



Genova Burns LLC
 494 Broad Street, Newark, NJ 07102
Tel: 973.533.0777 **Fax:** 973.533.1112
Web: www.genovaburns.com

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 by Kathryn Ross
 Date: 2019.05.09
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Rebecca Moll Freed, Esq.
 Partner
 Member of NJ and NY Bars
rfreed@genovaburns.com
 Direct: 973-230-2075

May 7, 2019

VIA ELECTRONIC MAIL

Jeff S. Jordan, Esq.
 Assistant General Counsel
 Complaints Examination & Legal Administration
 Federal Election Commission
 1050 First Street, NE
 Washington, DC 20463

Re: MUR 7594

Dear Mr. Jordan:

Our firm, Genova Burns LLC, serves as counsel to the Election Fund for Craig J. Coughlin for Assembly (the "Committee"). Please accept this letter as the Committee's timely response to your April 18, 2019 letter, which the Committee received on April 22, 2019, in connection with MUR 7594. We appreciate the opportunity to demonstrate to the Commission, in writing, that no action should be taken against the Committee in this matter. As indicated in your April 18 letter, we understand that this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A).

We have reviewed the April 8, 2019 complaint submitted by Mr. Alexander Austin in connection with the above-referenced matter (the "Complaint") and with respect to Enbridge Inc., Enbridge (U.S.) Inc., and Enbridge (U.S.) Inc. PAC (Enbridge-DCP PAC) (the "PAC"). As discussed more fully below, the Committee respectfully submits that it did not violate the Federal Election Campaign Act of 1971 (the "Act") when the Committee received a contribution, in the amount of \$2,500.00, from the PAC on or about October 27, 2017.

Before addressing the specifics of the Complaint with respect to the Committee's receipt of the above-referenced contribution, it is worth noting that the Committee has no special knowledge with respect to the structure or operation of Enbridge Inc., Enbridge (U.S.) Inc., or the PAC. Thus, this submission takes no position regarding the veracity of Mr. Austin's allegations with respect to the relationship among the three Enbridge entities or with respect to the legality of the PAC's operations.



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In the Complaint, Mr. Austin alleges that the Committee violated 52 U.S.C. § 30101(a)(2) by soliciting, accepting, or receiving a contribution, in the amount of \$2,500.00, from the PAC on or about October 27, 2017. As set forth in the enclosed Certification of Scott Snyder, professional fundraiser for the Committee, the Committee took no action to actively solicit the aforementioned contribution from the PAC. (A copy of the Certification of Scott Snyder is enclosed herewith as **Exhibit A.**) Rather, a review of the Committee's records indicates that the PAC sent the contribution, unsolicited, to the Committee and that the contribution does not appear to have been made in connection with any Committee event or fundraiser.

Commission regulations prohibit any person from knowingly soliciting a contribution or donation from a foreign national. 11 C.F.R. § 110.20(g). The term "knowingly" in this context is defined by regulation as being limited to situations when a person has:

- (1) Actual knowledge that the source of the funds solicited, accepted or received is a foreign national;
- (2) Awareness 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
- (3) Awareness 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.

11 C.F.R. § 110.20(a)(4). The Commission has further identified a non-exhaustive list of pertinent facts that should cause a reasonable recipient of a contribution to conduct an inquiry into whether a particular political contribution was made by a foreign national. Those pertinent facts include whether a donor or contributor:

- Uses a foreign passport;
- Provides a foreign address;
- Makes a contribution from a foreign bank; or
- Resides abroad.



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11 C.F.R. § 110.20(a)(5). As described below, none of those specific pertinent facts (or equivalent facts) were present in this case, and thus the Committee had no reason to conduct a further inquiry into the permissibility of the contribution.

In this case, the Committee's acceptance of the PAC's contribution check was made with no knowledge, as that term is defined in the above-referenced regulation, that the contributor may be a foreign national. Instead, we respectfully submit that the Committee acted in good faith and exercised all reasonable due diligence when receiving, accepting, and depositing the contribution. The Committee had and has no actual knowledge of the structure, funding sources, or operation of the PAC, including whether the PAC is operating in accordance with applicable campaign-finance law. In addition, the Committee had and has no awareness of facts that would lead a reasonable person to conclude that, or to inquire into whether, the PAC's contributions would be viewed as those made by a foreign national. In fact, as described in detail below, none of the pertinent facts identified by the Commission as sufficient to give notice to a recipient that further inquiry is required were present in this case.

