



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 1, 2022

Via Electronic Mail

sthomas@blankrome.com

Scott E. Thomas
Blank Rome LLP
1825 Eye Street, NW, Suite 900
Washington, DC 20006

RE: MUR 7903
Tomfoolery, LLC
Thomas A. Chavez

Dear Mr. Thomas:

On May 13, 2021, and October 8, 2021, the Federal Election Commission (the "Commission") notified your client, Tomfoolery, LLC, and you, of a complaint alleging that your clients, Tomfoolery, LLC, and Thomas A. Chavez, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided Tomfoolery, LLC, and you with a copy of the complaint.

After reviewing the allegations contained in the complaint, your response, and publicly available information, the Commission, on July 26, 2022, found reason to believe that your clients, Tomfoolery, LLC, and Thomas A. Chavez, violated 52 U.S.C. § 30122, a provision of the Act, by knowingly permitting its name to be used to effect contributions in the name of another, and by making contributions in the name of another, respectively. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

MUR 7903 (Tomfoolery, LLC, *et al.*)

Scott E. Thomas

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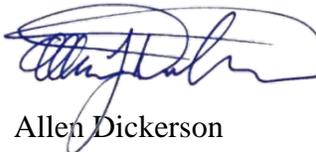
If your clients are interested in engaging in pre-probable cause conciliation, please contact Crystal Liu, the attorney assigned to this matter, at (202) 694-1273 or cliu@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

We look forward to your response.

On behalf of the Commission,



Allen Dickerson
Chairman

Enclosures:

Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENTS: Tomfoolery, LLC MUR 7903
5 Thomas A. Chavez

6 **I. INTRODUCTION**

7 The Complaint in this matter alleges that an unknown person made two contributions
8 totaling \$75,000 in the name of a limited liability company, Tomfoolery, LLC (“Tomfoolery”),
9 to an independent-expenditure-only political committee, Lone Star Forward and Tory Gavito in
10 her official capacity as treasurer (“LSF”), in violation of 52 U.S.C. § 30122, a provision of the
11 Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint contends that
12 because there is no public record of a “Tomfoolery, LLC” located at the address provided on
13 LSF’s disclosure report, the contributions may have been made in the name of a nonexistent
14 entity; alternatively, the Complaint asserts that because none of the three currently active entities
15 in the U.S. named “Tomfoolery, LLC,” could have had the funds to make the combined \$75,000
16 in contributions without an infusion of funds provided for that purpose, the contributions to LSF
17 were made by another person using Tomfoolery as a straw donor.²

18 Tomfoolery filed a joint response with its single member, Thomas A. Chavez, addressing
19 the allegations in the Complaint and confirming that the LLC was organized in Delaware in
20 2017.³ While the Response acknowledges that “Chavez wanted to help the election prospects of

¹ Compl. at 1-2 (May 12, 2021).

² *Id.* The Complaint contends that there are three active entities named “Tomfoolery, LLC” which are registered in New York, Delaware, and Wyoming, and that none of these LLCs had the apparent financial capability to make the contributions at issue. *Id.* at 4-6.

³ Resp. of Tomfoolery, LLC, and Thomas Chavez at 1 (June 23, 2021) (“Tomfoolery Resp.”). Chavez was not initially notified of the Complaint but was provided notice after being identified as the LLC’s single member in the joint response. *See* Letter from Roy Q. Lockett, Asst. Gen. Counsel, FEC, to Scott E. Thomas, Counsel to Tomfoolery and Thomas A. Chavez (Oct. 8, 2021).

1 one particular candidate” and that “funds had to be transferred into the LLC on the days the
2 contributions were made in order to cover the full contribution amounts,” it contends that “there
3 was no willful effort to make a contribution in the name of another in this matter.”⁴ Following
4 the filing of the Complaint, Tomfoolery requested that LSF amend its disclosure reports to
5 attribute the two contributions at issue to Chavez.

6 Because the overall record in this matter supports the conclusion that Chavez made, and
7 Tomfoolery knowingly permitted its name to be used to effect two contributions in the name of
8 another, the Commission finds reason to believe that Chavez and Tomfoolery violated 52 U.S.C.
9 § 30122.

10 **I. FACTUAL BACKGROUND**

11 Tomfoolery is a limited liability company (“LLC”) that was formed, according to its
12 Response, in Delaware on November 13, 2017, and its registered agent is the Corporation Trust
13 Company.⁵ As disclosed in its Response, Tomfoolery has a single natural person member,
14 Thomas Chavez. Tomfoolery sent a \$50,000 contribution to LSF on February 3, 2020, and a
15 \$25,000 contribution to LSF on February 24, 2020. Tomfoolery did not provide any information
16 about the source of the funds or that they should have been attributed to some other person. Both
17 contributions were originally reported by LSF as having been made by Tomfoolery,⁶ and were
18 later reattributed to Chavez in an amended report filed on July 1, 2021, a few weeks after the

⁴ Tomfoolery Resp. at 2.

