



subject to the legal obligations set forth in the Georgia Government Transparency and Campaign Finance Act (the “Campaign Finance Act”) and the associated rules promulgated by the GGTCFC. However, the Complaint raises an issue under federal campaign finance law that is within the purview of the Commission - the erroneous allegation that an improper contribution was made by a foreign national.

## II. Statement of Facts

According to the accusation lodged in the Complaint, Respondents supposedly accepted a campaign contribution from a foreign national - Enbridge, Inc. - through the Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC) (hereinafter referred to as the “PAC”), in violation of 52 U.S.C. §30121.<sup>2</sup> (Complaint, p. 7). In support of this assertion, the Complaint references a October 18, 2018 contribution of \$5,000 that the PAC made to KFG, and also the fact that Enbridge, Inc. is a publicly traded oil pipeline company based in Calgary, Canada. (Complaint, p. 5 & 15). Complainant also makes the factually inaccurate and legally erroneous assertions that Enbridge, Inc. made “hundreds of contributions *directly to* American political campaigns”, and that hundreds of American political campaigns (including KFG) “accepted contributions *from* a foreign (Canadian) company.” (Complaint, p. 1). The Complaint likewise includes a strange *non sequitur* reference to the PAC’s purported lobbying efforts in the United States, which claims the PAC “reported it acts as an agent of foreign interests in its lobbying efforts” in several federal lobbying disclosure reports (Form LD-2s) filed with the Clerk of the U.S. House of Representatives and Secretary of the U.S. Senate. (Complaint, p. 5).<sup>3</sup>

Despite the misleading details set forth above by the Complainant, the facts at issue in this matter are quite straightforward. Enbridge, Inc. is indeed a publicly-traded company with its headquarters in Calgary, Alberta, Canada.<sup>4</sup> Enbridge (U.S.) Inc. is a US-based subsidiary of Enbridge, Inc. with its headquarters located in Houston, TX.<sup>5</sup> The PAC is a federal separate segregated fund (“SSF”) registered with the FEC, which publicly discloses Enbridge (U.S.) Inc. as its connected organization and Houston, TX as its operational and contact address.<sup>6</sup> The PAC, not the Canadian parent company of its connected organization, made a contribution to KFG that was received on October 2, 2018 and was disclosed properly under Georgia campaign finance law in one of KFG’s campaign contribution disclosure reports submitted to the GGTCFC.<sup>7</sup> This

<sup>2</sup> The Complaint mistakenly cites to 52 U.S.C. §30101(a)(2) as the controlling statute, which does not exist.

<sup>3</sup> The LD-2 reports cited as “evidence” of lobbying activities by the PAC were actually filed by Enbridge (U.S.) Inc. to detail its federal government affairs interactions under the Lobbying Disclosure Act. It is not clear why Complainant would falsely attribute those federal lobbying disclosure reports to the PAC, nor is it clear why such reports are relevant to the issues before the Commission in this matter. The federal lobbying activity of a SSF’s sponsoring organization has no bearing on the permissibility of the political contributions made by the SSF itself.

<sup>4</sup> See <https://www.enbridge.com/contact>.

<sup>5</sup> See <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=4247200>.

<sup>6</sup> See most recent Statement of Organization for Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC), dated February 27, 2017. <https://docquery.fec.gov/pdf/247/201703069050710247/201703069050710247.pdf>.

<sup>7</sup> See Campaign Contribution Disclosure Report for Kemp for Governor, dated November 1, 2018, p. 66. [http://media.ethics.ga.gov/search/Campaign/Campaign\\_ReportOptions.aspx?NameID=478&FilerID=C2017000227&CDRID=135816](http://media.ethics.ga.gov/search/Campaign/Campaign_ReportOptions.aspx?NameID=478&FilerID=C2017000227&CDRID=135816).

contribution by the PAC, and acceptance of the donation by KFG, was wholly appropriate under both Georgia and federal campaign finance law, and as such it is not surprising that the Complaint lacks any factual support for the assertion that KFG accepted a contribution from a foreign national.

