FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 7833
Montcalm, LLC, *et al.*	)	
	)	

STATEMENT OF REASONS OF COMMISSIONERS ALLEN J. DICKERSON AND JAMES E. "TREY" TRAINOR, III

INTRODUCTION

On February 27, the Commission dismissed allegations that Montcalm LLC, Henrik Meijer, Mark Rizik, [1] and the Congressional Leadership Fund violated the Federal Election Campaign Act of 1971, as amended, ("FECA" or "Act").[2] Although the Office of General Counsel ("OGC") recommended that we find reason to believe these individuals and entities had been involved in a name-of-another conspiracy and associated misreporting,[3] we do not believe the evidence supports that characterization of events.[4] Rather, this Matter presents a technical attribution error that was later fixed due to the diligent efforts of the recipient committee.

The difference is important. The Supreme Court has repeatedly warned this agency against adopting complex, intent-based standards for determining liability. It has explained that such tests "offer[] no security for free discussion" because they "blanket[] with uncertainty whatever may be said" and "compel [speakers] to hedge and trim."[5] It has instructed that the First Amendment requires us to "eschew the

[1] Montcalm's registered agent.

[2] Certification at 1-2, MUR 7833 (Montcalm LLC, *et al.*), Feb. 27, 2024.

[3] First Gen'l Counsel's Report ("FGCR") at 25-26 ("Recommendations"), MUR 7833 (Montcalm LLC, *et al.*), Dec. 22, 2023.

[4] *See* Statement of Reasons of Chairman Cooksey at 2, MUR 7833 (Montcalm LLC, *et al.*), Mar. 7, 2024.

[5] *Buckley v. Valeo*, 424 U.S. 1, 43 (1976) (*per curiam*) (citations and quotation marks omitted).

open-ended rough-and-tumble of factors which invites complex argument in a trial court and a virtually inevitable appeal."[6] And it has pilloried this Commission for its adoption of "a two-part, 11-factor balancing test"[7] and forgetting that "[t]he First Amendment does not permit laws that force speakers to retain a campaign finance attorney… before discussing the most salient political issues of our day."[8] In short, it has consistently cautioned that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms."[9]

While well-intentioned, the Commission's evaluation of name-of-another violations has fallen into this trap. OGC's suggested approach hinges on a multi-factor analysis of an LLC's intentions. We prefer an objective approach based on the Commission's LLC attribution and reporting rules.

I. Factual Background

In October 2020, Montcalm LLC, a Limited Liability Company, made a $150,000 contribution to the Congressional Leadership Fund (the "Committee"), an independent-expenditure-only committee ("IEOPC") not prohibited from accepting unlimited contributions from domestic corporations.[10] After receiving Montcalm's money, the Committee repeatedly requested the attribution information required by our regulations.[11]

These requests are important because the way in which an LLC is taxed determines how a recipient committee will report information about the LLC's contribution to the Commission.[12] LLCs taxed as corporations attribute the donation to the LLC itself, whereas LLCs taxed as partnerships or single-member disregarded entities must attribute the donation to their owners. The Congressional Leadership

[6] *Fed. Election Comm'n v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 469 (2007) (Roberts, C.J., controlling op.) (internal citations, brackets, and quotation marks omitted).

[7] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 335 (2010).

[8] *Id.* at 324.

[9] *NAACP v. Button*, 371 U.S. 415, 438 (1963).

[10] *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 695 (D.C. Cir. 2010) (*en banc*) ("[T]he government has no anti-corruption interest in limiting contributions to an independent expenditure group…the First Amendment cannot be encroached upon for naught").

[11] 11 C.F.R. § 104.7(b)(2).

[12] *See* Statement of Reasons of Chairman Allen Dickerson, MUR 7454 (Blue Magnolia Investments, LLC, *et al.*), Apr. 14, 2022; *also infra* at 4.

Fund never received a response from Montcalm. So, quite reasonably, it reported the information it had available: that it received a $150,000 contribution from Montcalm, LLC.

The situation changed, rapidly, on October 23. The initiating complaint in this Matter was filed and, before the Commission formally noticed Respondents, Meijer and Montcalm contacted the Committee and provided the correct attribution information. [13] The LLC also made another contribution of $100,000 to the Congressional Leadership Fund the same day, which was properly attributed to Mr. Meijer, the sole member of the disregarded entity Montcalm LLC.

II. Legal Analysis

It is unlawful for a "person [to] make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution," or for anyone to "knowingly accept a contribution made by one person in the name of another person." [14] As OGC explained, the Commission has interpreted this provision to require disclosure of a contribution's "true source."[15]

Determining the "true source" of money used for a contribution can be challenging. The term is misleading – the "true source" of funds is, ultimately, the Federal Reserve System – which is why our regulation speaks, more helpfully, of the "true contributor."[16] Further, determining the "true contributor" is a question of intent. The Commission must determine whether a financial transaction was made for the express purpose of, ultimately, channeling funds to a particular recipient committee.

