

May 7, 2019

Sent via email:
cela@fec.gov

Federal Elections Commission
Office of Complaints Examination
& Legal Administration
Attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, D.C. 20463

RE: MUR 7594

Dear Ms. Ross:

Our firm represents: (1) Roger Thompson for OK Senate 2018, (2) Friends of AJ Griffin 2014, and (3) Friends of Tim Downing 2018 (collectively “the Respondents”). This letter responds to the correspondence from the Federal Election Commission (the “Commission”) regarding a complaint dated April 8, 2019, filed by Alexander Austin (the “Complainant”).

Based on the reasons set forth below, the Respondents respectfully request that the Commission find no reason to believe that the facts alleged in the Complaint pose a violation of the Federal Elections Campaign Act of 1971, as amended (the “Act”) or its implementing regulations and that this matter be dismissed and the Commission take no further action.

The Complaint makes only one accusation of a violation of federal law—that a foreign (Canadian) company (Enbridge Inc.) has made contributions to American political campaigns through Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC) including the campaigns of the aforementioned Respondents. The Complaint alleges that these contributions were in violation of 52 U.S.C. § 30101(a)(1)(A), which prohibits foreign nationals, directly or indirectly, from making contributions or donations of money (or other things of value) to a federal, state or local election.

There is no reason to believe that the facts alleged in the Complaint pose a violations of the Act for two reasons: first, the contributions were not unlawfully accepted by Respondents' Committees; and second, the contributions were not unlawfully made.

(1) The contributions were not unlawfully accepted by Respondents' Committees

Respondents admit that all three campaigns received contributions from Enbridge-DCP PAC. However, there was no reason for Respondents to believe—or even suspect—that these contributions were unlawful.

The Federal Election Campaign Act (the “Act”) prohibits *knowingly* accepting a campaign contribution from foreign nationals. Specifically, 11 C.F.R. § 110.20(g) provides:

Solicitation, acceptance, or receipt of contributions and donations from foreign nationals. No person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation prohibited by paragraphs (b) through (d) of this section.

The Act defines “knowingly” at 11 C.F.R. § 110.20(a)(4) as follows:

- (4) *Knowingly* means that a person must:
- (i) Have actual knowledge that the source of the funds solicited, accepted or received is a foreign national;
 - (ii) Be aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national; or
 - (iii) Be aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry. . . .

Further, the FEC provides pertinent guidance on what facts should lead a person to question whether a contribution was received from a foreign national on its website.¹ The guidance provides:

Pertinent facts that should cause the recipient of a contribution or donation to question whether it was given by a foreign national include, but are not limited to the following: a donor or contributor uses a foreign passport, provides a foreign address, makes a contribution from a foreign bank, or resides abroad.

Based on the guidance above, Respondents simply had no reason to question that the contributions they received were from a foreign national. Enbridge-DCP PAC is an affiliated PAC of a United States corporation. Enbridge-DCP PAC has an address in Houston, Texas – a neighboring state of Respondents' Oklahoma campaign committees. Respondents received their contributions by mail—a common means used for campaign contributions from out-of-state PACs. The contribution was from a federal PAC associated with an energy company—a

¹ <https://www.fec.gov/updates/foreign-nationals/>

common occurrence in Oklahoma. All contributions were properly reported to the Oklahoma Ethics Commission by the Respondents and to the FEC by Enbridge-DCP PAC. All contributions were within the acceptable contribution limits. Put another way—nothing about the contributions should have aroused Respondents’ suspicion.

Even if Respondents had any reason to question the contributions, a simple Google search of Enbridge-DCP PAC would lead them to Enbridge Inc.’s Political Contribution Policy (available online²) and would have alleviated any concern. The Policy clearly states:

In the United States, eligible employees may choose to participate in the political process by voluntarily making contributions to [the PAC]. . . Enbridge-DCP PAC contributions go directly to support candidates for Congressional office and for state office, where Federal PAC contributions are permitted by state law. . . All PAC contributions are disclosed consistent with Federal and state laws and regulations, and available on the website of the Federal Election Commission and on the websites of election boards in the certain states where the PAC makes contributions.

Surely a candidate for State Office in Oklahoma cannot be reasonably expected to conduct the kind of rigorous investigation that would be necessary to reveal a contribution by a foreign national in an instance such as this one, particularly since Respondents lack subpoena power or other resources to undertake such a query. The contributions were from a PAC registered with the FEC with a Houston, Texas address. A candidate for State Office in Oklahoma should be expected to look no further absent some reason to the contrary.

Thus, even in the unlikely event that the FEC finds that the questioned contributions were made by a foreign national, the Respondents did not *knowingly accept* contributions from a foreign national so there was no violation of the Act by the Respondents. The Complaint simply fails to satisfy the “knowledge” requirement.

(2) The contributions were not unlawfully made.

