



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jan Witold Baran, Esq.
Caleb P. Burns, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

MAR 11 2014

RE: MUR 6726
Congressional Leadership Fund

Dear Messrs. Baran and Burns:

On March 12, 2013, the Federal Election Commission notified your clients, Congressional Leadership Fund and Caleb Crosby, in his official capacity as treasurer, ("CLF") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 25, 2014, the Commission found, on the basis of the information in the complaint and information provided by you that there is no reason to believe that CLF violated 2 U.S.C. § 441c(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Jin Lee, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler".

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Congressional Leadership Fund
6 and Caleb Crosby in his official capacity as treasurer

MUR 6726

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8 **I. INTRODUCTION**

9 This matter involves allegations that the Congressional Leadership Fund and Caleb
10 Crosby in his official capacity as treasurer ("CLF") knowingly solicited a contribution from
11 Chevron Corporation ("Chevron") or its subsidiary Chevron U.S.A., Inc. ("Chevron U.S.A.") in
12 violation of the Federal Election Campaign Act, as amended (the "Act").¹ Relying upon a
13 government website, www.usaspending.gov, which tracks contracts awarded by the federal
14 government, Complainants allege that Chevron was a federal contractor in October 2012 when it
15 made a contribution to CLF, an independent expenditure-only political committee. Chevron
16 acknowledges that, on October 7, 2012, it made a \$2.5 million contribution to CLF but denies
17 that it is a government contractor subject to the provisions of the Act cited by the Complainant.
18 In contrast, Chevron U.S.A. acknowledges that it is a government contractor but denies that it
19 made any federal political contribution in violation of the Act.

20 As discussed below, the available information indicates that Chevron was the entity that
21 made the contribution to CLF, Chevron was not a federal contractor at the time it made the
22 contribution, and Chevron and Chevron U.S.A. appear to be separate and distinct separate legal
23 entities. It therefore does not appear that Chevron was subject to the Act's ban on contributions
24 by federal contractors at the time of the contribution or that Chevron's contribution should be

¹ On March 5, 2012, the Complainants filed the original Complaint alleging that Chevron U.S.A., Inc. made the contribution at issue in this matter. Based on Chevron's subsequent comments to the press that it, not Chevron U.S.A., made the contribution, the Complainants filed an Addendum to the Complaint, requesting that the Commission also conduct an investigation of Chevron. Addendum to Compl. at 1 (Mar. 22, 2012).

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1 attributed to Chevron U.S.A. Accordingly, because there is no information indicating that CLF
2 knowingly solicited a contribution from a federal contractor, the Commission finds no reason to
3 believe that CLF violated 2 U.S.C. § 441c(a).

4 **II. FACTUAL BACKGROUND**

5 **A. Corporate Structure of Chevron and Its Subsidiaries**

6 1. Chevron Corporation

7 Chevron is a Delaware corporation with headquarters in San Ramon, California. *See*
8 Chevron Resp. at 2. Chevron describes itself and its numerous subsidiaries as “one of the world’s
9 leading integrated energy companies.” Chevron Resp., Declaration of Kari H. Endries ¶ 9
10 (“Endries Decl.”). Chevron reports that its combined sales and other revenue exceeded \$230
11 billion in 2012 and its combined income from its subsidiaries exceeded \$26.2 billion. Endries
12 Decl. ¶ 9.

13 Chevron holds 100% of the stock of Chevron Investments, Inc., which in turn owns the
14 stock of other companies, including 100% of the stock of Texaco, Inc. Endries Decl. ¶ 6.
15 Texaco, Inc. owns the stock of other companies, including 100% of Chevron U.S.A. Holdings,
16 Inc., which in turn owns 100% of the shares of Chevron U.S.A. *Id.*

17 The Response distinguishes Chevron from its subsidiaries, stating that its subsidiaries are
18 separate legal entities. Chevron Resp. at 2. The Response indicates that Chevron, “[a]s a general
19 matter . . . does not sell any goods or services.” *Id.* Rather, Chevron:

20 owns shares in, allocates capital to, reviews financial and performance goals for,
21 monitors the performance of, and provides general policy guidelines to numerous
22 global subsidiaries and affiliates, which are the separate holding or operating
23 companies, under the direction and control of their own management, engaged in
24 all aspects of worldwide energy operations.
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1 *Id.* Consequently, Chevron's primary assets consist of stock of other companies, and Chevron
2 derives most of its income from the dividends of those companies. *Id.*

3 Contrary to the Complaint's assertions, Chevron claims that it was neither a federal
4 contractor nor seeking to become one in October 2012 and that it has no division, unit, or person
5 responsible for federal contracting. *Id.*; Endries Decl. ¶ 5. Although publicly available
6 information identified in the Complaint and Response available on www.usaspending.gov
7 identifies "Chevron Corporation" as a federal contractor during the relevant time period,
8 Chevron argues that this information is in error. Chevron Resp. at 6-7. Chevron states that many
9 of the entries in the database involve companies other than Chevron or one of its subsidiaries and
10 do not list the true vendor. *Id.* at 7 (citing Endries Decl. ¶¶ 16, 18-22). Moreover, many of the
11 entries are dated outside the relevant time period. *Id.* at 7-8.

