



GARY M. LAWKOWSKI
glawkowski@DhillionLaw.com

June 17, 2022

Trace Keys
Paralegal
Federal Election Commission
Office of Complaints Examination & Legal Administration
1050 First Street, NE
Washington, DC 20463

RE: MUR 7994

Dear Paralegal Keys:

This Response is submitted by undersigned counsel on behalf of Make America Great Again, Again! Inc. and Mr. Charles Gantt, in his official capacity as treasurer (collectively, the "Committee").

The Federal Election Commission ("FEC" or the "Commission") should find that there is no reason to believe the Committee violated the Act and close the file as to the Committee for three reasons:

- First, the Complaint does not name the Committee as a respondent or otherwise allege that the Committee broke any law or regulation. Under these circumstances, the Committee should not have been named as a respondent by FEC staff.
- Second, the facts show that the Committee exercised the level of diligence required by the Act to ascertain who made the contribution in question. It then appropriately attributed the contribution in its reports to the Commission based on the information provided by the contributor to the Committee at the time.
- Finally, upon learning new information on May 20, 2022, indicating that the contributing LLC is partnership and that the contribution should be attributed to an individual, the Committee promptly amended its report to correct the public record. The Committee also updated its donor card to prevent any future misunderstandings.

If the Commission is not inclined to find no reason to believe the Committee violated the Act, the Committee respectfully requests that the Commission dismiss the matter as to the Committee as an exercise of its prosecutorial discretion in consideration of the information the

Committee sought and was given at the time of the contribution and its prompt remedial measures upon learning new information.

I. The Complaint Does Not Allege that the Committee Broke Any Law

The Commission should find that there is no reason to believe the Committee violated the Act because the Complaint does not allege any wrongdoing by the Committee.

The Complainant in this matter is a sophisticated actor that is intimately familiar with the Federal Election Commission's administrative enforcement process and underlying campaign finance law. This is not a case where the Commission has to suss out a potential violation buried in a vague and confusing factual narrative. The Complainant knows how to make precise allegations and did so in this matter.

Specifically, the Complaint names three persons as respondents in the caption of the Complaint, none of whom are the Committee: ML Organization, LLC; William Pulte; and "Any unknown persons who made contributions to [the Committee] in the name of ML Organization, LLC." Complaint at 1. Moreover, the Complaint makes a very specific allegation, claiming that "the Commission should find reason to believe that ML Organization, LLC, and any person(s) who created, operated, and made contributions to or in the name of this entity (William Pulte and/or unknown person(s)) have violated 52 U.S.C. § 30101, *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2)." Complaint at 13. The Complaint does not level a similar accusation against the Committee.

In spite of the Complaint's clear and precise allegation, FEC staff identified and notified the Committee as a Respondent in this matter as if it was accused of violating the Act. The result is that the Committee has no clear notice of why it is being named as a Respondent, and must necessarily guess at what enforcement theories FEC staff envisioned when they sent the Complaint to the Committee. This is a problem for due process and basic fairness. It is also a practical problem for both the Committee and the Commission: The Committee is in a much better position to provide relevant facts and arguments when it knows what accusations are under consideration.

Respondents should not have to guess at why they are being hauled before a government body as a result of exercising their core First Amendment freedoms. The Complaint does not allege any wrongdoing by the Committee. For that reason alone, the Commission should find no reason to believe that the Committee violated the Act.

II. The Committee Exercised Appropriate Diligence in Determining the Source of the Contribution

There is no reason to believe the Committee violated the Act as the recipient of the contribution because the Committee exercised the required level of diligence in determining and reporting the source of the contribution in question.

Under Commission regulations, the burden is on the contributing LLC to provide recipient committees with proper attribution information.¹ For example, 11 C.F.R. § 110.1(g)(5) states “[a]n LLC that makes a contribution [as a partnership or single member entity that does not elect to be treated as a corporation] *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” (emphasis added).

When making a facially valid contribution, a contributing LLCs must do two things: 1) tell the recipient committee how to attribute the contribution, and 2) affirm that the LLC is eligible to make the contribution. The contributing LLC in this case appeared to do both of these things.

With respect to the second requirement, there is no question that the contributor properly affirmed its eligibility to make a contribution. To wit, the signature block on the donation form, attached as Exhibit A, begins “[b]y making this contribution, you affirm that the following statements are true and accurate” and goes on to list eligibility criteria.

