



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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106 East College Ave., Suite 700
Tallahassee, FL 32301

OCT 29 2019

RE: MUR 7582
Andrew Gillum for Governor and
Shelby Green as its treasurer

Dear Ms. Smith:

On March 21, 2019, the Federal Election Commission notified your above-named client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 23, 2019, the Commission found, on the basis of the information in the complaint, and information provided by respondents, that there is no reason to believe Andrew Gillum for Governor and Shelby Green as its treasurer violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(g) by accepting prohibited foreign national contributions. 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 Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Nick Mueller, the attorney assigned to this matter, at (202) 694-1577.

Sincerely,

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

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3

4 **RESPONDENTS:** Candide Group LLC **MUR: 7582**
5 Aner Ben-Ami
6 Sen. Kamala Harris
7 Kamala Harris for Senate and Stephen J. Kaufman
8 in his official capacity as treasurer
9 Barbara Lee
10 Barbara Lee for Congress and Loraine Binion
11 in her official capacity as treasurer
12 Friends of Ben Jealous and Jason Barnard Small
13 as its treasurer
14 Andrew Gillum for Governor and Shelby Green
15 as its treasurer
16 Nikki Fortunato Bas for Oakland City Council 2018
17 and Chelsea Johnson as its treasurer
18
19
20
21

22 **I. INTRODUCTION**

23 The Complaint in this matter alleges that Candide Group LLC (“Candide”) and Aner
24 Ben-Ami violated the Federal Election Campaign Act of 1971, as amended, (the “Act”) by
25 making prohibited foreign national contributions to five federal, state, and local candidate
26 committees, and prohibited corporate contributions to the two federal candidate committees.

27 Because the record does not indicate that either Candide or Ben-Ami made the alleged
28 contributions, the Commission finds no reason to believe that Candide or Ben-Ami violated
29 52 U.S.C. §§ 30121 or 30118 of the Act by making prohibited foreign national and corporate
30 contributions. Likewise, the Commission finds no reason to believe that Friends of Ben Jealous
31 and Jason Barnard Small as its treasurer; Andrew Gillum for Governor and Shelby Green as its
32 treasurer; and Nikki Fortunato Bas for Oakland City Council 2018 and Chelsea Johnson as its
33 treasurer (collectively “State and Local Recipient Committees”) violated 52 U.S.C. § 30121 and

1 11 C.F.R. § 110.20(g) by accepting prohibited foreign national contributions and that Kamala
2 Harris; Kamala Harris for Senate and Stephen J. Kaufman in his official capacity as treasurer;
3 Barbara Lee; and Barbara Lee for Congress and Loraine Binion in her official capacity as
4 treasurer (collectively “Federal Recipient Committees”) violated 52 U.S.C. §§ 30121, 30118, and
5 30104(b)(2)(A) and 11 C.F.R. § 110.20(g) by accepting prohibited corporate and foreign national
6 contributions and failing to report them.

7 **II. FACTS**

8 Candide is a limited liability corporation registered in California and formed in 2015 to
9 “provide consulting services to impact investing.”¹ According to Candide, it is a partnership for
10 tax purposes and has two partners, Morgan Simon and Aner Ben-Ami.² Candide states that
11 Simon has at all times been a United States citizen, while Ben-Ami became a permanent resident
12 alien in 2012 and a naturalized United States citizen in July 2018.³

13 The Complaint points to two statements on Candide’s website to support its allegation
14 that Candide made contributions to the Respondent Committees. First, on the “activist” tab of its
15 website, Candide lists each of the Respondent Committees as “Political candidates and
16 organizations supported.”⁴ Second, at the bottom of the same page, it states “Candide Group is
17 not a grant-making organization and does not accept proposals, however we do make a small
18 number of philanthropic and political contributions each year to holistically support the

¹ Compl. at 2 (Mar. 18, 2019); Candide Group/Ben-Ami Resp. at 1 (Apr. 9, 2019).

² *Id.* The Complaint alleges that Candide is a corporation for tax purposes, citing documents on file with the Securities and Exchange Commission. Compl. at 4. A review of these documents indicates that Morgan and Ben-Ami each own 50% of the entity but they contain no indication whether Candide has elected to be taxed as a corporation or partnership.

³ Candide Group/Ben-Ami Resp. at 1.

⁴ Compl. at 2; *see id.*, Ex. 3.

1 infrastructure needed for lasting change.”⁵ Finally, the complaint includes a screenshot of Ben-
2 Ami’s Facebook post from August 9, 2018, stating that he “just became a citizen.”⁶ Based on
3 this post, the Complainant states that Ben-Ami’s “previous U.S. immigration status remains
4 murky.”⁷

5 The alleged recipient committees each responded to the complaint stating that after
6 checking their records, they have not received any contributions from Candide or Ben-Ami.⁸
7 Two of the committees note that they have received (and reported) a contribution from Morgan
8 Simon, listing her employer as Candide.⁹

9 III. LEGAL ANALYSIS

10 The Act prohibits any “foreign national” from directly or indirectly making a contribution
11 or donation of money or other thing of value, or an expenditure, in connection with a federal,
12 state, or local election.¹⁰ The Act’s definition of “foreign national” includes an individual who is
13 not a citizen or national of the United States and who is not lawfully admitted for permanent
14 residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn,

⁵ *Id.* Of note, Candide’s website does not specifically state, nor does it clearly imply, that Candide has made contributions to any of the candidates that it “supports.” *See Id.*

⁶ *Id.*, Ex. 1.

