



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Montcalm LLC, *et al.*)

) MUR 7833
)
)

STATEMENT OF REASONS OF CHAIRMAN SEAN J. COOKSEY

The Complaint in this matter alleged that unknown individuals made a \$150,000 contribution in the name of another to Congressional Leadership Fund (“CLF”)¹ through Montcalm LLC on October 8, 2020.² That contribution was initially reported to the Commission as coming solely from Montcalm LLC on October 22, but was corrected the next day as being attributable to Hendrik Meijer.³ The Complaint was filed the same day as the amended disclosure report.⁴ Upon review, the Office of General Counsel (“OGC”) concluded not only that there was reason to believe that Hendrik Meijer and Montcalm had violated 52 U.S.C. § 30122 by making and allowing one’s name to be used for a conduit contribution, but also that CLF had knowingly accepted the conduit contribution.⁵ OGC further recommended a Commission investigation.⁶

I disagreed.⁷ First, I found the circumstantial evidence insufficient to support a reason-to-believe finding with respect to Meijer and Montcalm. Notwithstanding the recency of Montcalm’s formation relative to the contribution, the respondents’ denials and the prompt reporting correction prior to receiving the Complaint militate against such a finding. Likewise, the available evidence showed that CLF staff exercised due diligence in handling, reporting, and verifying the contribution, and the Commission therefore appropriately dismissed allegations against CLF. This statement explains my reasoning more thoroughly.

¹ CLF is a hybrid political committee with a non-contribution account that registered with the Commission on October 24, 2011, and Caleb Crosby is CLF’s current treasurer. At the time the relevant events took place in this matter, CLF was an independent expenditure-only political committee. First General Counsel’s Report at 3 (Dec. 22, 2023), MUR 7833 (Montcalm LLC, *et al.*).

² Complaint at ¶ 6 (Oct. 23, 2020), MUR 7833 (Montcalm LLC, *et al.*).

³ Response of Congressional Leadership Fund at 1 (Dec. 15, 2020), MUR 7833 (Montcalm LLC, *et al.*).

⁴ Complaint (Oct. 23, 2020), MUR 7833 (Montcalm LLC, *et al.*).

⁵ First General Counsel’s Report at 3–4 (Dec. 22, 2023), MUR 7833 (Montcalm LLC, *et al.*).

⁶ *Id.* at 24–25.

⁷ Certification (Feb. 27, 2024), MUR 7833 (Montcalm LLC, *et al.*).

I. Factual Background

The events in this matter took place over just a few weeks. Montcalm LLC was formed in Michigan on September 28, 2020.⁸ Its sole member is Hendrik Meijer, and it is a disregarded entity for federal tax purposes.⁹ Mark Rizik is the organizer and registered agent of Montcalm, and he stated in a declaration that he organized Montcalm on behalf of a client, Greenville Partners LLC, “to be used for various business purposes.”¹⁰ He further swore that he was “unaware of any discussion or plans involving the potential use of Montcalm LLC for any federal political contributions.”¹¹

On October 8, 2020, Montcalm made a \$150,000 contribution via wire transfer to CLF with funds—by its own admission—provided by Meijer.¹² That same day, CLF staff sent representatives of Montcalm and Meijer a donor form to provide relevant reporting information, including any required attribution information, but the form was not immediately returned.¹³ CLF staff sent the donor form two additional times following receipt of the wire transfer contribution.¹⁴ Having not yet received the additional information by the time its 12-Day Pre-General report was due on October 22, CLF used the information available from the wire transfer to report the contribution as coming from Montcalm, LLC.¹⁵

The next day, on October 23, several things happened all at once. This Complaint was filed with the Commission mid-day, but seeking publicity for themselves, the complainants first provided it to the media.¹⁶ After receiving press inquiries—but before receiving any notification from the Commission—Meijer and Montcalm contacted CLF and an amended report was filed to correctly attribute the Montcalm contribution to Meijer.¹⁷ Meijer then made another contribution

⁸ First General Counsel’s Report at 2–3 (Dec. 22, 2023), MUR 7833 (Montcalm LLC, *et al.*).

⁹ Response of Montcalm LLC at 2 (Dec. 14, 2020), MUR 7833 (Montcalm LLC, *et al.*).

¹⁰ Response of Mark E. Rizik, Attachment A (Declaration of Mark E. Rizik) at ¶ 3 (Dec. 12, 2020), MUR 7833 (Montcalm LLC, *et al.*).

¹¹ *Id.* at ¶ 6.

¹² Response of Montcalm LLC at 2 (Dec. 14, 2020), MUR 7833 (Montcalm LLC, *et al.*).

