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June 11, 2019

VIA EMAIL TO CELA@FEC.GOV

Federal Election Commission
Office of Complaint Examination
and Legal Administration
1050 First Street, NE
Washington, District of Columbia 20463

Attn: Donna Rawls, Paralegal

MUR 7594: Response of Duffy for Wisconsin

To Whom It May Concern:

On behalf of Duffy for Wisconsin and its treasurer, Michael Masterson, I submit this response to the Complaint filed in MUR 7594 by Alexander Austin.

The Complaint alleges that the Committee violated the Federal Election Campaign Act by accepting contributions from a foreign company. Compl. at 1. There is, however, no evidence—either in the Complaint or in the Committee’s FEC reports—that the Committee accepted any funds from a foreign company, because it did not do so. For this reason, the Commission should dismiss this Complaint because it fails to “contain a clear and concise recitation of the facts which describe a violation of a statute or regulation.” 11 C.F.R. § 111.4(d)(3).¹

¹ It appears that the Commission, once again, has abrogated its duty to review complaints for compliance with the requirements of 11 C.F.R. § 111.4. The Commission’s own regulations require a complaint to “contain a clear and concise recitation of the **facts** which describe a violation of a statute or regulation over which the Commission has jurisdiction.” 11 C.F.R. § 111.4(d)(3). If a complaint fails to comply with these (and other) requirements, “the General Counsel shall so notify the complainant and any person(s) or entity(ies) identified therein as respondents...that no action shall be taken on the basis of that complaint.” 11 C.F.R. § 111.5(b); see also Guidebook for Complainants and Respondents on the FEC Enforcement Process (May 2012). The Complaint in this matter clearly does not state “**facts** which describe a violation.” Rather, it alleges that the Committee violated the foreign national prohibition by accepting a contribution from a U.S. subsidiary’s PAC. That fact does not constitute a violation of the foreign national prohibition, and this Complaint never should have made it past the Commission’s initial intake.



MUR 7594
Response of Duffy for Wisconsin
Page 2 of 2

Construing the Complaint generously, the Complainant appears to confuse lawful contributions from the connected political action committee of a U.S. subsidiary with contributions from the subsidiary's foreign parent. The Act and Commission precedent, of course, prohibit foreign nationals, including foreign corporations, from directly or indirectly making contributions, expenditures, independent expenditures or electioneering communications in connection with a Federal, State or local election. However, they also allow U.S. subsidiaries of foreign corporations to establish and control separate segregated funds. 52 U.S.C. § 30121(b) (citing 22 U.S.C. § 611(b)(2)); AO 1990-08 (CIT) (June 18, 1990); AO 1995-15 (Allison Engine PAC) (June 30, 1995); AO 1999-28 (Bacardi-Martini) (October 29, 1999); AO 2009-14 (Mercedes-Benz USA/Sterling) (August 28, 2009).

In this matter, Enbridge (U.S.) Inc. is organized under the laws of Delaware, see Ex. 1, with its principal place of business in Houston, Texas. See <https://www.enbridge.com/contact>. On February 27, 2017, Enbridge acquired Spectra Energy Partners, LP. On that same day, Spectra DCP-PAC amended its Statement of Organization to change its name and connected organization information as a result of the merger. Since that date, Enbridge (U.S.) has continued to operate the PAC.

As a PAC registered with the Commission, Enbridge-DCP PAC can make contributions to Federal candidates within the limits of the Act. Here, Enbridge-DCP PAC contributed \$3,000 to the Committee in the 2017-2018 election cycle—\$2,000 designated for the primary and \$1,000 designated for the general—within the Act's amount limitations, and in compliance with its source prohibitions.

For these reasons, the Commission should dismiss this Complaint without taking any further action. It is based upon a misunderstanding of the foreign national prohibition, and fails to describe—let alone provide facts to support—any legal violation.