⁷ *Id.* at 5.

⁸ Gillum Supp. Resp. at 3, Decl. of Bridget Smith (May 21, 2019); Harris Resp. at 3 (Apr. 12, 2019); Lee Resp. at 1-2 (Apr. 9, 2019); Fortunato Bas Resp. (Apr. 5, 2019); Jealous Resp. at 1, Aff. of Jason Bernard Small (Apr. 3, 2019).

⁹ *See* Gillum Supp. Resp. at 3, Decl. of Bridget Smith (noting that the Gillum Committee received one contribution of \$50 from Morgan Simon on November 7, 2017); Jealous Resp., Aff. of Jason Bernard Small, Ex. A (noting one contribution of \$27 from Morgan Simon on May 31, 2017). *But see* Candide Resp. at 2 (listing a \$50 contribution from Simon to Jealous).

¹⁰ 52 U.S.C. § 30121(a)(1); *see also* 11 C.F.R. § 110.20(b), (c), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012).

1 includes a “partnership, association, corporation, organization, or other combination of persons
2 organized under the laws of or having its principal place of business in a foreign country.”¹¹

3 Commission regulations implementing the Act’s foreign national prohibition provide:

4 A foreign national shall not direct, dictate, control, or directly or indirectly
5 participate in the decision-making process of any person, such as a corporation,
6 labor organization, political committee, or political organization with regard to
7 such person’s Federal or non-Federal election-related activities, such as decisions
8 concerning the making of contributions, donations, expenditures, or
9 disbursements . . . or decisions concerning the administration of a political
10 committee.¹²

11
12 The Act prohibits corporations from making contributions to candidates or their
13 committees in connection with federal elections.¹³ Contributions by an LLC that elects to be
14 treated as a partnership by the Internal Revenue Service are treated as partnership contributions
15 rather than corporate contributions.¹⁴ Likewise, it is also unlawful for any person to knowingly
16 accept, or receive such a prohibited corporate or foreign national contribution.¹⁵

17 In the present matter, there is no information from which to conclude that the alleged
18 contributions from Candide or Ben-Ami occurred. While Candide, on its website, does reference
19 candidates supported, and states that it “make[s] a small number of philanthropic and political
20 contributions each year,” none of the committees “supported” have reported contributions from
21 Candide, and in their responses, each states that reviews of their records indicate they have not
22 received contributions from Candide.¹⁶ Candide explains that it “has never made any political

11 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

12 11 C.F.R. § 110.20(i).

13 52 U.S.C. § 30118(a).

14 11 C.F.R. § 110.1(g)(2).

15 52 U.S.C. § 30118(a); 11 C.F.R. § 110.20(g).

16 Compl., Ex 3; *see supra* note 8.

1 contributions”¹⁷ and clarifies that the referenced contributions were made by one of the two
2 partners who own the entity, Morgan Simon, who is a U.S. citizen.¹⁸ This explanation is
3 supported by two of the alleged recipient committees noting contributions from Simon, listing
4 Candide as her employer.¹⁹

5 Accordingly, because the record does not indicate that Candide or Ben-Ami made the
6 alleged foreign national contributions, the Commission finds no reason to believe that Candide
7 Group LLC or Ben-Ami violated 52 U.S.C. §§ 30121 or 30118 by making prohibited foreign
8 national and corporate contributions. Further, the Commission finds no reason to believe that the
9 State and Local Recipient Committees violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(g) by
10 accepting prohibited foreign national contributions, and that the Federal Recipient Committees
11 violated 52 U.S.C. §§ 30121, 30118 and 30104(b)(2)(A), and 11 C.F.R. § 110.20(g) by accepting
12 prohibited corporate and foreign national contributions and failing to report those contributions.

¹⁷ Candide Resp. at 2 (emphasis omitted).

¹⁸ Candide Resp. at 2 (detailing contributions to all five candidates, made by Simon, “from personal funds”).

¹⁹ See *supra* note 9. Even assuming, *arguendo*, that Candide did make the alleged contributions, there is no evidence that Ben-Ami, a partner at Candide, was a foreign national when it made the contributions or that he was involved in any decision by Candide to make a contribution. Complainant’s evidence only supports the claim that he was not a United States citizen at the time. There is no evidence contradicting his claim that he has been a permanent resident alien since 2012 and such status would allow him to make legal contributions either in his personal capacity or as a partner in Candide. See 52 U.S.C. § 30121(b).