## **II. Legal Analysis**

The Complaint's sole accusation against Respondents in this matter is that KFG (and by extension Governor Kemp and Mr. Kilgore) violated FECA by accepting a contribution from a foreign national. (Complaint, p. 5). This allegation is substantively deficient and lacks any reasonable basis in law or fact. In order to violate 52 U.S.C. §30121, a committee or individual must solicit, accept, or receive an impermissible contribution by a foreign national.<sup>8</sup> Nowhere in Complainant's submission does he reference any such contribution from a foreign individual or entity that was either solicited, accepted or received by KFG. Instead, Mr. Austin cites to a legal contribution from the PAC and incorrectly concludes that, because the PAC bears some connection to Enbridge, Inc. (by virtue of being the SSF of its U.S. subsidiary), it must be the foreign company itself that funded the contribution to KFG. Mr. Austin provides no explanation for or evidence to support such a conclusion, and presents his claims in such a way that illustrate he has a fundamental misunderstanding of the nature of federal SSFs and is unable to distinguish between U.S. corporate subsidiaries and their parent companies.

Had Complainant consulted appropriate counsel prior to submission of the instant Complaint, he would have discovered that federal campaign finance law and relevant FEC guidance make clear that it is perfectly permissible for the US-based subsidiary of a foreign corporation to establish a SSF and use it to make contributions to both federal and nonfederal candidates provided certain conditions are met. Specifically, a SSF sponsored by the domestic subsidiary of a foreign parent can operate legally under federal law assuming:

- The foreign parent company does not finance these activities through its subsidiary; and
- No foreign national (including the foreign parent company) participates in the operation or administration of the SSF, or in any decisions to make contributions or expenditures in connection with any federal or nonfederal election.<sup>9</sup>

For decades, US-based subsidiaries of foreign corporations have relied on this legal framework to establish and operate SSFs that can permissibly give to federal, state, and local candidates.<sup>10</sup> Enbridge (U.S.) Inc. is just one example of the myriad domestic subsidiaries of international companies that serve as connected organizations for FEC-registered SSFs. Since the PAC's formation in 2006, it has legally given millions of dollars to federal and nonfederal political committees across the country without any assertion that such funds originated from a foreign national source or were otherwise improper or illegal. Similarly, throughout the PAC's

<sup>8</sup> See 11 C.F.R. §110.20(g).

<sup>9</sup> See 11 C.F.R. §110.20(i). See also FEC AOs 2009-14; 2006-15; 2000-17; 1999-28; 1995-15 and the AOs cited within.

<sup>10</sup> See FEC AO 2006-15.

life cycle, neither the FEC nor any other party has found reason to believe that Enbridge, Inc. has either directly or indirectly financed the activities of its U.S. subsidiary's SSF, or to question the legitimacy of the PAC's operations as being improperly influenced by foreign nationals.

Given this reality, it is absurd for the Complainant to suggest that there is anything inappropriate or illegal about the donation at issue in this matter. The Complaint itself offers no plausible legal or factual basis for the Commission to believe that a foreign national funded, subsidized or otherwise participated in the PAC's donation to KFG. Nor does the Complainant offer any evidence to suggest that Respondents had any reason to doubt the PAC's independence from foreign control and influence under applicable law. Given the utter lack of support for the allegation raised by Mr. Austin in this matter, the FEC should refrain from any further consideration of his accusations and summarily dismiss the present Complaint as it relates to Respondents.

### **III. Conclusion**

As detailed in the contents of this response, it is readily apparent that the Complaint filed in conjunction with this matter is mistaken in its sole allegation and has no basis in either law or fact. Accordingly, the Commission should immediately dismiss the instant Complaint as it relates to Respondents and refrain from dedicating any additional public resources to investigating the instant matter.

Should the Commission have any questions regarding the contents of this response or wish to discuss any items detailed herein in further detail, please do not hesitate to contact me via phone or e-mail.

Sincerely,



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