Sincerely,

Chris Ashby
Counsel, Duffy for Wisconsin

Exhibit 1

Department of State: Division of Corporations

[Allowable Characters](#)

- HOME
- About Agency
- Secretary's Letter
- Newsroom
- Frequent Questions
- Related Links
- Contact Us
- Office Location
- SERVICES**
- Pay Taxes
- File UCC's
- Delaware Laws Online
- Name Reservation
- Entity Search
- Status
- Validate Certificate
- Customer Service Survey

- INFORMATION**
- Corporate Forms
- Corporate Fees
- UCC Forms and Fees
- Taxes
- Expedited Services
- Service of Process
- Registered Agents
- Get Corporate Status
- Submitting a Request
- How to Form a New Business Entity
- Certifications, Apostilles & Authentication of Documents

Entity Details	
THIS IS NOT A STATEMENT OF GOOD STANDING	
File Number:	2561207
	Incorporation Date / Formation Date: 11/8/1995 (mm/dd/yyyy)
Entity Name:	ENBRIDGE (U.S.) INC.
Entity Kind:	Corporation
Residency:	Domestic
	Entity Type: General State: DELAWARE
REGISTERED AGENT INFORMATION	
Name:	THE CORPORATION TRUST COMPANY
Address:	CORPORATION TRUST CENTER 1209 ORANGE ST
City:	WILMINGTON
	County: New Castle
State:	DE
	Postal Code: 19801
Phone:	302-658-7581
<p style="color: red; font-size: small;">Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.</p> <p>Would you like <input type="radio"/> Status <input type="radio"/> Status, Tax & History Information</p> <p style="text-align: center;"><input type="button" value="Submit"/></p> <p style="text-align: center;"><input type="button" value="View Search Results"/> <input type="button" value="New Entity Search"/></p>	

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2019 JUN 14 PM 3:45

June 14, 2019

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

Re: Matter Under Review 7594

Dear Mr. Jordan:

I write as counsel to the non-federal campaign committees of Texas state representatives César Blanco, Terry Canales, Abel Herrero, Tracy King, Oscar Longoria, and Armando Walle (collectively, “the “Texas Respondents”) in response to the Complaint filed by Alexander Austin (“Complainant”) on April 8, 2019 (“Complaint”) in the above-referenced matter.

The Complaint fails to allege any violation of any law or regulation by any Texas Respondent:

- *First*, the Complaint fails to allege that any foreign national made any contribution. Factually, the Complaint alleges only that the Texas Respondents received lawful contributions from a domestic separate segregated fund (“SSF”) registered with the Commission. The Complaint repeatedly and erroneously conflates Enbridge Inc., a Canadian company, with Enbridge (U.S.) Inc., its domestic subsidiary, and Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC), the domestic subsidiary’s SSF. The Complaint presents only lawful contributions made by the SSF. The Complaint alleges nothing to suggest that any foreign national engaged in any conduct as to any contribution or any Texas Respondent.
- *Second*, the Complaint fails to allege that any Texas Respondent knowingly received a foreign national contribution. Because a domestic SSF made each of the contributions, and because the Texas Respondents had and continue to have no reason to know or think that they received foreign national contributions, the Complaint alleges no violation by any Texas Respondent.

Because the Complaint fails to allege any fact which, if true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101 *et seq.* (“the Act”), the Commission should find no reason to believe any violation occurred, send the appropriate letters, and close the file. Moreover, because of the negative effect this unsupported Complaint’s

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OFFICE OF
GENERAL COUNSEL

Jeff S. Jordan
 June 14, 2019
 Page 2

continued pendency will have on the many respondents named, the Commission should expedite this Complaint's dismissal.

FACTS

The Texas Respondents are all nonfederal campaign committees of Texas state representatives. Their campaign committees are not registered with the FEC.

