



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )

Tomfoolery, LLC, *et al.* )

) MUR 7903  
)  
)  
)

**STATEMENT OF REASONS OF  
COMMISSIONER SEAN J. COOKSEY**

I opposed the Commission’s decision to pursue these Respondents for a straw-donor violation under 52 U.S.C. § 30122 based on a reporting error.

The evidence showed that Thomas Chavez used a preexisting LLC—one that he had used before for business dealings and of which he was the sole member—to effectuate two contributions totaling \$75,000 to Lone Star Forward, an independent expenditure-only political committee (“IEOPC”).<sup>1</sup> When he initiated the contributions, Chavez told his financial advisors, “[I]f possible, I’d like to send it through an [LLC] like [T]omfoolery; if [I] need to be named, so be it.”<sup>2</sup> The contributions were made through, and reported as coming from, Tomfoolery, LLC in February 2020, using at least some funds Chavez transferred to the LLC’s accounts.<sup>3</sup>

Under the Commission’s complex and evolving guidance for reporting contributions, because Tomfoolery is not taxed as a corporation, the IEOPC should have attributed the contributions as coming from Chavez, as the LLC’s sole member.<sup>4</sup> But like most Americans, Chavez is not an expert on campaign-finance law or FEC reporting rules. So no attribution was provided. When this Complaint was filed in May 2021, Chavez took corrective action, and Lone Star Forward amended the relevant reports to show that he had made the contributions.<sup>5</sup>

Nothing in the record indicated that Chavez was attempting to purposefully evade the Commission’s reporting requirements or any other campaign-finance law by making a contribution

<sup>1</sup> First General Counsel’s Report at 3–4 (Feb. 3, 2022), MUR 7903 (Tomfoolery, LLC, *et al.*).

<sup>2</sup> Response of Tomfoolery, LLC and Thomas Chavez, Attach. 1 (June 23, 2021), MUR 7903 (Tomfoolery, LLC, *et al.*).

<sup>3</sup> First General Counsel’s Report at 3–4 (Feb. 3, 2022), MUR 7903 (Tomfoolery, LLC, *et al.*).

<sup>4</sup> 11 C.F.R. § 110.1(g)(4), (5); Conciliation Agreement at 1 (Sept. 9, 2022) (Tomfoolery, LLC “is a disregarded entity for federal tax purposes”), MUR 7903 (Tomfoolery, LLC, *et al.*).

<sup>5</sup> Response of Lone Star Forward at 1 (July 1, 2021), MUR 7903 (Tomfoolery, LLC, *et al.*).

in the name of another.<sup>6</sup> Indeed, he acknowledged at the time that the law may require his name to be reported, and Chavez has made political contributions in his own name in the past. Instead, the evidence showed an everyday citizen misunderstanding his reporting obligations under regulations that frequently perplex experienced lawyers, and that the Commission itself has acknowledged lack clarity.<sup>7</sup> As a result, it makes for rough justice, unsupported by the evidence, for the Commission to take a technical violation—subsequently corrected—and treat it as a conduit-contribution scheme.

Moreover, I worry the Commission is acting inconsistently in how it handles analogous matters, and it raises concerns about uneven enforcement of the law. In MUR 7454 (DefendArizona, *et al.*), the Commission faced a similar fact pattern: two LLCs—both formed only five weeks prior—made contributions of \$100,000 each to an independent expenditure-only political committee without proper attribution.<sup>8</sup> In both cases, the errors were subsequently addressed through either amended reports or refunds.<sup>9</sup> Yet there, upon OGC’s recommendation, the Commission dismissed the allegations that the Respondents had engaged in straw donations, and it instead pursued only lesser reporting violations.<sup>10</sup>

I see no reason why the Commission is treating this matter differently, and its outsized and unpredictable enforcement pattern in cases like these risks disparate treatment and chilling Americans’ participation in the political process. For those reasons, I opposed the Commission’s actions here.

  
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 Sean J. Cooksey  
 Commissioner

October 27, 2022  
 Date

<sup>6</sup> See Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman at 12 (April 1, 2016), MURs 6485, 6487, 6488, 6711, and 6930 (W Spann LLC, *et al.*) (“[W]e conclude that, when 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.”).

<sup>7</sup> See Conciliation Agreement for Blue Magnolia Investments, LLC at 3 (Nov. 5, 2021), MUR 7454 (DefendArizona, *et al.*) (noting a “lack of clarity by the Commission concerning the application of 11 C.F.R. § 110.1(g)(5) in these circumstances”).

<sup>8</sup> First General Counsel’s Report at 15–17 (June 10, 2019), MUR 7454 (DefendArizona, *et al.*).

<sup>9</sup> *Id.*

<sup>10</sup> Certification (May 20, 2021), MUR 7454 (DefendArizona, *et al.*).