The Commission has fashioned, through its enforcement process and without regulatory sanction, a multi-factor test for divining whether a given LLC is being used to effect a name-of-another violation. It has considered "whether the LLC had the means to make the contribution absent an infusion of funds provided for that purpose, the temporal proximity between the LLC's formation date and the

[13] As Chairman Cooksey notes in his Statement of Reasons, the complainant made the existence of its filing known to the media, which in turn triggered calls to Montcalm. Statement of Reasons of Chairman Cooksey at 2; FGCR at 7-8 (recounting same).

[14] 52 U.S.C. § 30122.

[15] FGCR at 9-10 ("[T]he purpose of the Act's disclosure requirements is to, among others, reveal the true source from which a contribution to a candidate or committee originates, regardless of the mechanism by which the funds are transferred").

[16] 11 CFR § 110.4(b)(2)(i).

contribution, the amount of the contribution relative to the LLC's other activities, the LLC's known activities prior to making the contribution, and whether any other information suggests an attempt to circumvent the Act's disclosure requirements."[17]

Consistently applying this non-exhaustive, standardless balancing test is extraordinarily difficult. It is almost tailor made to foster disagreement among intelligent and well-intentioned people. It is also, in this context, completely unnecessary.

It is perfectly legal for an LLC to contribute to an IEOPC. It is also entirely lawful for someone to make a contribution to an IEOPC through an LLC. These transactions only become unlawful when the LLC fails to properly attribute the source of its contribution and the recipient committee fails to properly report the "true contributor" of the funds. And there is no need to rely on fuzzy common-law-of-the-Commission standards to police *that* failure because we have a regulation directly on point.

All agree that the attribution of an LLC's contribution turns on its tax status. [18] "A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service…shall be considered a contribution from a partnership" and attributed to its partners. Similarly, a "contribution by an LLC with a single natural person member that does not elect to be treated as a corporation…shall be attributed only to that single member." Finally, an LLC treated as a corporation is attributed to the LLC itself.

A recipient committee cannot be expected to know any given LLC's tax status. Accordingly, our regulations require that when a single-member LLC or partnership makes a contribution it "shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution." [19] In other words, partnerships and disregarded entities have "an obligation to provide" recipient committees with "accurate LLC attribution information." [20] Montcalm failed

[17] FGCR at 11 (cleaned up).

[18] 11 C.F.R. § 110.1(g)(2)-(4).

[19] 11 C.F.R. § 110.1(g)(5); *SAS Inst., Inc. v. Iancu*, 584 U.S. __; 138 S.Ct. 1348, 1354 (2018) ("The word 'shall' generally imposes a nondiscretionary duty").

[20] Statement of Reasons of Chairman Allen Dickerson at 2, MUR 7454 (Blue Magnolia Investments, LLC, *et al.*), Apr. 14, 2022.

to do so, albeit for a short time, and we have separately explained that this violation merited dismissal pursuant to the Commission's prosecutorial discretion.[21]

But a committee also has an independent legal obligation to make "best efforts" to accurately report its contributions.[22] This can be tricky where LLC contributions are concerned because a committee, again, does not know a contributing LLC's tax status – and because, if the LLC is taxed as a corporation, no attribution information is required by our regulations. This creates a trap for committees. If they receive an LLC contribution without attribution information, may they simply assume that it came from an LLC taxed as a corporation and report the contribution as such?

We believe that doing so runs the risk of misreporting, and that the better course is for committees to avail themselves of our best-efforts safe harbor, as was done here. The Committee repeatedly requested the required attribution information. [23] Moreover, it promptly amended its reports once it received that information.[24] The Committee, simply put, followed the law. We voted accordingly.

[21] Statement of Reasons of Comm'rs Dickerson, Lindenbaum, and Trainor at 1, MUR 7833 (Montcalm LLC, *et al.*), May 1, 2024.

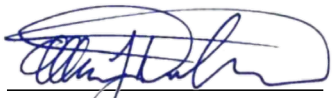
[22] 52 U.S.C. § 30102(i).

[23] 11 C.F.R. § 104.7(b)(2) (requiring only that committees make "at least one effort," oral or written, to obtain contributor information within 30 days of the receipt of the contribution.).

[24] 11 C.F.R. § 104.7(b)(4)(i)(A-B).

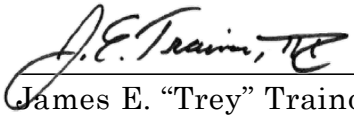
CONCLUSION

The Commission's approach to contributions by LLCs has not been a model of clarity. Upon reflection, we believe the Commission should look to its regulations, and their objective test for attribution reporting, in place of the vague and unwieldy name-of-another analysis it has developed informally over time. Applying those regulations, we voted to dismiss the allegations against all respondents.



Allen J. Dickerson
Commissioner

May 2, 2024
Date



James E. "Trey" Trainor, III
Commissioner

May 2, 2024
Date