The Complaint alleges that the Texas Respondents "accepted contributions from a foreign (Canadian) company (Enbridge Inc.)" in violation of Federal law.¹ While Enbridge Inc. is a multinational corporation based in Canada, its domestic subsidiary, Enbridge (U.S.) Inc., is a Delaware-based corporation whose principal place of business is located in Texas.² Enbridge (U.S.) Inc. maintains an SSF registered with the Commission: Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC).

On February 27, 2017, Enbridge Inc. acquired the Texas-based Spectra Energy Corp.³ Before then, Spectra Energy Corp established and maintained an SSF registered with the Commission: Spectra Energy Corp Political Action Committee (Spectra-DCP PAC).⁴ Upon Spectra Energy Corp's acquisition by Enbridge, Spectra Energy Corp's SSF became Enbridge (U.S.) Inc.'s SSF, and Enbridge (U.S.) Inc. became its connected organization.⁵

The Complaint alleges no conduct by Enbridge Inc. or any foreign national as to any Texas Respondent or contribution. It alleges no conduct by any Texas Respondent besides their receipt of lawful contributions. It alleges no facts that would have led any Texas Respondent to associate any contribution with any foreign national, but for the fact that Enbridge Inc. owns Enbridge (U.S.) Inc., which in turn maintains the SSF. In fact, the Complaint appears to disclaim any violation by anyone. It acknowledges the Complainant's "lack of subject matter expertise" and states that he did "not intend to falsely accuse the innocent," preferring instead simply to have his claims "critically examined by professionals."⁶

¹ Compl., at 1.

² See Letter from Adam Parker, Manager, Enbridge-DCP PAC, to Rep. Terry Canales (May 3, 2019) (attached as Exhibit A) [hereinafter "Exh. A"].

³ *We are now Enbridge!*, Spectra Energy Corp (Feb. 27, 2017), <http://www.spectraenergy.com/>.

⁴ Spectra Energy Corp Political Action Committee (Spectra-DCP PAC), FEC Form 1, Statement of Organization (Sept. 10, 2014), available at <https://docquery.fec.gov/cgi-bin/forms/C00429662/951351/>.

⁵ Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC), FEC Form 1, Statement of Organization (Feb. 27, 2017) [hereinafter "Enbridge-DCP PAC FEC Form 1"], <https://docquery.fec.gov/cgi-bin/forms/C00429662/1151436/>; see also Exh. A, *supra* note 2 (stating that Enbridge-DCP PAC was "formerly known as Spectra Energy Corp Political Action Committee (Spectra-DCP PAC)").

⁶ Compl., at 2.

Jeff S. Jordan
 June 14, 2019
 Page 3

LEGAL ANALYSIS

The Complaint fails to allege any violation of the Act. Rather, it alleges only that an SSF made lawful contributions to the Texas Respondents. It alleges no actual conduct by any foreign national, nor does it allege any facts that would have given the Texas Respondents any reason to question any of the contributions.

A complaint must allege “‘sufficient specific facts’ that, if proven[,] would constitute a violation of the Act.”⁷ A complainant’s “unwarranted legal conclusions from asserted facts[] will not be accepted as true.”⁸ Further, statements in complaints that “are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant’s belief in the truth of such statements.”⁹ Without such information, there is no actionable complaint.

Here, the Complainant lacks personal knowledge: “I have no personal or business connection to any of these people or organizations that I am aware of; as such, all information ultimately comes from publicly available sources that I list in this document.”¹⁰ Those “publicly available sources” present no potential violation. The Complainant repeatedly confuses the SSF, Enbridge (U.S.) Inc., and Enbridge Inc., and the Complaint’s cited sources present only contributions made by the SSF. Thus, the Commission should find no reason to believe a violation occurred.

I. The Complaint Fails to Allege Any Foreign National Contribution

The Complaint’s claim of a supposed violation hinges entirely on its failure to distinguish between an SSF, its U.S. connected organization, and that connected organization’s Canadian parent. The Complaint alleges that Enbridge Inc. “made hundreds of contributions *directly* to American political campaigns,” but the supporting documentation shows only lawful contributions that the SSF made to the Texas Respondents.¹¹

⁷ Fed. Election Comm’n, Matter Under Review 5972 (Iowa Christian Alliance), Factual and Legal Analysis, at 7 (Nov. 4, 2008) (citation omitted).