⁵ “Tomfoolery LLC” DE Dep’t of State, Division of Corps. Entity Search, <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (visited Sept. 15, 2021); *see* Compl., Ex. B (“Certificate of Formation of Tomfoolery LLC” dated November 13, 2017, and signed by “Tom Chavez” as the “authorized person”).

⁶ LSF Apr. 2020 Quarterly Report at 10-11 (Apr. 13, 2020).

1 May 2021 Complaint filing in this matter.⁷ These are the only federal contributions that
2 Tomfoolery is reported to have made.

3 LSF is an independent-expenditure-only political committee (“IEOPC”), which registered
4 with the Commission on January 22, 2020.⁸ During the 2020 election cycle, the committee
5 received \$275,510 in contributions, of which the contributions made in Tomfoolery’s name
6 constituted 27% of LSF’s total receipts during the cycle. LSF made \$255,200 in independent
7 expenditures, all of which supported Cristina Ramirez, a candidate in the 2020 Democratic
8 primary election for the U.S. Senate in Texas, which constituted 96% of the \$265,531.48 in total
9 independent expenditures supporting Ramirez’s candidacy.⁹

10 II. LEGAL ANALYSIS

11 A. Contributions in the Name of Another

12 1. No Person May Furnish Another Person with Funds for the 13 Purpose of Making a Political Contribution

14 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
15 deposit of money or anything of value made by any person for the purpose of influencing any
16 election for Federal office.”¹⁰ The term “person” for purposes of the Act and Commission
17 regulations includes partnerships, corporations, and “any other organization or group of

⁷ LSF Amend. Apr. 2020 Quarterly Report at 10-11 (July 1, 2021).

⁸ LSF Statement of Org. (Jan. 22, 2020).

⁹ Ramirez lost in the primary election held on March 3, 2020. LSF appears to have ceased all activity after the March 3, 2020, primary election, *see* LSF July 2020 Quarterly Report at 2 (disclosing \$653.95 in cash on hand as of April 1, 2020, as well as no receipts and less than \$400 in disbursements during the reporting period from April 1, 2020 through June 30, 2020), and reported virtually no activity during the 2022 election cycle, *see* Lone Star Forward Financial Summary, <https://www.fec.gov/data/committee/C00735829/?tab=summary&cycle=2022>.

¹⁰ 52 U.S.C. § 30101(8)(A).

1 persons.”¹¹ The Act prohibits a person from making a contribution in the name of another
 2 person, knowingly permitting his or her name to be used to effect such a contribution, or
 3 knowingly accepting such a contribution.¹² The Commission has included in its regulations
 4 illustrations of activities that constitute making a contribution in the name of another:

- 5 (i) Giving money or anything of value, all or part of which was
 6 provided to the contributor by another person (the true contributor)
 7 without disclosing the source of money or the thing of value to the
 8 recipient candidate or committee at the time the contribution is
 9 made; or
- 10 (ii) Making a contribution of money or anything of value and
 11 attributing as the source of the money or thing of value another
 12 person when in fact the contributor is the source.¹³

13 Because the concern of the law is the true source from which a contribution to a
 14 candidate or committee originates, regardless of the mechanism by which the funds are
 15 transmitted, the Commission will examine the structure of the transaction itself and the
 16 arrangement between the parties to determine who in fact “made” a given contribution. The
 17 D.C. Circuit has found that Section 30122’s prohibition of contributions in the name of another
 18 applies to LLCs¹⁴ — such that an LLC cannot be used as a “straw donor” to transmit the funds of
 19 another, but must instead be the true source of any contribution it purports to make.¹⁵

¹¹ *Id.* § 30101(11); 11 C.F.R. § 100.10.

¹² 52 U.S.C. § 30122.

¹³ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

¹⁴ *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) (“The controlling commissioners did not dispute that [52 U.S.C.] § 30122 applies to closely held corporations and corporate LLCs. *We agree that it does.*”) (emphasis added). The Court nevertheless held that the Commission’s dismissal of several matters involving alleged LLC conduits — based on the rationale that the matters presented an issue of first impression, which raised fair notice and due process concerns — was reasonable. *Id.* at 357–58.