12 2. Chevron U.S.A., Inc.

13 Chevron U.S.A. is a Pennsylvania corporation with headquarters also located in San
14 Ramon, California.² According to its Response, Chevron U.S.A. is engaged in all branches of
15 the petroleum industry as well as mineral, geothermal, and other activities but derives a relatively
16 insignificant amount from contracts with the federal government. Chevron Resp. at 2; Endries
17 Decl. ¶ 7. Chevron U.S.A. not only explores for and produces crude oil and natural gas but also
18 refines crude oil into petroleum products and markets such products. Endries Decl. ¶ 7.
19 Chevron U.S.A. acknowledges that it is a federal contractor, but asserts that it derives "a
20 relatively insignificant amount of revenue" from federal contracts. Resp. at 2.

² According to www.usaspending.gov, both Chevron and Chevron USA are located at the same street address, 6001 Bollinger Canyon Road, San Ramon, California. Compl., Appendix A; Addendum to Compl., Attachment.

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1 **B. Contribution to the Congressional Leadership Fund**

2 CLF is an independent expenditure-only political committee registered with the FEC.
3 CLF Resp. at 1; CLF Statement of Organization (filed Oct. 24, 2011). According to its
4 Response, CLF does not accept contributions from federal contractors and does not solicit such
5 contributions. CLF Resp. at 1, citing Affidavit of Trent T. Edwards ¶ 4 (“Edwards Aff.”). CLF
6 claims that its fundraising materials, including its website, have stated its policy against
7 accepting contributions from federal contractors. CLF Resp. at 1, citing Edwards Aff. ¶¶ 2, 4.

8 According to CLF, in late September 2012, Trent T. Edwards, Director of Development
9 for CLF, met with representatives of Chevron to explore the possibility of Chevron making a
10 contribution to CLF. Edwards Aff. ¶ 5. Soon after that meeting, a representative of Chevron
11 indicated that Chevron was considering a contribution to CLF and that Chevron was not a federal
12 contractor. *Id.* According to a sworn statement provided by the Chevron Response, Chevron’s
13 Policy, Government and Public Affairs Corporate Department requested the \$2.5 million
14 contribution to CLF, and the payment was “charged to Chevron.” *See* Chevron Resp.,
15 Declaration of Thomas G. Hoffman ¶ 3 (“Hoffman Decl.”). On October 7, 2012, CLF received a
16 check from Chevron in the amount of \$2.5 million. *See id.*; Check No. 0024282612, Chevron
17 Resp., Ex. A.; CLF Amended 2012 12 Day Pre-Election Report (filed Oct. 26, 2012).

18 **III. LEGAL ANALYSIS**

19 **A. The Act’s Prohibition of Contributions Made By Federal Chntractors**

20 The Act prohibits any person who is negotiating or performing a contract with the United
21 States government or any of its agencies or departments from making a contribution to any
22 political party, political committee, federal candidate, or “any person for any political purpose or
23 use.” 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.2(a). In addition, the Act prohibits any person

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1 from knowingly soliciting a contribution from any person who is negotiating or performing a
2 contract with the United States government. 2 U.S.C § 441c(a)(2); 11 C.F.R. § 115.2(c).

3 The available information indicates that Chevron made the contribution to CLF and that
4 Chevron was not a federal contractor when it made that contribution. The Chevron Response
5 includes sworn testimony and documentation that Chevron, not Chevron U.S.A., made the
6 contribution to CLF in October 2012. *See* Thomas Decl. ¶ 3. There is no available information
7 to contradict this evidence.