Respondents have each received identical letters from Enbridge-DCP PAC regarding MUR 7594. A copy of one such letter is attached to this response. In the letter, Enbridge-DCP PAC states, “Please be assured that the operations of the Enbridge-DCP PAC are in full compliance with federal law and regulations....”

This response hereby incorporates Enbridge-DCP PAC’s letter and incorporates their future response to the FEC regarding the legality of the contributions.

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https://www.enbridge.com/~media/Enb/Documents/Investor%20Relations/CorporateGovernance/ENB_Political_Contributions_Policy.pdf?la=en (accessed on June 7, 2019).

There is every reason to believe the contributions were both lawfully made and accepted. There simply is no basis for a probable cause finding against the Respondents, and thus Respondents respectfully request that this case be dismissed without further action. Should you have any additional questions with regards to this matter, please do not hesitate to contact me or Denise Lawson, Counsel to Respondents, at (405) 601-1616.

Sincerely,

A handwritten signature in black ink that reads "Glenn Coffee". The signature is written in a cursive style with a large, prominent "G" and "C".

Glenn Coffee
Denise Lawson
Counsel to Respondents

May 3, 2019

Friends of Tim Downing 2018
25129 Kody Lane
Purcell, OK 73080

Re: Complaint filed with the Federal Election Commission by Alexander Austin with respect to
Enbridge-DCP PAC – MUR 7594

To whom it may concern:

As you may be aware, Alexander Austin, an individual residing in Colorado, has submitted a complaint to the Federal Election Commission (FEC) with respect to Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC) (which was formerly known as Spectra Energy Corp Political Action Committee (Spectra-DCP PAC)).

The complaint is focused on the fact that Enbridge (U.S.) Inc., which sponsors Enbridge-DCP PAC, is a subsidiary of Enbridge Inc., a Canadian company.

Enbridge Inc. is a Canadian corporation with its common shares publically traded on the Toronto and New York stock exchanges under the symbol "ENB." Enbridge Inc. is one of North America's largest energy infrastructure companies with strategic business platforms (owned and operated through its subsidiaries) that include an extensive network of crude oil, liquids and natural gas pipelines, regulated natural gas distribution utilities and renewable power generation assets. Enbridge (U.S.) Inc. is a Delaware corporation and a wholly owned subsidiary of Enbridge Inc. Enbridge (U.S.) Inc.'s principal place of business is located in Houston, Texas, and, through its subsidiaries, has approximately 3,500 employees in the U.S., who safely maintain and operate Enbridge's assets across 41 U.S. states.

Please be assured that the operations of the Enbridge-DCP PAC are in full compliance with federal law and regulations, which allow the U.S. subsidiaries of foreign companies to sponsor PACs, have such PACs solicit contributions from eligible U.S. citizens and green card holders, and have such PACs make contributions to U.S. political committees. Many U.S. subsidiaries of foreign companies sponsor PACs and engage in such activities. The law is clear in this area, and we are confident the complaint will be dismissed.

Unfortunately, the complaint identified not only the Enbridge-DCP PAC but also many of the federal and state political committees to which the Enbridge-DCP PAC made contributions to over several years. This included your committee, and the FEC was therefore obligated to notify your committee of the complaint. You likely received a letter from Jeff Jordan, the FEC's Assistant General Counsel, in recent days.

As the letter explains, at this preliminary stage the FEC is given an opportunity to determine if there is any reason to believe that a possible violation has occurred. Only if the FEC reach that conclusion would the FEC open an investigation into the matter.

Enbridge (U.S.) Inc. will respond to the complaint on our behalf and seek to demonstrate that there is no reason for the FEC to believe that any violation has occurred. Other parties mentioned in the complaint, including your committee, are provided a chance to respond at this preliminary stage too, but a response is not required. If your committee chooses to respond, as the letter explains, your committee may request an extension of the 15-day response deadline referenced in the letter.

If you have any questions about this matter, please feel free to contact me at (303) 605-1618 or bfox@dcpmidstream.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Bret Fox", written in a cursive style.

Bret Fox
Vice President Government Affairs
DCP Midstream



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

FAX 202-219-3923

AR/MUR/RR/P-MUR# MUR 7594

Name of Counsel: Glenn Coffee & Denise Lawson

Firm: Glenn Coffee & Associates PLLC

Address: 915 N Robinson Ave, Oklahoma City, OK 73102

Office#: 405-601-1616 Fax#: _____

Mobile#: _____

E-mail: gcoffee@glenncoffee.com; denise@glenncoffee.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

6-6-19
Date

Timothy J. Downing
(Signature - Respondent/Agent/Treasurer)

Na.
Title

Timothy J. Downing
(Name - Please Print)

RESPONDENT: Friends of Tim Downing 2018
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 25129 Kody Lane, Purcell, OK 73080
(Please Print)

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.