First, the Committee notes that it is well established under Commission guidance that a U.S. subsidiary of a foreign company may form a separate segregated fund, collect contributions from U.S. employees, and make contributions to political candidates provided that certain precautions related to the operation of the separate segregated fund are enacted (for example, individual foreign nationals are not permitted to participate in the operation, or serve as officers, of the separate segregated fund). See FEC AO 2000-17. Thus, the fact that Enbridge Inc. is a corporation headquartered in Canada does not itself provide notice that the contributions made by the PAC, which has been registered with the Commission in various forms since 2006, are prohibited as those made by a foreign national. The PAC has not only been registered with the Commission since 2006, but it has been operating under the name Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC) since March 6, 2017. (A copy of the PAC's Statement of Registration with the name Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC) is enclosed herewith as **Exhibit B**.) A contribution made by an FEC-registered separate segregated fund is not inherently questionable, even when the name of that separate segregated fund references a corporation headquartered in a foreign country, and thus the Committee was permitted to rely on the PAC's continued good standing as a registered FEC separate segregated fund and permitted contributor.

Second, the contribution check itself and other contribution materials provided no indication that further inquiries were required. Indeed, the information set forth on the face of



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the contribution check contained helpful information with respect to supporting the permissibility of accepting the contribution. The check is drawn upon an account held at Comerica Bank, which is a financial services company headquartered in Dallas, Texas.¹ The face of the check (check #4137) contains the PAC's address (5400 Westheimer Court, Houston, Texas 77056) and the PAC FEC ID Number (C00429562). The check also indicates that the PAC is registered as a multi-candidate committee. Thus, all information surrounding the contribution itself and the instruments used to make the contribution provided the Committee with no actual or constructive knowledge that any further inquiry was required. (A copy of the contribution check is enclosed herewith as **Exhibit C.**) Therefore, none of the "pertinent facts" identified in the Commission regulations (or any other similar facts) were present in this case as all addresses and banks used in the contribution materials indicated a U.S.-based contributor.

In sum, notwithstanding whether the Commission ultimately determines that the PAC should be considered a foreign national under applicable law, it is our position that the Commission should take no action against the Committee, as the Committee had no reason, based on the Committee's examination of the face of the contribution check itself and the PAC's status as an FEC-registered separate segregated fund, to believe that there was a substantial probability that the money stemmed from a foreign national. Indeed, the overwhelming majority of contributions made by an FEC-registered separate segregated fund are permissible, without implicating the prohibition on foreign-national contributions. Because contributions made by an FEC-registered separate segregated fund are not inherently questionable, the Committee had no reason to question the contribution. See FEC MUR 7081, First General Counsel's Report (finding that because "the overwhelming majority of real estate LLCs are neither schemes to hide illegal contributors nor are they foreign-owned entities" the Commission had no reason to believe that the respondent in that matter violated 52 U.S.C. § 30101(a)(2) or 11 C.F.R. § 110.20). We therefore submit that a reasonable person would have had no basis to conduct an inquiry into whether the source of the funds was a prohibited foreign national, and thus the Committee's acceptance of the contribution was made without the required "knowledge" set forth in 11 C.F.R. § 110.20(a)(4).

Based on the foregoing, we respectfully submit that the Committee acted in good faith and exercised due diligence when it received the PAC's contribution. Notwithstanding the Commission's ultimate determination as to whether the contributions made by the PAC were contributions by a foreign national, the facts support the conclusion that a reasonable person would have no reason to believe that the October 27, 2017 contribution was made or received

¹ See <https://www.comerica.com/about-us/company-overview.html> (last visited on May 1, 2019).



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in violation of the foreign-national prohibition on political contributions. As such, the Committee respectfully requests that the FEC take no action against the Election Fund of Craig J. Coughlin for Assembly in this matter. Should the FEC ultimately determine that the PAC was making contributions with funds belonging to foreign nationals, the Committee is prepared to refund the contribution at issue to the PAC.

Thank you for the opportunity to respond on behalf of our client. Please do not hesitate to contact us should you have any questions or require any additional information.

Respectfully Submitted,

GENOVA BURNS LLC

A handwritten signature in black ink that reads "Rebecca Moll Freed". The signature is written in a cursive, flowing style.

REBECCA MOLL FREED

RMF/gda
Encls.

c: Kathryn Ross, Paralegal (via email- w/encls.)
Angelo J. Genova, Esq. (via email- w/encls.)

