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June 14, 2019

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

**Re: Matter Under Review 7594**

Dear Mr. Jordan:

We write as counsel to Northam for Governor and the Northam Inaugural Committee (“Respondents”), in response to the Complaint filed by Alexander Austin (“Complainant”) on April 8, 2019 (“Complaint”) in the above-referenced matter.

Not only does the Complaint incorrectly suggest that the Respondents accepted contributions from a foreign national, but it also fails to state sufficiently specific facts that, if proven, would show that the Respondents *knowingly* accepted contributions from a foreign national. As the facts do not support the Complaint’s allegation of a violation of the Federal Election Campaign Act of 1971, as amended (“FECA” or “the Act”) and Federal Election Commission (“FEC”) regulations, the Commission should immediately dismiss the Complaint and close the file.

### FACTS

Respondent Northam for Governor was a Virginia political committee that served as Virginia Governor Ralph Northam’s candidate campaign committee; it was terminated on July 16, 2018.<sup>1</sup>

Respondent Northam Inaugural Committee was the inaugural committee for Virginia Governor Ralph Northam’s 2018 Gubernatorial inauguration; it was terminated on July 6, 2018.<sup>2</sup>

<sup>1</sup> See Virginia Dept. of Elections, Northam for Governor, “Final Report” (filed Jul. 16, 2018) available at <https://cfreports.elections.virginia.gov/Report/Index/144048>.

<sup>2</sup> See *id.*, Northam Inaugural Committee, “Final Report” (filed Jul. 6, 2018) available at <https://cfreports.elections.virginia.gov/Report/Index/141328>.

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Enbridge Inc. is a multinational corporation based in Canada.<sup>3</sup> Its domestic subsidiary, Enbridge (U.S.) Inc., is a Delaware-based domestic corporation.<sup>4</sup> Enbridge (U.S.) Inc. owns and operates a separate segregated fund (“SSF”), Enbridge (U.S.) Inc. Political Action Committee (“Enbridge-DCP PAC”), which is based in Texas and has been registered with the FEC since February 27, 2017.<sup>5</sup>

On September 7, 2017, Enbridge-DCP PAC made a \$2,000 contribution to Northam for Governor.<sup>6</sup> On December 20, 2017, Enbridge-DCP PAC made a \$2,500 contribution to the Ralph Northam Inaugural Committee.<sup>7</sup>

### LEGAL ANALYSIS

The Complaint alleges that Respondents, along with 305 other political committees which received contributions from Enbridge-DCP PAC in the 2017-2018 election cycle, “accepted contributions from a foreign (Canadian) company (Enbridge Inc.)” in violation of Federal law.<sup>8</sup> Although Federal law does prohibit any person from “solicit[ing], accept[ing], or receiv[ing] a contribution or donation . . . from a foreign national,”<sup>9</sup> the facts here do not support the Complainant’s allegation. Respondents accepted contributions from Enbridge-DCP PAC, the separate segregated fund of a domestic corporation.

The Complainant confused Enbridge-DCP PAC with both its affiliated organization—Enbridge (U.S.) Inc.—and its affiliated organization’s parent company—Enbridge Inc. In addition, the Complaint fails to even allege that the Respondent *knowingly* accepted a contribution from a foreign national in violation of federal regulations.

<sup>3</sup> Enbridge, Inc, “General By-Law No. 1” (effective Feb. 27, 2017) available at [https://www.enbridge.com/~media/Enb/Documents/Governance/Amended\\_General\\_ByLawNo1\\_FEB\\_27\\_2017.pdf?la=en](https://www.enbridge.com/~media/Enb/Documents/Governance/Amended_General_ByLawNo1_FEB_27_2017.pdf?la=en).

<sup>4</sup> See Enbridge, Inc., “Political Contributions Policy” (Aug. 3, 2017) available at [https://www.enbridge.com/~media/Enb/Documents/Investor%20Relations/CorporateGovernance/ENB\\_Political\\_Contributions\\_Policy.pdf?la=en](https://www.enbridge.com/~media/Enb/Documents/Investor%20Relations/CorporateGovernance/ENB_Political_Contributions_Policy.pdf?la=en); Delaware Department of State: Division of Corporations General Name Search, File Number 2561207, available at <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (last accessed June 7, 2018).

<sup>5</sup> 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/>.

<sup>6</sup> Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC), October 2017 Monthly Report 195 (filed Oct. 17, 2018), available at <https://docquery.fec.gov/cgi-bin/fecimg/?201802169094586643>.

<sup>7</sup> Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC), 2017 Year-End Report 145 (filed Jan. 31, 2018) available at <https://docquery.fec.gov/cgi-bin/fecimg/?201801319091032277>.

<sup>8</sup> Complaint of Alexander Austin in MUR 7594 1, (Apr. 8, 2019) [hereinafter “Compl.”].

<sup>9</sup> 52 U.S.C. § 30121(a)(1).

