26 (Weller), where she worked in a meaningful capacity but did not participate in management decisions. This matter is also similar to MURs 5987, 5995, and 6015 (Hillary Clinton for President) in the sense that, like Sir Elton John, Ms. Martinez helped design creative content—not partake in management decisions. It bears noting that much of the permissible activities from AO 2014-26 (Weller) and MURs 5987, 5995, and 6015 (Hillary Clinton for President) involve speech activities. The work Ms. Martinez performed was also speech activity or directly related to it; she was designing messages for social media and collaborating with staff members for that purpose. Finally, as with MUR 6959 (DNC), the attached sworn affidavit of Chris Fadeff makes clear that Ms. Martinez did not participate in any decision-making or management processes, nor did she direct any contributions, expenditures, or disbursements.

Accordingly, the Commission should find no reason to believe that a FECA violation occurred since the facts the complainant alleged are insufficient to sustain such a finding, and in any case, the duties performed by Ms. Martinez were far afield from what might constitute a violation of Section 30121(a)(1)(C) or 11 C.F.R. § 110.20(i).

Conclusion

The evidence cited by the complainant falls woefully short of establishing a reason to believe a FECA violation occurred.

Additionally, the weakness of the complaint does not merit further use of the Commission's finite resources.

For those reasons, Tom Steyer 2020 respectfully requests that the Commission find no reason to believe this organization committed a FECA violation and therefore dismiss this matter as it pertains to this organization.

Sincerely,



Ryan Hughes
General Counsel
Tom Steyer 2020

EXHIBIT A

AFFIDAVIT OF MIKE DE BELLIS

I, Mike De Bellis, declare that the following is true and correct to the extent of my knowledge:

1. I was employed by Tom Steyer 2020 for the duration of Tom Steyer's presidential campaign.
2. At Tom Steyer 2020, I was the campaign's Human Resources Director.
3. In my role as Human Resources Director, I oversaw all job postings and descriptions, as well as facilitated hiring.
4. Tom Steyer 2020 hired a woman named Karen Martinez as its Nevada Digital Director.
5. The Nevada Digital Director position had responsibilities for: creating social media content for Tom Steyer 2020's campaign in Nevada; training other staff and volunteers on best social media practices; and collaborating with the campaign's Digital Team at Tom Steyer 2020's headquarters.
6. The Nevada Digital Director position was creative in nature.
7. The Nevada Digital Director position did not direct resources or expenditures.

Dated 4/21/20

Mike De Bellis
Mike De Bellis

State of California

County of _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2020, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

SEE ATTACHMENT
JURAT/ACKNOWLEDGMENT
SA 04-21-2020
Signature

(Seal)

CALIFORNIA JURAT

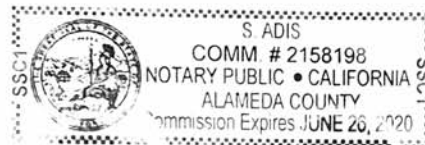
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State Of: **California**
County Of: **Contra Costa**

Subscribed and sworn to (or affirmed) before me on the 21 day of April, 2020
by Mike DeBellis,
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Signature: **S.Adis**



Title of Document: Affidavit

Total Number of Pages including Attachment: 2 pgs.

Notary Commission Expiration Date: **June 26, 2020**

Notary Commission Number: **2158198**

EXHIBIT B**AFFIDAVIT OF CHRIS FADEFF**

I, Chris Fadeff, declare that the following is true and correct to the extent of my knowledge:

1. I was employed by Tom Steyer 2020 for the duration of Tom Steyer's presidential campaign.
2. At Tom Steyer 2020, I was the campaign's Chief Operating Officer (COO).
3. In my role as COO, I helped oversee Tom Steyer 2020's budgets and expenditures.
4. Tom Steyer 2020 offered above-market salaries to attract talented employee candidate pools to all positions hired.
5. I am aware that Tom Steyer 2020 hired a person for a position titled Nevada Digital Director.
6. In my role as COO, I helped oversee all contributions, expenditures, or disbursements of Tom Steyer 2020.
7. In my role as COO, I was among a small group of people within Tom Steyer 2020 who were part of the senior staff and participated in the organization's decision-making or management processes.
8. At no point did the Nevada Digital Director take part in directing contributions, expenditures, or disbursements for Tom Steyer 2020.
9. At no point did the Nevada Digital Director participate in the decision-making or management processes of Tom Steyer 2020.

- Signature Page to Follow -

Dated 4-21-20

[Signature]
Chris Fadeff

State of California

County of California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Subscribed and sworn to (or affirmed) before me on this 21st day of April, 2020, by Chris Fadeff,
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(Seal)

Trish Casey, Notary Public
Signature