⁸ Fed. Election Comm’n, Matter Under Review 5141 (Moran for Congress), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold, at 2 (Apr. 17, 2002).

⁹ 11 C.F.R. § 111.4(d)(2).

¹⁰ Compl., at 1.

¹¹ *Id.*

Jeff S. Jordan
 June 14, 2019
 Page 4

The domestic subsidiary of a foreign corporation may maintain an SSF which, in turn, may make contributions in connection with state and local elections.¹² A foreign national may not directly or indirectly make a contribution or donation of money or other thing of value in connection with any Federal, state, or local election.¹³ The term “foreign national” refers to: (1) any individual who is not a citizen, national, or lawfully-admitted permanent resident of the United States; and (2) any “foreign principal” who is not a U.S. citizen.¹⁴ A “foreign principal” includes, *inter alia*, “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”¹⁵

However, a corporation “organized under the laws of any State within the United States that has its principal place of business in the United States” is neither a foreign principal nor a foreign national under the Act.¹⁶ The domestic subsidiary of a foreign corporation is not a foreign national and may establish and maintain an SSF to make contributions, so long as it is a “discrete entit[y] whose principal place of business is the United States”¹⁷ and “those exercising decision-making authority over the SSF are not foreign nationals.”¹⁸ The foreign corporation must “delegate all decisions concerning [the SSF’s] administration . . . to some other corporate personnel group comprised exclusively of United States citizens or individuals lawfully admitted for permanent residence in the United States.”¹⁹

The facts presented by the Complaint are consistent with this long line of Commission authority and show no deviation. The documents cited in the Complaint show that the SSF was the donor to the Texas Respondents, has its principal place of business in the United States, and is maintained and controlled by a domestic U.S. corporation.²⁰ The documents also show no contributions from Enbridge Inc. or any other foreign national. They also do not establish that any foreign national exercised any decision-making authority over the SSF or participated in any

¹² See Fed. Election Comm’n, Advisory Op. 1992-16 at 4 (Nansay Hawaii) [hereinafter “AO 1992-16”].

¹³ 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

¹⁴ 52 U.S.C. § 30121(b).

¹⁵ 22 U.S.C. § 611(b)(3); 52 U.S.C. § 30121(b)(1).

¹⁶ See Fed. Election Comm’n, Advisory Op. 2000-17, at 4 (Extendicare) [hereinafter “AO 2000-17”].

¹⁷ Fed. Election Comm’n, Advisory Op. 2009-14 at 3 (Mercedes-Benz USA/Sterling) [hereinafter “AO 2009-14”].

¹⁸ *Id.*; see also Fed. Election Comm’n, Advisory Op. 1999-28, at 4 (Bacardi-Martini) (“[A] domestic subsidiary may establish and administer an SSF subject to certain conditions”); Fed. Election Comm’n, Advisory Op. 1995-15, at 2-3 (Allison Engine PAC) (stating that the domestic subsidiary of a foreign corporation may establish an SSF so long as, *inter alia*, “foreign national[s] . . . would abstain from voting on the selection of individuals to operate the committee and exercise decision-making authority with respect to its contributions and expenditures”); Fed. Election Comm’n, Advisory Op. 1990-08, at 2 (CIT) (“[A] discrete corporate entity organized under the laws of Delaware and with New York as its principal place of business . . . [was] not a foreign principal and, therefore, may establish and operate a separate segregated fund subject to certain conditions[.]”).

¹⁹ AO 2000-17, *supra* note 16, at 6.

²⁰ See Enbridge-DCP PAC FEC Form 1, *supra* note 5; see also Exh. A, *supra* note 2.