With respect to attribution, by checking the LLC box on the donor form, the contributing LLC appeared to tell the Committee how to attribute its contribution. The Committee’s donor form asks contributors to check a “contribution type” and provides options for “Individual,” “Corporation,” “LLC,” “Partnership,” or “Trust.” It also provides space for “Joint Contributor Information.” ML Organization checked the box for “LLC” and provided a check from the LLC. Thus, on its face, the donor form appears to include an attribution sufficient to satisfy section 110.1(g)(5). After all, under 11 C.F.R. § 110.1(g), the options for an LLC are to be treated as a partnership (§ 110.1(g)(2)), a contribution by an individual (§ 110.1(g)(4)), or a contribution from the LLC itself. An organization intending to have their contribution allocated as a partnership could have checked the “partnership” box. A single-member LLC where the contribution is properly attributed “only to that single member” could have checked the “individual” box. Not doing so and checking the “LLC” box appears on its face to be an attribution of the contribution to the LLC.

Having been given this information by the donor, the Committee was under no obligation to investigate the donor any further. Under, 52 U.S.C. § 30102(i) committee treasurers have an obligation to use “best efforts” to obtain, maintain, and submit reporting information required by the Act. *See also* 11 C.F.R. § 104.7. The Committee met this obligation by providing contributors with spaces they can check to delineate how they would like their contributions to be attributed, as well as requesting other mandatory contributor information, and reporting the information received. Since there was nothing on the face of the contribution and donor form suggesting that any contributor information is missing, there was no obligation for the Committee to request additional information from the contributor.

¹ Given that “[c]ampaign finance regulations now impose ‘unique and complex rules,’” it is entirely possible that a contributor may make an innocent mistake in providing reporting or attribution information to a Committee. *Citizens United v. FEC*, 130 S.Ct. 876, 895 (2010). The likelihood of such a mistake counsels in favor of the exercise of prosecutorial discretion with respect to the contributor. It does not serve as an invitation to shift the burden of verifying facially valid attributions to political committees.

The Committee thus satisfied its obligations under the Act. The Committee provided a mechanism for the contributor to attribute their contribution. The contributor provided information that was required by the Act. Because there was nothing on the face of the contribution and donor form suggesting that any contributor information is missing, there was no obligation under the current rules for the Committee to request additional information. Accordingly, there is no reason to believe the Committee violated the Act.

III. The Committee Took Prompt Remedial Action

The Committee took prompt remedial actions to correct the public record and revise its donor card to prevent future misunderstandings.² Accordingly, if the Commission is unable to find that there is no reason to believe the Committee violated the Act, it should dismiss any allegations against the Committee as a matter of prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

On May 20, 2022, the Committee learned for the first time that the ML Organization LLC is treated as a partnership for Internal Revenue Service purposes. *See* Exhibit B – Declaration of Mr. Charles Gantt. That same day, the Committee filed an amended report with the Commission to correct the public record, attributing the contribution to one of the partners in ML Organization. *Id.*

In addition, even before receiving the Complaint in this matter, the Committee proactively updated its donor form to be more explicit about how a contribution from an LLC should be attributed, which should help prevent future misunderstandings. *See* Exhibit C – Revised LLC Contribution Form.

Finally, there is no indication that the contribution at issue was illegal or otherwise impermissible. The Committee is an independent expenditure only political committee; it is able to accept unlimited contributions from individuals, corporations, and partnerships, provided they meet the other eligibility criteria. There is no advantage to the Committee or incentive to misreport the identity of its contributor; this is money the Committee could accept and use, whether it was coming from Mrs. Diana Pulte or the LLC as an independent entity.

For the reasons described above, there is no reason to believe the Committee violated the Act. Even if the Commission believes that the Committee could have used a better donor card or otherwise prevented misattributions, the fact remains the Committee tried to and appeared to succeed in obtaining accurate information, and that it corrected the public record immediately upon learning that its information was inaccurate. Therefore, if the Commission is unable to find no reason to believe, it should exercise its prosecutorial discretion to dismiss any allegations against the Committee.

² This description of remedial actions are not an admission or acknowledgement that the Committee did anything wrong before. Consistent with conventional doctrine, as reflected in Rule 407 of the Federal Rules of Evidence, subsequent remedial measures are not admissible to show negligence or culpable conduct. Instead, they are offered to show that the Committee is a good faith actor that warrants dismissal from this matter, either as a matter of law or as a matter of prosecutorial discretion.

IV. If the Commission Does Not Dismiss the Committee from this Matter (It Should), then There Should Be No Civil Penalty

If the Commission does not find that there is no reason to believe the Committee violated the Act or dismiss the Committee in an exercise of its prosecutorial discretion, it should follow the example set in MUR 7454 (Blue Magnolia Investments, LLC) and decline to seek a civil penalty.