¹³ First General Counsel’s Report at 7 (Dec. 22, 2023), MUR 7833 (Montcalm LLC, *et al.*).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Response of Montcalm LLC at 2 (Dec. 14, 2020), MUR 7833 (Montcalm LLC, *et al.*).

¹⁷ *Id.*; First General Counsel’s Report at 7 (Dec. 22, 2023), MUR 7833 (Montcalm LLC, *et al.*).

through Montcalm to CLF for \$100,000 that was correctly reported.¹⁸ The Commission then notified the parties of the Complaint six days later, on October 29.¹⁹

II. Legal Framework

The Federal Election Campaign Act of 1971, as amended (the “Act”), prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.²⁰ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”²¹ A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”²² The Commission’s regulations include two examples of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.²³

In addition to the *actus reus* elements, the statute provides a *mens rea* element for others involved in a contribution in the name of another beyond the contributor. For anyone who permits his or her name to be used for another’s contribution or who accepts such a contribution, the Act requires that such a violation be knowing—a requirement that need not be shown to establish a violation by the contributor.²⁴

Separately, under the Act, all political committees are required to file periodic disclosure reports with the Commission which accurately report all contributions received and disbursements made.²⁵ Further, under Commission regulations, committees must report certain attribution information for contributions from limited liability companies.²⁶ With respect to single-member LLCs, the regulations provide that “[a] contribution by an LLC with a single natural person member that does not elect to be treated a corporation by the Internal Revenue Service ... shall be

¹⁸ First General Counsel’s Report at 8 (Dec. 22, 2023), MUR 7833 (Montcalm LLC, *et al.*).

¹⁹ Response of Montcalm LLC at 1 (Dec. 14, 2020), MUR 7833 (Montcalm LLC, *et al.*).

²⁰ 52 U.S.C. § 30122.

²¹ 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

²² 52 U.S.C. § 30101(8)(A)(i).

²³ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

²⁴ 52 U.S.C. § 30122.

²⁵ 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

²⁶ *See* 11 C.F.R. § 110.1(g)(4).

attributed only to that single member.”²⁷ As a result, a contribution by an LLC that does not elect to be treated as a corporation by the Internal Revenue Service and that has a single natural-person member must be attributed only to the natural person member.²⁸ Furthermore, when an LLC makes a contribution, it must affirm to the recipient, at the time the LLC makes the contribution, that it is eligible to make a contribution and “provide information to the recipient committee as to how the contribution is to be attributed.”²⁹ When a treasurer of a political committee shows that the committee used “best efforts” to obtain, maintain, and submit the information required by the Act, the committee’s reports will be considered in compliance with the Act.³⁰

III. Legal Analysis

A. Montcalm LLC and Hendrik Meijer

Whether there is reason to believe a violation occurred in this matter ultimately comes down to a question of evidence. The Commission has previously made clear that “purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the [law] has occurred.”³¹ As the courts have stated, “mere ‘official curiosity’ will not suffice as the basis for FEC investigations.”³² In the case of an alleged contribution in the name of another made through an organization, such as an LLC, the Commission has set out the kinds of evidence that it will consider:

When an LLC purports to make a political contribution in close temporal proximity to its formation date, without evidence of activity or any specific information regarding the provenance of its funds, the circumstances may support a reasonable inference that the LLC was provided funds for the purpose of making a contribution, i.e., that the LLC was used as a conduit to mask the identity of the true contributor. However, in determining whether such an inference is supported, the Commission considers the overall record, including the amount of the contribution, the LLC’s stated purposes and activity, and whether other information, such as the attribution of the LLC contribution, suggests an attempt to circumvent the Act’s disclosure requirements.³³

²⁷ 11 C.F.R. § 110.1(g)(4). *Compare* 11 C.F.R. § 110.1(g)(3) (governing contributions by LLCs electing IRS treatment as corporations and LLCs with publicly traded shares).

²⁸ 11 C.F.R. § 110.1(e), (g).

²⁹ 11 C.F.R. § 110.1(g)(5).

³⁰ 52 U.S.C. § 30102(i); 11 C.F.R. § 104.7(a).

³¹ Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 4 (Dec. 21, 2000), MUR 4960 (Hillary Rodham Clinton for Senate). *See also* First General Counsel’s Report at 5 (July 23, 2004), MUR 5467 (Michael Moore) (quoting the Statement of Reasons of four Commissioners in MUR 4960 (Hillary Rodham Clinton for Senate)); Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen at 6 (Sept. 19, 2013), MUR 5878 (Arizona Democratic Central Committee) (same).

³² *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981).

³³ Factual & Legal Analysis at 10 (June 10, 2021), MUR 7464 (LZP, LLC).