8 Chevron asserts that “Chevron Corporation is not, and was not in October 2012, in the
9 business of federal contracting.” Chevron Resp. at 12. It supports this assertion with testimony
10 from staff responsible for Chevron’s corporate governance and the results of an internal review
11 initiated in response to the Complaint. *See* Endries Decl. ¶¶ 1-5, 10-31. Chevron declares that,
12 upon reviewing www.usaspending.gov and the Complaint, it identified 140 results for “Chevron
13 Corporation.” *Id.* ¶ 11. Fifty-one of those entries pertained to agreements by companies other
14 than Chevron. *Id.* ¶¶ 13-14 (explaining that the website returned entries for a corporation that
15 makes insignia shaped as “chevrons”). The remaining 89 entries, which include purchase or
16 delivery orders and contract modifications, reflect a total of only 16 underlying contracts. *Id.*
17 ¶ 15. Chevron was able to locate nine of these contracts. *Id.* Of these nine contracts, five were
18 “issued in the names of Chevron affiliates and not Chevron Corporation.” *Id.* Four of the nine
19 located contracts “had erroneously been issued in the name of Chevron,” and performance was
20 complete on all before October 2012. *Id.* at ¶¶ 15, 17-24.

21 Chevron was unable to locate the remaining 7 of the 16 contracts. *Id.* ¶¶ 15-16. Chevron
22 provides testimony, however, that “the database contains sufficient information about the
23 contracting company, the product, or service to be delivered . . . that it can be reasonably

1 ascertained that, if these contracts listed Chevron Corporation as the contracting party, it would
2 have been in error.” *Id.* ¶ 16. These contracts included, for example, providing fuel to the U.S.
3 Coast Guard in El Salvador, a service Chevron Corporation does not provide. *Id.* ¶ 26.

4 Consistent with Chevron’s sworn testimony, most of the contracts listed on
5 www.usaspending.gov appeared to have been completed prior to October 2012 and awarded to a
6 Chevron subsidiary. *See* <http://www.usaspending.gov> (last visited Sept. 26, 2013), Search
7 Results for “Chevron Corporation.” Although OGC found one contract that could arguably be
8 attributed to Chevron during the relevant time period (Contract No. SP0600095C5541), Chevron
9 states that the true vendor for this contract was its subsidiary, Chevron U.S.A. Product Company.
10 *See* Endries Decl. ¶ 21.

11 Accordingly, Chevron does not appear to have been a federal contractor during the
12 relevant time period.

13 **B. Chevron Appears to Have Been Separate and Distinct from Chevron U.S.A.**

14
15 The Commission has recognized a parent company may make a contribution to an
16 independent-expenditure-only political committee if it has an ownership interest in a federal-
17 contractor subsidiary when (1) the subsidiary is a “separate and distinct legal entity” and (2) the
18 parent company has sufficient revenue derived from sources other than its contractor subsidiary
19 to make the contribution. *See, e.g.* MUR 6403 (*Alaskans Standing Together, et al.*). Here, the
20 available information indicates that Chevron and Chevron U.S.A. appear to be separate and
21 distinct entities. Chevron and Chevron U.S.A. are separately incorporated: Chevron is a
22 registered corporation in Delaware, and Chevron U.S.A. is registered as a Pennsylvania
23 corporation. Although both Chevron and Chevron U.S.A. are located at the same street address.
24 Compl., Appendix A; Addendum to Compl., Attachment, the companies are under the direction

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1 and control of separate management. *See* Chevron Resp. at 2. Although publicly available
2 information indicates that Chevron and Chevron U.S.A. may share the same CEO, the public
3 record also indicates most of the companies' directors and officers do not overlap. *See*
4 *generally* Advisory Op. 1998-11 at 5, n. 3 (determining that overlapping officers and directors
5 between a parent company and its subsidiaries was insufficient to establish that the subsidiaries
6 were alter egos of the parent company). In addition, Chevron appears to have had sufficient
7 funds *not* derived from revenue of subsidiaries with federal contracts to make the \$2.5 million
8 contribution to CLF. Chevron's combined sales and operating revenues in 2012 exceeded \$230
9 billion, and it has provided sworn testimony that significantly more than \$2.5 million was
10 derived from dividend revenues from domestic subsidiaries that were not federal contractors.
11 *See* Endries Decl. ¶ 9.

12 Accordingly, the available information indicates that Chevron and Chevron U.S.A.
13 appear to be separate and distinct legal entities and that Chevron made its contribution to CLF
14 with revenue from sources other than subsidiaries holding federal contracts.

15 IV. CONCLUSION

16 Accordingly, the Commission finds no reason to believe that CLF violated 2 U.S.C.
17 § 441c(a) by knowingly soliciting a contribution made by a federal contractor.³

³ Because the Commission is not proceeding in this matter, we do not address the constitutional challenges to 441c(a) raised by the respondents. *See* Chevron Resp. at 13-18.

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