FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Stephen Nekhaila, Treasurer
Libertarian Party of Florida
1301 East 11th Street
Panama City, FL 32401

JUL 19 2019

RE: MUR 7320

Dear Mr. Nekhaila:

On February 16, 2018, the Federal Election Commission (the "Commission"), notified the Libertarian Party of Florida (the "Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaints were forwarded to you at that time.

Upon review of the allegations contained in the complaint, and information provided by the Committee, the Commission, on July 11, 2019, found that there is reason to believe that the Committee violated 52 U.S.C. § 30121(a), the Act's foreign national prohibition. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

The Committee may submit any factual or legal materials that it believes is relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed questions and requests for documents should be submitted to the Office of the General Counsel within 30 days of your receipt of this notification. Any additional materials or statements you wish to submit should accompany the response to the order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that

pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent(s).

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Wanda Brown at (202) 694-1650.

On behalf of the Commission,

Ellen L. Weintraub

Ellen L. Weintraub
Chair

Enclosures
Questions and Requests for Documents
Factual and Legal Analysis

MUR 7320 - Questions and Requests for Documents

Please answer the questions and produce the requested documents regarding Pierre Crevaux, the Libertarian Party of Florida ("LPF") and the Libertarian Party of Miami-Dade ("LPMD").

1. What was Pierre Crevaux's nationality, citizenship and/or U.S. immigration status at all times during his association with LPMD and or LPF. Identify all individual officers and employees of LPMD and/or LPF with knowledge of Crevaux's nationality, citizenship or U.S. immigration status. Submit copies of all documents, records or communications related to LPMD's and/or LPF's knowledge of Crevaux's nationality, citizenship and/or U.S. immigration status.

2. Describe how Pierre Crevaux became known to and associated with LPMD and/or LPF. Name the individuals who participated in Crevaux's hiring or appointment, and who later supervised his work at LPMD and/or LPF, and describe their roles. Submit copies of all documents, records or communications related to Crevaux's association with LPMD and/or LPF.

3. Describe Pierre Crevaux's duties and/or role in the management, administration, and activities of LPMD and/or LPF. Submit copies of all documents, records, and communications related to Crevaux's management or administration of LPMD and/or LPF activities.

4. Describe Pierre Crevaux's duties and/or role in connection with LPMD and/or LPF fundraising or the solicitation of contributions. Submit copies of all documents, records, and communications related to Crevaux's fundraising or the solicitation of contributions for LPMD and/or LPF.

5. Describe Pierre Crevaux's duties and/or role in connection with determining how LPMD and LPF made expenditures in connection with federal, state and local elections. Submit copies of all documents, records, and communications related to Crevaux's duties and/or role in authorizing or directing LPMD or LPF election-related disbursements.

6. Describe the circumstances surrounding any monetary or in-kind contributions Pierre Crevaux made to LPMD or LPF. State whether LPMD and/or LPF has refunded these contributions. Submit copies of all documents, records, and communications related to any such contributions.

7. State whether LPMD and/or LPF have policies or procedures regarding the participation of foreign nationals in the management or administration of LPMD and/or LPF activities. Submit copies of all documents, records, and communications related to any LPMD and/or LPF policies or procedures regarding foreign nationals.

8. State whether any foreign nationals other than Crevaux have participated in the management, administration or activities of LPMD and/or LPF. Submit copies of all documents, records, communications related to other foreign nationals involved in the management or administration of LPMD and/or LPF activities.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT:	Libertarian Party of Florida and James C. Morris in his official capacity as treasurer	MUR 7320

I. INTRODUCTION

The Complaint alleges that the Libertarian Party of Florida and James C. Morris in his official capacity as treasurer ("LPF") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the decision making processes of a political committee's contributions or expenditures in connection with a federal election. The Complaint alleges that Pierre Crevaux, a foreign national, served as Chief of Staff to LPF Chairman Marcos Miralles. The Complaint further alleges that Crevaux contributed $5 to LPF in violation of the Act's foreign national ban.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

LPF is a state committee of a political party registered with both the Commission and with the state of Florida.[1] Marcos Miralles is the Chairman of the LPF and, according to the Complaint, a Libertarian Party of Miami Dade County board member.[2] The record includes an undated communication from Crevaux in which he identifies himself as Chief of Staff to LPF

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[1] *See* Advisory Op. 2010-13 (LPF) (recognizing the LPF's state party committee status); FLORIDA DEPARTMENT OF STATE, *Committee Tracking System*, http://dos.elections.myflorida.com/committees/ComDetail.asp?account=3402 (last visited Sept. 18, 2018).