¹⁵ *See, e.g.*, Statement of Reasons of Chairman Matthew S. Petersen and Comm’rs Caroline C. Hunter and Lee E. Goodman at 8, 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“Upon thorough

1 2. The Available Information Indicates that Chavez Provided
 2 Funds to Tomfoolery to Make Contributions in its Name

3 The available information indicates that the contributions made in Tomfoolery’s name
 4 were, in fact, actually made by Thomas A. Chavez, when Chavez furnished Tomfoolery with
 5 funds for the purpose of having the LLC make the contributions. Tomfoolery’s Response
 6 acknowledges that “at the time the contributions here involved were made, funds had to be
 7 transferred into the LLC on the days the contributions were made in order to cover the full
 8 contribution amounts.”¹⁶ This statement supports the allegation that the provision of outside
 9 funds was necessary for Tomfoolery to make the contributions — *i.e.*, that Tomfoolery could not
 10 be the true contributor because it lacked the financial wherewithal to make the contributions on
 11 its own, such that “funds had to be transferred . . . to cover the full contribution amounts.”¹⁷

consideration of these matters, we conclude that closely held corporations and corporate LLCs may be considered straw donors in violation of section 30122 under certain circumstances. . . . [W]hen enforcing section 30122 in similar future matters, the proper focus will be on whether funds were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act’s reporting requirements. If they were, then the true source of the funds is the person who funneled them through the corporate entity for this purpose. Where direct evidence of this purpose is lacking, the Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”); Statement of Reasons of Vice Chairman Steven T. Walther and Comm’rs Ann M. Ravel and Ellen L. Weintraub at 3–4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“Although the ability of individuals and corporations to make unlimited contributions to super PACs is a post-*Citizens United* and *SpeechNow* phenomenon, the longstanding prohibition against making contributions in the name of another remains unchanged and squarely applies to these [LLC] cases . . . Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.”) (citations omitted).

¹⁶ Tomfoolery Resp. at 2.

¹⁷ *Id.*

1 Moreover, the Response states that “Chavez wanted to help the election prospects of one
2 particular candidate seeking the [U.S.] Senate nomination in Texas,”¹⁸ and that the “necessary
3 transfers [were made] into the LLC from a Thomas Chavez account to facilitate the political
4 contributions being made,”¹⁹ which indicates that Chavez, not Tomfoolery, was the true
5 contributor. Thus, the overall information, including the statements provided in Tomfoolery’s
6 Response, supports the conclusion that Chavez, not Tomfoolery, was the true source of the
7 \$75,000 in contributions to LSF.²⁰

8 Although Tomfoolery contends that it “has functioned most recently to facilitate various
9 business-related expenses of Mr. Chavez, such as paying expenses for development and
10 operation of a music industry project,”²¹ and publicly available information shows that
11 Tomfoolery was organized in 2017, an LLC’s longevity and its business activities do not
12 undermine its use as a straw donor. In other words, even accepting, *arguendo*, the respondents’
13 assertion that Tomfoolery was an established company used for business purposes, the available
14 information, including the statements submitted to the Commission in the Response, indicates
15 that it also been used on the two occasions at issue as an intermediary to make political
16 contributions without revealing Chavez’s identity.

17 Tomfoolery argues that the Commission should dismiss this matter because Chavez did
18 not engage in a “willful effort to make a contribution in the name of another,” as it contends is
19 demonstrated by an email, attached to the Response, from Chavez to the financial services firm

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.* (emphasis added)

²⁰ *Boender*, 649 F.3d at 660; *O’Donnell*, 608 F.3d at 555; *Whittemore*, 776 F.3d at 1080.

²¹ *Id.*

1 that executed the transactions at issue, in which Chavez instructs: “please send Lone Star 50K. if
2 possible, i’d like to send it through an llc like tomfoolery; if i need to be named, so be it.”²² The
3 Response states that Chavez sought to promote transparency and accountability, as shown by his
4 request — made after receiving notice of the Complaint in this matter — that LSF attribute the
5 contributions to him.²³ Regardless, while the reattribution of the contributions provided *post*
6 *facto* clarification of the record, the overall record in this matter supports the conclusion that
7 Tomfoolery was not the true source of the combined \$75,000 that it facially appeared to give to
8 LSF, but instead served as an instrument to convey Chavez’s funds to LSF without publicly
9 disclosing his identity.²⁴ Accordingly, the Commission finds reason to believe that Chavez
10 made, and Tomfoolery knowingly permitted its name to be used to effect, contributions in the
11 name of another, in violation of 52 U.S.C. § 30122.

²² *Id.*, Attach. 1 (“Chavez email”).

²³ Tomfoolery Resp. at 2.

²⁴ *See Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 354 (D.C. Cir. 2020) (“As the Supreme Court has repeatedly declared, the electorate has an interest in knowing where political campaign money comes from and how it is spent by the candidate. To that end, the [Act] imposes disclosure requirements on those who give and spend money to influence elections. The straw donor provision, 52 U.S.C. § 30122, is designed to ensure accurate disclosure of contributor information.”) (citations and quotation marks omitted).