In MUR 7454, the Commission found reason to believe a violation occurred with respect to the failure to properly attribute an LLC contribution, concluding that the respondent committee had a duty to investigate further when faced with incomplete donor information. However, “as the Commission has not previously found reason to believe under these circumstances, [it] did not seek a civil penalty in this case.” MUR 7454 (Blue Magnolia Investments, LLC), Statement of Reasons of Chairman Allen Dickerson, Vice Chair Steven T. Walther, Commissioner Shana M. Broussard, and Commissioner Ellen L. Weintraub at 2.

The conduct at issue in this matter occurred long before the Commission’s decision in MUR 7454. Accordingly, if the Commission were inclined to find reason to believe the Committee violated the Act, the same logic should apply: There should be no civil penalty.

V. Conclusion

The Committee did not do anything wrong, nor did the Complaint allege otherwise. Accordingly, the Commission should find that there is no reason to believe the Committee violated the Act or dismiss the Committee from this matter in an exercise of its prosecutorial discretion.

In the alternative, assuming *arguendo* that the Commission believes there is reason to believe a violation occurred (there is not), consistent with the resolution of MUR 7454 (Blue Magnolia Investments, LLC) the Commission should decline to seek a civil penalty and permit the Committee to include contention language.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Gary M. Lawkowski", with a stylized flourish at the end.

Gary M. Lawkowski
Dhillon Law Group

Exhibit A

MAGA, AGAIN! DONOR FORM

☐ \$1,000,000
☐ \$250,000
☒ \$500,000

☐ \$100,000
☐ \$50,000
☐ Other Amount: \$ _____

CONTRIBUTOR INFORMATION (Please fill out every field. It is required to contribute)

Check one for contribution type: ☐ Individual ☐ Corporation ☒ LLC ☐ Partnership ☐ Trust

First Name: DIANA
 Last Name: PULTE
 Employer: ML Organization LLC
 Occupation: Vice President
 Address: 2305 Dixie Highway

City: BOCA RATON
 State: FL
 Zip: 33432
 Email: N/A
 Phone: N/A

By making this contribution, you affirm that the following statements are true and accurate: I am a United States citizen or permanent resident (e.g., greencard holder) or I am a representative of a corporation that is chartered and operating in the U.S., the funds are derived from U.S. revenues, and no foreign national has participated in the decision to make this contribution; This contribution is made from the funds of the above-listed contributor, will not be reimbursed by another, and, if this contribution is made via credit card, it is being made with a card for which the contributor has a legal obligation to pay and will not be made on the card of another; This contribution is not made from the treasury of an entity that is a federal government contractor.

Contributor Signature Diana Pulte
 Name Printed Diana Pulte

Date 11/8/2021

JOINT CONTRIBUTOR INFORMATION (Please fill out every field if you are giving from a joint account.)

Check one for contribution type: ☐ Individual ☐ Corporation ☐ LLC ☐ Partnership ☐ Trust

First Name: _____
 Last Name: _____
 Employer: _____

Occupation: _____
 Email: _____
 Phone: _____

By making this contribution, you affirm that the following statements are true and accurate: I am a United States citizen or permanent resident (e.g., greencard holder) or I am a representative of a corporation that is chartered and operating in the U.S., the funds are derived from U.S. revenues, and no foreign national has participated in the decision to make this contribution; This contribution is made from the funds of the above-listed contributor, will not be reimbursed by another, and, if this contribution is made via credit card, it is being made with a card for which the contributor has a legal obligation to pay and will not be made on the card of another; This contribution is not made from the treasury of an entity that is a federal government contractor.

Contributor Signature _____
 Name(s) Printed _____

Date _____

PAYMENT INFORMATION

- ☐ Pay by check. Please make personal checks payable to **MAGA, Again!**
☐ Pay by credit card (check one). ☐ Visa ☐ MasterCard ☐ American Express ☐ Discover
☐ Pay by Wire Transfer. Instructions provided upon request.

Name on personal credit card: _____
 Card Number: _____
 Expiration Date: _____

Contribution Amount: \$ _____
 Security Code: _____
 Signature: _____

Contributions to Make America Great Again, Again! are not tax deductible. Make America Great Again, Again! is a political action committee registered with the federal election commission that makes independent expenditures in connection with elections for public office. We accept unlimited contributions from individuals (U.S. Citizens and permanent resident aliens), corporations and other organizations. We are prohibited by law from accepting contributions from foreign citizens, foreign corporations, federal government contractors, entities established by congress, and national banks. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of each individual whose contributions exceed \$200 in a calendar year. FEC Committee ID C00790477.

