

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

May 26, 2022

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: MUR 7975

Dear Ms. Dennis,

This response is submitted by the undersigned counsel on behalf of the following committees:

- McConnell Senate Committee; Larry J. Steinberg, Treasurer;
- McConnell Victory Committee; Lisa Lisker, Treasurer;
- Joni For Iowa; Cabell Hobbs, Treasurer;
- Steve Daines for Montana; Lorna Kuney, Treasurer;
- Cotton for Senate, Inc.; Theodore Koch, Treasurer;
- Thom Tillis Committee; Collin McMichael, Treasurer;
- Cindy Hyde-Smith for US Senate; William K. Ozanus, Treasurer;
- Cory Gardner for Senate; Lisa Lisker, Treasurer;
- Senate Georgia Battleground Fund; Les Williamson, Treasurer.

The Complainant alleges that various contributions made by Lorenzo Fertitta and Frank Fertitta III from 2019-2021 to the Respondent Committees appear on the Respondents' FEC Form 3X filings with "false information about employer and occupation."¹ The Complaint "ask[s]" the Commission to "determine whether this false information was knowingly submitted in violation of Title 52 of the US Code on voting and elections." The Complainant alleges that the employer and occupation entries it identifies are "outdated and, as a result, false." Complaint at 1. In an effort to support its allegations, the Complainant includes information about certain business transactions involving entities allegedly owned and sold by the two contributors. Complaint at 1-2.

¹ News reports indicate that the contributors, Lorenzo and Frank Fertitta, and the Complainant, the Culinary Workers Union, are engaged in a long-running labor dispute. See, e.g., Howard Stutz, 'What's the endgame?' No resolution projected as decades-long feud between Culinary and Station Casinos continues, The Nevada Independent (Sept. 19, 2021), <https://thenevadaindependent.com/article/whats-the-endgame-no-resolution-projected-as-decades-long-feud-between-culinary-and-station-casinos-continues>. This Complaint appears to be an outgrowth of that dispute rather than a legitimate FEC reporting grievance.

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As shown below, the Complaint fails to allege facts that, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). To begin, the Respondent Committees are unfamiliar with the business affairs of the contributors and cannot comment on the accuracy of the Complainant’s claims. More importantly, however, those business affairs are not a matter under the Federal Election Commission’s (“FEC” or the “Commission”) jurisdiction and are not relevant to the consideration of this matter.

With respect to the contributions identified in the Complaint, each Respondent Committee reported the contributor’s employer and occupation information as it was known to the Committee at the time. The copies of disclosure report pages included in the Complaint demonstrate that each contribution referenced in the Complaint was reported with complete name, address, employer, and occupation information, which conclusively demonstrates that each Respondent Committee satisfied its reporting obligations under the Act and Commission regulations. Therefore, the allegations made in the Complaint are without merit and should be dismissed.

Legal Background

The Act requires a political committee to report the “identification” of each person who makes aggregate contributions during the reporting period in excess of \$200, and when a political committee uses “best efforts” “to obtain, maintain, and submit” this information, its reports are deemed to be in compliance with the Act. 52 U.S.C. §§ 30104(b)(3)(A), 30102(i). With respect to an individual contributor, the term “identification” means name, mailing address, the individual’s occupation, and the name of the individual’s employer. *Id.* § 30101(13).

Commission regulations provide that the “best efforts” standard is satisfied if certain requirements are met. *First*, all written solicitations for contributions must include a clear request for the contributor’s full name, mailing address, occupation and name of employer, and an accurate statement of Federal law regarding the collection and reporting of individual contributor information. 11 C.F.R. § 104.7(b)(1)(i). *Second*, the request and statement must appear in a clear and conspicuous manner on any response material included in a solicitation. *Id.* § 104.7(b)(1)(ii). *Third*, committees are required to make a second request for contributor information “[f]or each contribution received aggregating in excess of \$200 per calendar year (or per election cycle, in the case of an authorized committee) *which lacks required contributor information.*” *Id.* § 104.7(b)(2) (emphasis added).

By its own terms, the “second request” requirement does not apply where contributor information is not “lack[ing].” Thus, when a committee is in possession of, and reports, complete contributor information, as each Respondent Committee did in this matter, the requirements of the Act and Commission regulations are satisfied. *See* Final Rule on Recordkeeping and Reporting by Political Committees: Best Efforts, 58 Fed. Reg. 57,725, 57,727 (Oct. 27, 1993) (“[A]ny contribution which is reported by a committee with all required contributor information will meet the reporting requirements for such information, whether or not the committee asked for the information in the solicitation or used the language specified in 11 CFR 104.7(b)(1).”) (emphasis added).