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### **I. The Complaint Incorrectly Suggests that the Respondents Accepted Contributions from a Foreign National**

Under federal law, 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.<sup>10</sup> 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 as U.S. citizen.<sup>11</sup> A “foreign principal” includes “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.”<sup>12</sup>

However, a corporation “organized under the laws of any [s]tate 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 federal election law.<sup>13</sup> Therefore, the domestic subsidiary of a foreign corporation is not a foreign national and may operate an SSF that makes direct contributions in connection with federal elections, so long as no foreign national directs, dictates, controls, or directly or indirectly participates in the decision-making process of the SSF’s federal or non-federal election-related activities.<sup>14</sup> Further, the foreign parent corporation must “delegate all decisions concerning [the federal PAC’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.”<sup>15</sup>

As discussed above, Enbridge-DCP PAC is an SSF owned and operated by Enbridge (U.S.) Inc., the domestic subsidiary of Enbridge Inc., a Canada-based corporation.<sup>16</sup> Contrary to the Complainant’s claims, the Respondents has *never* received contributions from either Enbridge Inc. or Enbridge (U.S.) Inc. However, Respondents did receive contributions from Enbridge-DCP PAC in 2017. To the best of Respondents’ knowledge, these contributions were legally permissible under federal election law.<sup>17</sup> Therefore, the Complaint’s allegation that the Respondents received and accepted contributions from a foreign national in violation of federal law is grossly inaccurate and should be discarded.

<sup>10</sup> 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

<sup>11</sup> 52 U.S.C. § 30121(b)(1).

<sup>12</sup> *Id.* § 30121(b)(2) (noting that the definition of foreign principal codified at 22 U.S.C. § 611(b) applies to the foreign national contribution ban); 22 U.S.C. § 611(b)(1)-(3).

<sup>13</sup> *See* Fed. Election Comm’n, Advisory Op. 2000-17 at 4 (Extencicare) [hereinafter “AO 2000-17”].

<sup>14</sup> *See id.*; 11 C.F.R. § 110.20(i).

<sup>15</sup> AO 2000-17, *supra* note 13, at 6.

<sup>16</sup> *See* Enbridge-DCP PAC FEC Form 1, *supra* note 5.

<sup>17</sup> *See* Fed. Election Comm’n, Matter Under Review 6099 (Sam Page et al.), Factual and Legal Analysis, at 4-6 (finding no reason to believe that a campaign committee accepted a contribution from a foreign national, because the contributor was a domestic subsidiary of a foreign corporation).

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## **II. The Complainant has Failed to Allege That the Respondent Knowingly Accepted A Contribution from a Foreign National in Violation of Federal Law**

The Complaint not only confuses the facts and makes grossly inaccurate allegations, but it also fails to allege that the Respondent *knowingly* accepted a contribution from a foreign national.

Under FEC regulations, no person “shall knowingly solicit, accept, or receive from a foreign national any contribution or donation.”<sup>18</sup> The word “knowingly” means that a person: (1) has “actual knowledge” that the source of funds accepted or received 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 accepted or received is a foreign national; *or* (3) is “aware of facts that would lead a reasonable person to inquire” whether the source of funds accepted or received is a foreign national, “but . . . fail[s] to conduct a reasonable inquiry.”<sup>19</sup> Pertinent facts relevant to whether a person knowingly solicits, receives, or accepts a foreign national contribution in violation of federal law include—but are not limited to—the contributor or donor: using a foreign passport or passport number for identification purposes; providing a foreign address; residing abroad; and/or drawing funds from a foreign bank, or wiring money from a foreign bank, to write a check or other written instrument.<sup>20</sup>

Here, the Complainant does not allege, nor does he furnish the Commission with any information, or accompanying documentation or evidence, that could establish that Respondents knowingly solicited or accepted a contribution from a foreign national.<sup>21</sup> The Complaint does not, for instance, state whether the Respondents had actual knowledge that the source of the contributions is a foreign national. Nor does the Complainant discuss whether a reasonable person might conclude or inquire from the nature of these contributions that there is a substantial probability that the source of the funds is a foreign national. The Complaint does not state that the Respondents were aware of facts that might lead a reasonable person to inquire whether or conclude that foreign nationals were involved in Enbridge-DCP PAC’s decision-making related to election activities. Outside of conclusory statements, and charts detailing lawful contributions that Enbridge-DCP PAC made to the Respondents, the Complaint is simply devoid of the facts necessary to articulate a valid claim here.

In reality, a reasonable inquiry into Enbridge-DCP PAC’s background on the FEC’s website would confirm that Enbridge (U.S.) Inc., a Houston, Texas-based entity, is the SSF’s affiliated

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<sup>18</sup> 11 C.F.R. § 110.20(g).

<sup>19</sup> *Id.* § 110.20(a)(4)(i)-(iii).

<sup>20</sup> *Id.* § 110.20(a)(5)(i)-(iv).

<sup>21</sup> Compl., at 1.

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organization.<sup>22</sup> Further, Enbridge-DCP PAC's depository, custodian of records, treasurer, and designated agent all list contact addresses within the United States.<sup>23</sup>

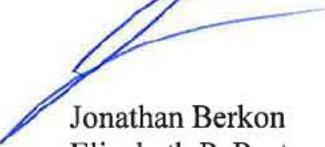
The facts prove that the Respondents received lawful contributions from a federal committee registered with the FEC. The facts also establish that the Respondents had absolutely no legitimate reason to conclude, or inquire as to whether, the source of the funds received was a foreign national. Thus, the Commission should dismiss this matter.

### CONCLUSION

Respondents respectfully requests that the Commission promptly finds no reason to believe any violation occurred, dismisses the matter, and closes the file.

We appreciate the Commission's consideration of this response.

Very truly yours,



Jonathan Berkon  
Elizabeth P. Poston

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<sup>22</sup> Enbridge-DCP PAC FEC Form 1, *supra* note 5.

<sup>23</sup> *Id.*