

October 19, 2010

Christopher Hughey
Acting General Counsel
Federal Election Commission
999 E Street, S.E.
Washington, D.C. 20463

Re: Complaint Against TransCanada Corporation; Jon Bruning for Attorney General; and the Governor Heineman Committee.

Dear Mr. Hughey:

Bold Nebraska is writing to file a complaint, in accordance with the Federal Election Commission's rules, against TransCanada Corporation, a Canadian corporation, for making contributions in connection with a state election; Jon Bruning for Attorney General and the Governor Heineman Committee for accepting campaign contributions from a foreign national. These actions violate the Federal Election Campaign Act of 1971, as amended, and the Commission's rules prohibiting contributions by foreign nationals in connection with Federal, State and local elections.

TransCanada Corporation ("TransCanada"), a Canadian corporation, maintains its principal place of business in Calgary, Alberta, Canada. TransCanada is an energy infrastructure company focused on pipelines and energy and is lobbying to build a controversial oil pipeline across several states including Nebraska.

Jon Bruning is the Attorney General of Nebraska, and running for reelection on November 2, 2010. Bruning for Attorney General ("Bruning") is his official campaign committee.

Dave Heineman is the Governor of Nebraska, and running for reelection on November 2, 2010. Governor Heineman Committee ("Heineman") is his official campaign committee.

Discussion

The Federal Election Campaign Act of 1971, as amended (“the Act”), prohibits foreign nationals from making direct or indirect contributions or donations of money or other things of value, or express or implied promises to make contributions or donations, in connection with an election to any political office. 2 U.S.C. § 441e; 11 C.F.R. § 110.20(b). Additionally, foreign nationals are prohibited from directing, dictating, controlling, or directly or indirectly participating in the decision-making process of any person, such as a corporation, with regard to such person’s Federal or nonfederal election-related activities, including decisions concerning the making of contributions, donations, expenditures or disbursements in connection with elections for any Federal, State, or local office. 11 C.F.R. § 110.20(i).

Likewise, no person may solicit, accept or receive a contribution or donation as described in § 441e(a)(1)(A) and (B), from a foreign national. *See* 2 U.S.C. § 441(e)(2); 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited contribution if that person has actual knowledge that the funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited is a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the source of funds is from a foreign national but failed to conduct a reasonable inquiry. *See* 11 C.F.R. § 110.20(a)(4).

A “foreign national” is an individual who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence. 2 U.S.C. § 441e(b)(2). The term encompasses “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.” 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C. § 611(b)(3)).

1. TransCanada’s Contributions to Heineman and Bruning

TransCanada is organized under Canadian law and has its principal place of business in Canada. Therefore, TransCanada is a foreign national for purposes of 2 U.S.C. § 441e and is prohibited from making contributions to Federal, State and county elections.

TransCanada made contributions to the Governor Heineman Committee for \$2,500 on January 26, 2010 (exhibit 1) and to Bruning for Attorney General for \$2,500 on January 22, 2010 (exhibit 2), in violation of 2 U.S.C. § 441e. According to Nebraska Watchdog (exhibit 3), these illegal contributions were discovered by the Nebraska Accountability and Disclosure Commission (NADC) when an auditor noticed Bruning’s campaign filing only carried the name TransCanada and a street address. There was no

city or state listed. According to Frank Daley, the NADC Executive Director, the Bruning report simply said, “TransCanada Keystone Pipeline, LP, 450 1st Street S.W.” When NADC checked further, it discovered that the address listed is TransCanada’s address in Calgary, Alberta. The online report, edited by Frank Daley with the NADC, now lists the correct address as “Calgary Canada AB 25100,” and the name as “Trans Canada Keystone Pipeline.”

Heineman’s filing listed the contribution from TransCanada as “Trans Canada Keystone Pipeline” with the address, “450 1st Street, Omaha, NE 68104.” (Exhibit 2A) As shown above, 450 1st Street is TransCanada’s address in Canada. It does not have an office in Omaha listed under that address, nor do any of its subsidiaries. While TransCanada has multiple subsidiaries named “TransCanada Keystone Pipeline,” none maintain the address “450 1st Street” in Omaha or in any other American city. Further, Bruning’s original filing (exhibit 1A) names TransCanada Keystone Pipeline, LP. The address for this TransCanada subsidiary is:

7509 NW Tiffany Springs Parkway
Northpointe Circle II, Suite 200
Kansas City, MO 64153

As shown, this is not the address on the original Bruning report nor was it later amended to this address. The amended report lists the Canada address and removes the LP from the TransCanada name (exhibit 1). Therefore, the evidence shows that these contributions could not be made from a subsidiary of TransCanada that could be classified as a domestic corporation. Instead, the evidence clearly shows that TransCanada made the contributions to Heineman and Bruning in violation of 2 U.S.C. 441e and 11 C.F.R. § 110.20(b).

Even assuming the Heineman city and state error, and the Bruning omission were in good faith, and not a willful attempt to conceal this blatant violation of federal law, both committees have violated § 441e(a)(2) by accepting a contribution from a foreign national. Based upon the address provided on the committees’ disclosure reports, it is clear that the committees knew that the contribution came from a foreign address. Thus, the committees had an obligation to conduct an inquiry to determine the source of the funds and refund the contributions within 30 days of receipt if it determined that the contributions were from a foreign corporation. 11 C.F.R. § 103.3. Therefore, Heineman and Bruning are in violation of § 441e(a)(2) and 11 C.F.R. § 110.20(a)(4).

CONCLUSION

We believe the contributions described in this complaint are just the tip of the iceberg. We believe that there may be other states in which TransCanada has contributed

to state and local candidates. We urge the Commission to vigorously investigate this allegation and determine whether other state and local candidates may have been the recipient of foreign contributions.

Thus, for the reasons set forth above, the Commission should find reason to believe that TransCanada Corporation; Jon Bruning for Attorney General; and the Governor Heineman Committee have violated the Act, and the Commission's regulations.

Sincerely,

Jane Fleming Kleeb

Executive Director

Bold Nebraska

Notary