

# SANDLER REIFF

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RECEIVED

By cdennis at 11:05 am, Jul 02, 2021

July 1, 2021

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
Attn: Christal Dennis, Paralegal  
1050 First Street, N.E.  
Washington, D.C. 20463

VIA E-mail to CELA@fec.gov

Re: MUR 7903

Dear Ms. Dennis:

The undersigned serve as counsel to Lone Star Forward, and Tory Gavito, in her official capacity as Treasurer (collectively, “the Committee”). This letter responds on behalf of the Committee to the Commission’s notification that it received a complaint (the “Complaint”) alleging that the Committee violated the Federal Election Campaign Act (the “Act”) and Federal Election Commission (the “Commission”) regulations.

## Background and Legal Analysis

As described in the Complaint, the Committee received two contributions totaling \$75,000 from a “Tomfoolery, LLC” (the “LLC”), which were disclosed on its 2020 April Quarterly Report. The Complaint alleges that the LLC either does not exist or alternatively did not have sufficient funds to make the contributions, resulting in a straw donor contribution in violation of Section 30122 of the Act. Upon receipt of the allegations in this Complaint, the Committee subsequently reached out to the LLC to request additional information about the contributions. Thereafter, we received an e-mail from counsel to Tomfoolery, LLC confirming that the LLC was a legitimate, pre-existing single-member LLC and requesting that the Committee amend its 2020 April Quarterly report to attribute the two contributions to Mr. Thomas A. Chavez.<sup>1</sup> The Committee filed an amendment to its 2020 April Quarterly Report to include this attribution on July 1, 2021.

Over the last several years, the Commission has been divided over the proper treatment of LLC contributions to Super PACs. In 2016, a divided Commission dismissed several MURs addressing the application of the straw donor analysis to corporate LLCs with three Commissioners finding that the Commission had not given proper notice to the regulated

<sup>1</sup> See Exhibit A.

community of the applicable standard.<sup>2</sup> Then, in 2018, an equally divided Commission likewise dismissed several MURs dealing with the appropriate reporting required for non-corporate LLC contributions to Super PACs for the same reason.<sup>3</sup> Since the conclusion of those matters, to our knowledge, the Commission has issued no uniform guidance on the topic to appropriately inform the regulated community of the proper treatment of LLC contributions to Super PACs. As noted in the Controlling Statement of Reasons in the corporate LLC MURs, the Commission has “several procedures available” to do just that—“notice and comment rulemaking, interpretative guidance, and statements interpreting the Act in the enforcement context.”<sup>4</sup> The Commission has not taken any of these actions, leaving the regulated community without proper guidance. Nevertheless, in the interest of full transparency, the Committee has amended its report to include an attribution to Mr. Thomas A. Chavez, the single-member of Tomfoolery LLC.

Accordingly, the Commission should exercise its prosecutorial discretion and dismiss this matter. As discussed above, the Commission has not issued uniform guidance on the appropriate treatment of LLC contributions to Super PACs. As noted in previous Statements of Reasons, fair notice to the regulated community of prohibited conduct is a “fundamental principle in our legal system”, especially in the context of free speech considerations.<sup>5</sup> The treatment of LLC contributions to Super PACs has been a live issue since the emergence of Super PACs, yet the Commission has been unable to agree on uniform guidance on the subject. Without such guidance, Super PACs cannot be expected to parse through Statements of Reasons to try to intuit the Commission’s interpretation of the law. Additionally, the Committee has now amended its report to disclose the single-member of Tomfoolery LLC, dispelling any straw donor concerns, and providing ample information to the public about the source of the contributions. As such, the Commission should use its prosecutorial discretion to dismiss this matter.

If you have any questions regarding this Response, my daytime number is (202) 479-1111. My email address is [reiff@sandlerreiff.com](mailto:reiff@sandlerreiff.com).

Sincerely,



Neil P. Reiff  
 Erin Tibe  
 Counsel to Lone Star Forward and Tory Gavito,  
 Treasurer

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<sup>2</sup> See MURs 6485, 6487, 6488, 6711, and 6930, Controlling Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman.

<sup>3</sup> See MURs 6969, 7031, and 7034, Controlling Statement of Reasons of Chair Caroline C. Hunter and Matthew S. Petersen.

<sup>4</sup> MURs 6485, 6487, 6488, 6711, and 6930, Controlling Statement of Reasons at Footnote 50.

<sup>5</sup> MURs 6969, 7031, and 7034, Controlling Statement of Reasons of Chair Caroline C. Hunter and Matthew S. Petersen, (citing *FCC v. Fox Television Stations*, 567 U.S. 239, 253 (2012)).

## EXHIBIT A

**From:** "Thomas, Scott" <SThomas@blankrome.com>  
**Date:** June 23, 2021 at 7:16:18 PM EDT  
**To:** "Neil P. Reiff" <reiff@sandlerreiff.com>  
**Subject: Request to attribute two LLC contributions**

Neil, I hope all is well with you.

As you know, a complaint has been filed with the FEC regarding two contributions to Lone Star Forward by Tomfoolery LLC in early 2020 (MUR 7903). My firm is representing Tomfoolery LLC as well as its sole member, Thomas Chavez, in this matter. I understand that you are representing Lone Star Forward which reported these two contributions as coming from Tomfoolery LLC. While my firm has filed a response to the complaint explaining that Tomfoolery LLC was a legitimate pre-existing LLC at the time of the contributions, in the interest of transparency and accountability, we have advised the FEC that we would request Lone Star Forward to amend the applicable report to attribute the two contributions to Mr. Chavez. Mr. Chavez is perfectly happy being associated with the contributions involved.

Accordingly, please arrange for Lone Star Forward to file the appropriate amendment to attribute the two contributions to Mr. Chavez. The information should include:

- Name: Thomas A. Chavez
- Mailing Address: 28 Liberty Street, Suite 2850, New York, NY 10005
- Name of Employer: self-employed
- Occupation: technologist
- Date and Amount: [same as reflected on the original report].

I am not sure how the FEC would want you to craft the amendment, but I'm sure you can sort that out.

If you have any questions or need for follow-up, please contact me.

Best regards.

--Scott

**Scott E. Thomas | BLANKROME**

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