EXHIBIT B

DECLARATION OF MR. CHARLES GANTT

I, Mr. Charles Gantt, declare under penalty of perjury, that the foregoing is true and correct:

1. I am the treasurer for Make America Great Again, Again! Inc. (the "Committee").
2. I have been the treasurer of the Committee for the entire time the Committee has been registered with the Federal Election Commission.
3. Prior to receiving a Complaint in this matter, in April 2022, the Committee updated its donor form to make LLC attribution easier and clearer for both contributors and the Committee.
4. On May 20, 2022, I was informed by Counsel for the donor that ML Organization, LLC, is treated as a partnership for Internal Revenue Service purposes and that a contribution received from ML Organization LLC should be attributed to one of its partners, Ms. Diana Pulte.
5. On behalf of the Committee, that same day, May 20, 2022, I filed an amended report with the Commission clarifying that ML Organization LLC is a partnership, and that the contribution received from ML Organization LLC is attributed to Ms. Diana Pulte.

Executed on June 17, 2022.



Mr. Charles Gantt
Treasurer
Make America Great Again, Again! Inc.

Exhibit C

MAKE AMERICA GREAT AGAIN, AGAIN! LLC CONTRIBUTION DISCLOSURE FORM

NAME OF LLC: _____
 DATE OF CONTRIBUTION: _____
 AMOUNT OF CONTRIBUTION: _____
 PHYSICAL ADDRESS OF LLC: _____
 NAME OF INDIVIDUAL COMPLETING THIS FORM: _____

Thank you for the generous contribution from the above-referenced LLC. To assist us in properly disclosing the contribution to the Federal Election Commission, you must provide additional information. ***If this form is not promptly completed as instructed and returned, we may be forced to refund the LLC's contribution.***

Please check which box below accurately describes the IRS tax treatment of the LLC making the contribution.

1. ☐ The LLC is a domestic U.S. LLC that has elected to be treated as a corporation for federal income tax purposes or has publicly traded shares of stock. ***[If selected, no additional information is required beyond signing and dating the Certification below.]***
2. ☐ The LLC is a domestic U.S. LLC with only one natural member that has not elected to be treated as a corporation for federal income tax purposes (*i.e.*, a disregarded entity). ***[If selected, you must complete attached Schedule 1.]***
3. ☐ The LLC is a domestic U.S. LLC with at least two members that has not elected to be treated as a corporation for federal income tax purposes (*i.e.*, is taxed as a partnership) and does not have publicly traded shares of stock. ***[If selected, you must complete attached Schedule 1.]***

Certification

By signing below, I certify that, to the best of my knowledge and understanding after conducting reasonable diligence, the information disclosed herein is accurate and each of the following statements is true and correct: (1) the LLC is not attributing any portion of its contribution to, or otherwise using the funds of, any member who is a foreign national; (2) no foreign national has participated, directly or indirectly, in decisions regarding this contribution; (3) neither the LLC nor any member to which any portion of the contribution is attributed is a federal government contractor or presently negotiating a contract with the federal government; (4) the LLC, if taxed as a corporation, is making the contribution from funds derived from its own assets, investment earnings, business revenues, or bona fide capital investments, and such funds have not been provided to the LLC by any other person or entity for the purpose of making the contribution; and (5) I have authority to authorize the contribution on behalf of the LLC.

SIGNATURE: _____

DATE: _____

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SCHEDULE 1

If you checked box 2 or 3 on the LLC Contribution Disclosure Form, you **MUST** complete this Schedule. **If any member of the LLC to which a contribution is attributed below is itself an LLC that is either a disregarded entity or taxed as a partnership, this Schedule 1 must be completed for each member LLC until attribution is made to a natural person who is a U.S. citizen or permanent resident or a U.S. corporation.** Failure to complete this Schedule accurately may result in the refund of the contribution.

Member Name	
	If member is an LLC, is the LLC a disregarded entity or taxed as a corporation?
	Address:
	Occupation:
	Employer:
	Percentage Allocation of Contribution:

Member Name	
	If Member is an LLC, is the LLC a disregarded entity or taxed as a corporation?
	Address:
	Occupation:
	Employer:
	Percentage Allocation of Contribution:

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Member Name	
	If Member is an LLC, is the LLC a disregarded entity or taxed as a corporation?
	Address:
	Occupation:
	Employer:
	Percentage Allocation of Contribution:

Member Name	
	If Member is an LLC, is the LLC a disregarded entity or taxed as a corporation?
	Address:
	Occupation:
	Employer:
	Percentage Allocation of Contribution:

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