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May 7, 2019

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Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
Office of Complaints Examination & Legal Administration
1050 First Street, NE
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Re: Complaint of Alexander Austin, MUR 7594

Dear Mr. Jordan:

We are in receipt of your correspondence dated April 18, 2019, regarding the complaint filed by Alexander Austin. That correspondence arrived on April 29, 2019. We are providing our response within fifteen days of our receipt of the complaint, as provided in the Federal Election Commission ("FEC") Preliminary Procedures for Processing Complaints.

It is our position that the FEC should take no action against Kay Ivey for Governor, Inc. ("the Committee"), as a result of the allegations Mr. Austin made against Enbridge, Inc., in his letter and accompanying materials dated April 8, 2019. As explained below, the Committee did not receive any contribution from Enbridge, Inc., at any time, and the Committee is unaware that Enbridge, Inc., ever attempted to make a donation to the Committee. The Committee did receive a contribution from a separate segregated fund known as Enbridge-DCP PAC. That committee is sponsored by Enbridge (U.S.) Inc., a subsidiary of Enbridge, Inc. To the best of the Committee's knowledge, Enbridge (U.S.) Inc. is a Delaware corporation, not a foreign corporation, with its principle place of

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business in Texas. Thus, Austin's allegation of a direct contribution from Enbridge, Inc., to the Committee lacks any foundation, and the FEC should dismiss his complaint as it pertains to the Committee.

Background

The Committee is the principal campaign committee for Alabama Governor Kay Ivey, who was elected Governor of Alabama in November 2018. In 2017 and 2018, the Committee received contributions for the purpose of aiding Governor Ivey in her 2018 gubernatorial campaign. One such contribution, in the amount of \$2,500, was received from Enbridge-DCP PAC, which is a separate segregated fund sponsored by Enbridge (U.S.) Inc., a U.S. corporation ("the SSF"). From publicly-available information, it appears that Enbridge (U.S.) Inc. is a subsidiary of Enbridge, Inc., a Canadian corporation. The Committee received the Enbridge-DCP PAC contribution on May 3, 2018.

A review of publicly-available information on the FEC website reveals that during the 2017–2018 election cycle, approximately 6,500 itemized donations were made to the SSF from individuals, totaling approximately \$467,000, and that the SSF received an additional approximately \$91,000 in unitemized contributions. A review of the donors indicates that the SSF made numerous contributions to political committees during that cycle, including the one to the Committee noted above.

Discussion

The crux of Austin's allegations is that Enbridge, Inc., which he describes as a foreign company, "has made hundreds of contributions *directly to* American political campaigns and dozens of American political party committees; likewise, hundreds of American political campaigns and dozens of American political party committees accepted contributions *from*" Enbridge, Inc. As Austin points out, foreign nationals are prohibited from making contributions in connection with federal, state, and local elections. *See* 52 U.S.C. § 30121. However, the Committee did not receive any direct contribution from Enbridge, Inc., and, in fact, has no knowledge of receiving an indirect contribution from Enbridge, Inc.

Austin references the SSF sponsored by Enbridge, Inc.'s subsidiary Enbridge (U.S.) Inc., and points out that the SSF made numerous contributions to political committees. However, Enbridge (U.S.) Inc. is a domestic corporation, and "neither Congress nor the

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FEC have expanded the definition of ‘foreign national’ to include a domestic subsidiary of a foreign-owned entity.” Trevor Potter & Matthew Sanderson, *Political Activity, Lobbying Laws & Gift Rules Guide* (3d edition), § 12:6. Further, the publicly-available information on the FEC website shows that the SSF’s donations were received from individuals who all list domestic addresses. There does not appear to be any indication that a foreign national, either an individual or a corporation, contributed funds to the SSF, or otherwise provided funding for the contributions the SSF ultimately made. Nor, to the Committee’s knowledge, is there any allegation or evidence that Enbridge, Inc., was involved in the SSF’s making contributions. Thus, there appears to be no evidence that the Committee, in receiving the contribution from the PAC, received an indirect contribution from a foreign source.

On page 5 of his “Suspected Violations Summary,” Austin wrongly states that the SSF reported in a Lobbying Report that “it acts as an agent of foreign interests in its lobbying efforts by stating, ‘Interest of Enbridge Inc. are those of parent company.’” That reference is actually to a Lobbying Report filed by Enbridge (U.S.) Inc., not by the SSF. According to its Lobbying Registration, Enbridge (U.S.) Inc. appears to have appropriately listed Enbridge, Inc., its parent company, as a foreign entity with which it was affiliated. See Enbridge (U.S.) Inc. Lobbying Registration, available at <http://disclosures.house.gov/ld/ldxmlrelease/2016/RR/300787664.xml>. Thus, in the Lobbying Reports it thereafter filed, Enbridge (U.S.) Inc. appears to have appropriately indicated that the interests of Enbridge, Inc. in the specific lobbying issues described are those of a parent company. Such an indication, however, does not imply that Enbridge Inc. was the source of funds to the SSF, directly or indirectly.

Conclusion

In sum, Austin’s complaint lacks merit. His allegations fall far short of describing any illegal or otherwise inappropriate activity by the Committee. As a result, the FEC should reject the complaint and should take no action against the Committee.

Yours very truly,



Albert L. Jordan

Attorney for Kay Ivey for Governor, Inc.

Enclosure (authorization of legal counsel)



FEDERAL ELECTION COMMISSION
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STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

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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.

May 7, 2019 _____ Treasurer
 Date (Signature - Respondent/Agent/Treasurer) Title
Nimrod T. FROZER JR.
 (Name - Please Print)

RESPONDENT: Kay Ivey for Governor, Inc.
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

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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.