The evidence in this matter is a mixed bag, but I concluded that the exculpatory evidence outweighed the inculpatory.

To be sure, the fact that Montcalm LLC was formed only ten days prior to the initial contribution to CLF is suggestive of a contribution in the name of another. The Commission has relied on similar facts to support reason-to-believe findings in other matters.³⁴ In a similar way, the Commission has not always accepted bare denials from respondents about the purposes for which their organizations were formed and their contributions were made.³⁵

On the other hand, here the Commission is faced with additional exculpatory evidence that was not present in other matters, which is further reinforced by the unusual timing of the Complaint. Namely, the available information demonstrates that Montcalm and Meijer were merely dilatory in providing appropriate attribution information fifteen days after the contribution was transferred to CLF. But such attribution information was provided, and at no time did Montcalm or Meijer falsely assert to CLF that no such attribution information was required.³⁶ Indeed, CLF was still within the allowed thirty-day period for exercising its best efforts to obtain appropriate contributor information.

The Commission's regulations contemplate such situations in which contributor information is not immediately furnished and instead follows after a contribution.³⁷ Moreover, I decline to discredit Montcalm and Meijer's actions to provide attribution information because of its timing relative to the Complaint. The almost instantaneous filing of this Complaint—coming one day after CLF's 12-Day Pre-General report and only two weeks after the initial transfer of funds—does not call into question the motivation behind Montcalm's providing attribution information on October 23, 2020. Rather, because Montcalm also made another contribution that same day, the more likely case is that it intended to provide the attribution that same day anyway, and the filing of this Complaint was merely coincidental.

All of these circumstances make this case appear closer to MUR 7965 (Iho Araise LLC). There, the Commission found no reason to believe that a contribution initially reported as having been made by an LLC—then amended a few days later with proper attribution information—was a contribution in the name of another.³⁸ Like this matter, the recipient committee contended that “it initially disclosed the contribution from Iho Araise LLC without attribution information because it had requested and not yet received confirmation of the LLC's tax status.”³⁹ It then diligently sought and received that information, and it amended its reports. The Commission

³⁴ See *id.* at 9–11. See also [REDACTED] (open matter).

³⁵ [REDACTED] (open matter).

³⁶ First General Counsel's Report at 7–8 (Dec. 22, 2023), MUR 7833 (Montcalm LLC, *et al.*); Response of Congressional Leadership Fund at 1–2 (Dec. 15, 2020), MUR 7833 (Montcalm LLC, *et al.*); Response of Montcalm LLC at 1 (Dec. 14, 2020), MUR 7833 (Montcalm LLC, *et al.*).

³⁷ 11 C.F.R. § 104.7(b).

³⁸ Factual & Legal Analysis at 1–2 (Oct. 6, 2022), MUR 7965 (Iho Araise LLC, *et al.*).

³⁹ *Id.* at 2–4.

accepted this timeline of events, found no reason to believe, and closed the matter. Under the same reasoning, I believe the same should have been done here.⁴⁰

B. Congressional Leadership Fund

In a similar way, OGC's allegation that CLF, through its agents, knowingly accepted a contribution in the name of another was belied by the evidence, and the Commission appropriately voted to dismiss that claim. The available information shows that, over the relevant time period, CLF staff undertook diligent efforts to acquire and verify the correct information to report the contribution.⁴¹ CLF staff sent its donor form to Meijer's representatives multiple times, and when they received the full attribution information, CLF amended its 12-Day Pre-General report within hours.⁴² There was further evidence in the record that CLF staff denied knowing at the time that Meijer was behind the initial wire transfer from Montcalm.

I concluded that OGC failed to muster sufficient evidence to show reason to believe that CLF accepted—let alone *knowingly* accepted—a contribution in the name of another. Both CLF staff's statements and their behavior indicate that they did not, and the Commission must not engage in investigations premised on mere official curiosity. So, the Commission dismissed that allegation.

* * *

At the end of the day, the available circumstantial evidence could not support finding reason to believe that any party involved made, knowingly allowed its name to be used for, or knowingly accepted a contribution in the name of another. For that reason, I declined to move forward with enforcement in this matter, the Commission dismissed allegations as to CLF, and the Commission then closed the file.⁴³



Sean J. Cooksey
Chairman

March 7, 2024

Date

⁴⁰ Factual & Legal Analysis at 7–8 (Oct. 6, 2022), MUR 7965 (Iho Araise LLC, *et al.*).

⁴¹ First General Counsel's Report at 6–7 (Dec. 22, 2023), MUR 7833 (Montcalm LLC, *et al.*).

⁴² *Id.* at 7–8.

⁴³ Certification (Feb. 27, 2024), MUR 7833 (Montcalm LLC, *et al.*).