



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

October 4, 2022

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Sophia Gonsalves-Brown  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, DC 20005

RE: MUR 7903  
Tomfoolery, LLC, *et al.*

Dear Ms. Gonsalves-Brown:

This is in reference to the complaint Margaret Christ and Campaign Legal Center filed with the Federal Election Commission on May 12, 2021, involving \$75,000 in contributions made in the name of Tomfoolery, LLC, to Lone Star Forward. The Commission found reason to believe that Thomas A. Chavez and Tomfoolery, LLC, violated 52 U.S.C. § 30122, a provision of the Federal Election Campaign Act of 1971, as amended, by making contributions in the name of another and by knowingly permitting its name to be used to effect contributions in the name of another. On October 3, 2022, a conciliation agreement signed by Chavez and Tomfoolery, LLC, was accepted by the Commission. In addition, the Commission took no action as to Lone Star Forward. Accordingly, the Commission closed the file in this matter on October 4, 2022.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which formed a basis for the Commission's findings, and a copy of the agreement with the Committee are enclosed for your information.

MUR 7903 (Tomfoolery, LLC, *et al.*)  
Sophia Gonsalves-Brown  
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If you have any questions, please contact me at (202) 694-1273.

Sincerely,

A handwritten signature in cursive script that reads "Crystal Liu".

Crystal Liu  
Attorney

Enclosures:

1. Factual and Legal Analysis
2. Conciliation Agreement

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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

MUR 7903

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”).<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> While the Response acknowledges that “Chavez wanted to help the election prospects of

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<sup>1</sup> Compl. at 1-2 (May 12, 2021).

<sup>2</sup> *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.

<sup>3</sup> 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. Luckett, Asst. Gen. Counsel, FEC, to Scott E. Thomas, Counsel to Tomfoolery and Thomas A. Chavez (Oct. 8, 2021).

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

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

## **I. FACTUAL BACKGROUND**

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

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<sup>4</sup> Tomfoolery Resp. at 2.

<sup>5</sup> “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”).

<sup>6</sup> LSF Apr. 2020 Quarterly Report at 10-11 (Apr. 13, 2020).

May 2021 Complaint filing in this matter.<sup>7</sup> These are the only federal contributions that Tomfoolery is reported to have made.

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

## II. LEGAL ANALYSIS

### A. Contributions in the Name of Another

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

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

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

<sup>8</sup> LSF Statement of Org. (Jan. 22, 2020).

<sup>9</sup> 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>.

<sup>10</sup> 52 U.S.C. § 30101(8)(A).

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

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.<sup>13</sup>

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

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<sup>11</sup> *Id.* § 30101(11); 11 C.F.R. § 100.10.

<sup>12</sup> 52 U.S.C. § 30122.

<sup>13</sup> 11 C.F.R. § 110.4(b)(2)(i)–(ii).

<sup>14</sup> *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.

<sup>15</sup> *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

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

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

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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).

<sup>16</sup> Tomfoolery Resp. at 2.

<sup>17</sup> *Id.*

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

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

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

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<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> *Id.* (emphasis added)

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

<sup>21</sup> *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.”<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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.

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<sup>22</sup> *Id.*, Attach. 1 (“Chavez email”).

<sup>23</sup> Tomfoolery Resp. at 2.

<sup>24</sup> *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).

## BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	MUR 7903
Tomfoolery, LLC	)	
Thomas A. Chavez	)	
	)	

### CONCILIATION AGREEMENT

This matter was initiated by a Complaint filed with the Federal Election Commission (“Commission”) by the Campaign Legal Center. The Commission found reason to believe that Tomfoolery, LLC (“Tomfoolery”) and Thomas A. Chavez (collectively, “Respondents”) violated 52 U.S.C. § 30122.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Tomfoolery is a limited liability company (“LLC”) formed in Delaware on November 13, 2017, and has a single natural person member, Thomas A. Chavez, and is a disregarded entity for federal tax purposes.

2. Lone Star Forward (“LSF”) is an independent-expenditure-only political committee (“IEOPC”), which registered with the Commission on January 22, 2020. During the 2020 election cycle, the committee received \$275,510 in contributions, and made \$255,200 in independent expenditures, all of which supported Cristina Ramirez, a candidate in the 2020 Democratic primary election for the U.S. Senate in Texas.

3. Chavez provided funds to and caused Tomfoolery to send a \$50,000 contribution to LSF on February 3, 2020, and a \$25,000 contribution to LSF on February 24, 2020. Tomfoolery did not provide any information about the source of the funds or that they should have been attributed to some other person.

4. LSF reported that Tomfoolery made contributions of \$50,000 and \$25,000 on February 3 and February 24, 2020. After the filing of the complaint in this matter, LSF amended that report to attribute the \$75,000 in Tomfoolery contributions to Chavez as the true source of the contribution.

5. Under the Federal Election Campaign Act of 1971, as amended (the “Act”), a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A).

6. The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.” 52 U.S.C. § 30101(11).

7. The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution. 52 U.S.C. § 30122.

8. Federal courts have interpreted 52 U.S.C. § 30122 and the Commission's regulations implementing that provision such that a person who furnishes another person with funds for the purpose of contributing to a candidate or committee "makes" the resulting contribution. *See United States v. O'Donnell*, 608 F.3d 546, 555 (9th Cir. 2010); *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011); *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015).

9. While Tomfoolery is a distinct "person" that can make political contributions — provided that those contributions abide by the Act's prohibitions, including the prohibition on contributions in the name of another — the record indicates that Tomfoolery did not make these contributions using its own funds. Instead, Chavez was "the source" of two contributions totaling \$75,000 to LSF, whereas Tomfoolery was the "intermediary who simply conveys the gift from the donor to the donee." *Boender*, 649 F.3d at 660.

10. Respondents contend that this was a first-time situation for Mr. Chavez; that he indicated to his financial advisors, "[P]lease send Lone Star \$50K. [I]f possible, [I]'d like to send it through an llc like tomfoolery; if [I] need to be named, so be it."; and that promptly after receiving notice of the complaint in this matter, he initiated the process of having the recipient committee revise its reports to reflect the contributions being in Mr. Chavez's name.

V. Respondents violated 52 U.S.C. § 30122 when Thomas A. Chavez made, and Tomfoolery knowingly permitted its name to be used to effect, two contributions in the name of another totaling \$75,000.

VI. 1. Respondents will pay a civil penalty to the Commission in the amount of Twenty-Five Thousand Dollars (\$25,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondents will cease and desist from committing violations of 52 U.S.C. § 30122.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

XI. This agreement shall not be read to waive Respondents' right or ability to assert, without prejudice, any arguments or defenses in any future proceedings that are unrelated to the terms of this agreement and the violations of law described herein.

MUR 7903 (Tomfoolery, LLC, *et al.*)  
Conciliation Agreement  
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FOR THE COMMISSION:

Lisa J. Stevenson  
Acting General Counsel

BY:

Charles Kitcher

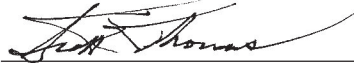
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Charles Kitcher  
Associate General Counsel for Enforcement

10/3/22

Date

FOR THE RESPONDENTS:



Scott E. Thomas  
Counsel for Respondents

9/9/22

Date