Jeff S. Jordan
 June 14, 2019
 Page 5

decisions regarding the contributions. In short, the Complaint and its supporting documents present lawful conduct: contributions made by a domestic SSF, established and maintained by a domestic corporation, in compliance with the Act.

II. The Complainant Fails to Allege That Any of the Texas Respondents Knowingly Received a Foreign National Contribution

Even if the Complaint could somehow be read to allege that a foreign national *made* a prohibited contribution, it fails to allege that any of the Texas Respondents knowingly *accepted* a foreign national contribution. This failure provides a separate, independent reason to dismiss the Complaint as to the Texas Respondents.

Under the Act, no person shall knowingly accept or receive a contribution from a foreign national.²¹ The word “knowingly” means that a person: (1) has “actual knowledge” that the source of funds is a foreign national; (2) is “aware of facts that would lead a reasonable person to conclude that there is a substantial probability” that the source of the funds is a foreign national; *or* (3) is “aware of facts that would lead a reasonable person to inquire” whether the source of funds is a foreign national while failing “to conduct a reasonable inquiry.”²² Such facts include whether the contributor or donor uses a foreign passport or passport number for identification purposes, provides a foreign address, resides abroad, or draws or wires funds from a foreign bank.²³

The Complaint offers no such facts. It makes no claim that any Texas Respondent had any actual knowledge that the source of the contributions is a foreign national. It presents no facts that could have led a reasonable person to conclude or inquire whether there is a substantial probability that the source of the funds is a foreign national—besides the fact that the contributing SSF was maintained by the domestic subsidiary of a foreign corporation, which the Commission has repeatedly held to be legal.²⁴

To the contrary, a recipient committee inquiring about the SSF, using its Commission identification number, would have seen that the SSF’s connected organization is based in Houston, Texas. The recipient committee also would have seen that the SSF’s custodian of records, treasurer, and designated agent—all different people—are based in Houston, Texas, as well. Finally, the representations made most recently by the SSF and its connected organization to the Texas Respondents affirm that they “are in full compliance with federal law and

²¹ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

²² 11 C.F.R. § 110.20(a)(4)(i)-(iii).

²³ *Id.* § 110.20(a)(5)(i)-(iv).

²⁴ *See, e.g.*, AO 2009-14, *supra* note 17, at 3; AO 2000-17, *supra* note 16, at 4.

Jeff S. Jordan
June 14, 2019
Page 6

regulations.²⁵ Thus, the Complaint presents no facts to allege that the Texas Respondents knowingly received any foreign national contribution.

CONCLUSION

This Complaint is the rare Commission equivalent of complex litigation, naming dozens of political committee respondents for no reason at all besides the fact that they received lawful contributions and disclosed them on Commission reports. The consequences of a pending complaint can be significant for a respondent committee, depending on its circumstances. A pending complaint can keep a committee from terminating and force it to continue filing reports so long as the Complaint remains pending. It can affect the disclosures a committee must make to lenders, and thereby the costs it must incur to obtain loans.

Although Commission rules provide no specific process for responding to a frivolous complaint, the Commission retains full power to resolve a complaint on the merits. Moreover, where, as here, a complaint is defective on its face, there is nothing to keep the Commission from dismissing it on an expedited basis. Thus, the Texas Respondents respectfully request that the Commission do so here and promptly find no reason to believe any violation occurred, dismiss the Complaint, and close the file.

We appreciate the Commission's consideration of this response.

Very truly yours,



Brian G. Svoboda
Counsel to the Texas Respondents

²⁵ Exh. A, *supra* note 2.



Enbridge DCP PAC
5400 Westheimer Court
Houston, Texas 77056

May 3, 2019

Terry Canales
2727 W. University
Edinburg, TX 78539

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 202-347-3386 or adam.parker1@enbridge.com.

Sincerely,



Adam Parker
Manager
Enbridge-DCP PAC

RECEIVED

MAY 10 2019

Initial: PG.