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The Act does not impose legal obligations on contributors with respect to their provision of information. Rather, committees are required to request certain information, and then must report the information that contributors provide. *See Republican National Committee v. FEC*, 76 F.3d 400, 406 (D.C. Cir. 1996) (“The statute does *not* require political committees to report the information for ‘each’ donor. It only requires committees to use their *best efforts* to gather the information and then report to the Commission *whatever information donors choose to provide.*”) (emphasis added). Neither the Act nor Commission regulations impose any obligation on committees to independently verify the identification information that donors provide.

Commission regulations also provide that contributor information may be derived from a variety of sources. In fact, the Commission’s “best efforts” regulation specifically requires committee treasurers to report “all contributor information not provided by the contributor, but in the political committee’s possession, or in its connected organization’s possession, regarding contributor identifications, including information in contributor records, fundraising records and previously filed reports, in the same two-year election cycle.” 11 C.F.R. § 104.7(b)(3); *see also* Advisory Opinion 1996-25 (Seafarers) at 2-3 (“The treasurer of a political committee must report all contributor information not provided by the contributor, but in the political committee’s possession, regarding contributor identification. This includes information in a committee’s contributor records, fundraising records and previously filed reports, in the same two-year election cycle in accordance with 11 CFR 104.3.”); MUR 6847 (Friends of Bob Johnson), First General Counsel’s Report at 4 (“If the committee possesses the information in its contributor records for the same election cycle, then the committee must use that information when disclosing the contribution.”).

Discussion

The Complaint does *not* allege or otherwise include any information suggesting that any Respondent Committee failed to satisfy the legal requirements of the Act and Commission regulations with regard to requesting and reporting individual contributor employer and occupation information. Specifically, the Complaint does *not* allege that any Respondent Committee made written solicitations using deficient materials, or otherwise failed to satisfy the Commission’s “best efforts” requirements. *See* 11 C.F.R. § 104.7(b).

To the contrary, and as the Complaint itself demonstrates, **each Respondent Committee reported occupation and employer information for the contributions at issue.** Complainant believes that information is “false,” but rather than allege any wrongdoing on the part of the Respondent Committees, the Complaint asks the Commission to “make a determination as to *who might be responsible* for submitting false information and whether this was done knowingly.” Complaint at 2 (emphasis added).

There is no information in the Complaint that in any way suggests that any Respondent Committee knowingly reported “false” information, nor does the Complaint suggest any conceivable motive for doing so. The Respondent Committees reported the employer and occupation information for the two contributors at issue as that information was known to the Committees at the time. The reported information was either provided by the contributors, or if

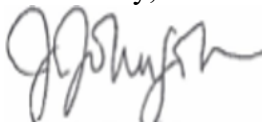
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not provided, drawn from information in the committees' contributor records, fundraising records, and previously filed reports, as required by Commission regulations.

Under Commission regulations, which *require* committees to report information already in their databases, it is possible for a committee to report outdated employer and occupation information without any violation of the law occurring. An individual may change jobs, or an individual may have more than one employer and occupation. The mere presence of differing reported employer and occupation information for an individual contributor within the Commission's reporting database – with *no* other information suggesting wrongdoing – is *not* evidence of a violation of the law. Accordingly, for the reasons set forth above, the Complaint does not “set[] forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA.” *See* MUR 4960 (Clinton), Statement of Reasons of David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1. The Complainant's contention that someone must have committed a knowing violation is an “unwarranted legal conclusion[] from asserted facts” and “mere speculation” that the Commission should not accept as true. *Id.* at 2. Where a Complaint fails to identify an actual violation, and cannot specify “who might be responsible,” Complaint at 2, there is no basis for the Commission to find reason to believe.

Finally, the Commission's recent practice with respect to complaints alleging *missing* employer and occupation information has been to dismiss those complaints as low-rated matters. *See, e.g.*, MUR 7814 (Salazar for Congress); MUR 7665 (McSally for Senate, Inc.); MUR 6953 (McSally for Congress). This Complaint similarly warrants dismissal as a low-rated matter.

Sincerely,



Jessica F. Johnson
Timothy Kronquist
Michael Bayes
Counsel to Respondents