EXHIBIT A

MUR 7594

Certification of Scott J. Snyder

1. I am registered with the New Jersey Election Law Enforcement Commission as the professional fundraiser for the Election Fund of Craig J. Coughlin for Assembly (the "Committee").
2. I served as the professional fundraiser for the Committee at the time it received a contribution, in the amount of \$2,500.00, from Enbridge (U.S.) Inc. PAC (Enbridge-DCP PAC) (the "PAC") on or about October 27, 2017 (the "Contribution").
3. In my capacity as the Committee's professional fundraiser, I have firsthand knowledge of the events surrounding the Committee's receipt of the Contribution.
4. The Committee had no special knowledge with respect to the structure or operation of Enbridge Inc., Enbridge (U.S.) Inc., or the PAC.
5. The Committee took no action to actively solicit the Contribution from the PAC. Rather, to the best of my knowledge, the PAC sent the Contribution, unsolicited, to the Committee. Further, to the best of my knowledge, the Contribution was not made in connection with any Committee event or fundraiser.
6. The Committee, upon receipt of the Contribution, reviewed the Contribution check and:
 - a. Identified that the check was drawn on the account of Comerica Bank; and
 - b. Noted that the PAC FEC ID (C00429662) and a statement indicating that the PAC is a multi-candidate committee were listed on the face of the check.
7. None of the "pertinent facts" identified in 11 C.F.R. § 110.20(a)(5) (or any other similar facts) were present in this case—instead, all addresses and banks used in the contribution materials indicated a U.S.-based contributor.
8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 2019.

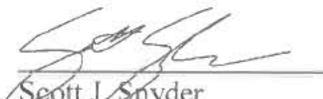

5/6/2019
Scott J. Snyder
Professional Fundraiser
Election Fund of Craig J. Coughlin for Assembly

EXHIBIT B

FEC FORM 1

STATEMENT OF ORGANIZATION

Office Use Only

1. NAME OF COMMITTEE (in full) [x] (Check if name is changed) Example: If typing, type over the lines. 12FE4M5

Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC)

ADDRESS (number and street) 5400 Westheimer Court
[] (Check if address is changed)
Houston TX 77056
CITY STATE ZIP CODE

COMMITTEE'S E-MAIL ADDRESS
[] (Check if address is changed) pacservices@ddcadvocacy.com
Optional Second E-Mail Address

COMMITTEE'S WEB PAGE ADDRESS (URL)
[] (Check if address is changed)

2. DATE 02 / 27 / 2017

3. FEC IDENTIFICATION NUMBER C C00429662

4. IS THIS STATEMENT [] NEW (N) OR [x] AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Talwar, Ritu, K.,

Signature of Treasurer Talwar, Ritu, K., [Electronically Filed] Date 03 / 06 / 2017

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g. ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

5. TYPE OF COMMITTEE

Candidate Committee:

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate _____

Candidate Party Affiliation Office Sought: House Senate President State
 District

- (c) This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate _____

Party Committee:

- (d) This committee is a (National, State or subordinate) committee of the (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):

- (e) This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:
 - Corporation Corporation w/o Capital Stock Labor Organization
 - Membership Organization Trade Association Cooperative
 - In addition, this committee is a Lobbyist/Registrant PAC.
- (f) This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)
 - In addition, this committee is a Lobbyist/Registrant PAC.
 - In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

Joint Fundraising Representative:

- (g) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

1.	_____	FEC ID number	C _____
2.	_____	FEC ID number	C _____
3.	_____	FEC ID number	C _____
4.	_____	FEC ID number	C _____

Write or Type Committee Name

Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC)

6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

Enbridge (U.S.) Inc.

Mailing Address

5400 Westheimer Court

Houston

TX

77056

CITY

STATE

ZIP CODE

Relationship: Connected Organization Affiliated Committee Joint Fundraising Representative Leadership PAC Sponsor

7. Custodian of Records: Identify by name, address (phone number -- optional) and position of the person in possession of committee books and records.

Full Name

Talwar, Ritu, K, .

Mailing Address

5400 Westheimer Court

Houston

TX

77056

Title or Position

CITY

STATE

ZIP CODE

Treasurer

Telephone number

713

989

1784

8. Treasurer: List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer

Talwar, Ritu, K, .

Mailing Address

5400 Westheimer Court

Houston

TX

77056-5353

CITY

STATE

ZIP CODE

Title or Position
Treasurer

Telephone number

713

989

1784

Full Name of Designated Agent: Nguyen, Rita, , ,

Mailing Address: 5400 Westerheimer Court

Houston TX 77056

CITY STATE ZIP CODE

Title or Position: Assistant Treasurer

Telephone number: 713 989 8446

9. **Banks or Other Depositories:** List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

Comerica Bank

Mailing Address: P.O Box 75000

Detroit MI 48275

CITY STATE ZIP CODE

Name of Bank, Depository, etc.

Mailing Address:

CITY STATE ZIP CODE

EXHIBIT C

Enbridge (U.S.) Inc. PAC (Enbridge-DCP PAC)
5400 WESTHEIMER COURT
HOUSTON, TX 77056
FEC ID C00429662

COMERICA BANK
09-0097720

4137

THIS PAC IS REGISTERED AS A MULTI-CANDIDATE CMTE

Date: 10/27/2017

2011 INTUIT INC # 795 1-800-433-8810

PAY TO THE
ORDER OF

Election Fund for Craig J. Coughlin for Assembly

\$ 2,500.00

Two thousand five hundred and xx / 100 *****

DOLLARS

Void in 90 Days

Ritu Talwar

MEMO

2017 General