[2] Compl. at 1.

Chairman Miralles.[3] It is unclear whether Crevaux served in his position at LPF as a volunteer or a paid staff member.

The record indicates that Crevaux is a foreign national.[4] The record includes an email dated May 5, 2017, from Crevaux, in which he states that "I'm an immigrant. I'm still in the process of getting my paperwork done, and I'm a Libertarian volunteer."[5] The record also includes an email from Miralles sent on October 13, 2017, in which he acknowledges the frustration some party members have with his Chief of Staff being an "undocumented immigrant."[6]

The record also indicates that Miralles, in his capacity as Chairman of LPF, appointed Crevaux as his Chief of Staff and granted him certain supervisory powers.[7] Further, Crevaux made a $5 contribution to the LPF, which LPF refunded on the same day.[8] The record includes a receipt from godaddy.com showing that Crevaux made a $5 contribution,[9] emails between officers and directors of LPF discussing Crevaux's foreign national status and the refund of the

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3 *Id.* at 8.

4 *See id.* at 1, 4-6.

5 Compl. at 6.

6 *Id.* at 5.

7 *Id.* at 1, 5, 8.

8 *See id.* at 12; MIAMI-DADE COUNTY, *Political Committees, Libertarian Party of Miami-Dade County, Q2 2017*, https://www.voterfocus.com/CampaignFinance/candidate_pr.php?op=rp&e=13&c=miamidade&ca=1254&sdc=837&cname=+Libertarian+Party+of+Miami-Dade+County+&coffice=Party+Executive+Committee&rptdate=17Q2
(4/1/2017 - 6/30/2017)&rellevel=3&dhc=14315&committee=Y (last visited Aug. 14, 2018) (evidencing that Crevaux made a $100 contribution to LPMD). The Florida Department of Election campaign finance database does not appear to show Crevaux's attempted $5 contribution to LPF.

9 Compl. at 11-13.

$5 contribution.[10] LPF's response asserts only that Crevaux's contribution was returned on the same day it was received; LPF's treasurer attached a receipt for the refund.[11]

B. Legal Analysis

The Act and Commission regulations prohibit any "foreign national" from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election.[12] The Act's definition of "foreign national" includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a "foreign principal" as defined at 22 U.S.C. § 611(b).[13] Commission regulations implementing the Act's foreign national prohibition provide:

> A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.[14]

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10 *Id.* at 14-15.

11 Resp. of Libertarian Party of Fla. (Feb. 27, 2018).

12 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (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); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

13 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

14 11 C.F.R. § 110.20(i).

The Commission has explained that this provision also bars foreign nationals from "involvement in the management of a political committee."[15]

In light of these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a "commercial vendor," *i.e.*, in the ordinary course of business, and at the usual and normal charge, as long as foreign nationals do not directly or indirectly participate in any committee's management or decision-making process in connection with its election-related activities.[16] For example, in MUR 5998, the Commission found that the foreign national owners of a venue did not make or facilitate a contribution to a political committee by allowing the committee to rent the venue for a fundraising event.[17] The venue at issue was rented out for events in the ordinary course of business, and the owners charged the committee the usual and normal amount for the service.[18] The Commission noted that there was no available information to suggest — and the foreign nationals and political

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15 Contribution Limits and Prohibitions, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that the foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees' activities as a volunteer without making a prohibited contribution, she "must not participate in [the candidate's] decisions regarding his campaign activities" and "must refrain from managing or participating in the decisions of the Committees.").

16 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining "commercial vendor" as "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include "anything of value," which in turn includes all "in-kind contributions," such as "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services." 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute a contribution under the Act. However, soliciting, accepting, or receiving information in connection with an election from a foreign national, as opposed to purchasing the information at the usual and normal charge or hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

17 Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

18 *Id.*

committee expressly denied — that the foreign nationals had any "decision-making role in the event."[19]

The Commission has found that not all participation by foreign nationals in the election-related activities of others will violate the Act. In MUR 6959, for example, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing clerical duties, such as online research and translations, during a one month-long internship with a party committee.[20] Similarly, in MURs 5987, 5995, and 6015, the Commission found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services to perform at a campaign fundraiser and agreeing to let the political committee use his name and likeness in its emails promoting the concert and soliciting support, where the record did not indicate that the foreign national had been involved in the committee's decision-making process in connection with the making of contributions, donations, expenditures, or disbursements.[21] By contrast, the Commission has consistently found a violation of the foreign national prohibition

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[19] *Id.* at 5.

[20] Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national's activities, did not indicate that the foreign national participated in any political committee's decision-making process). The Commission also found that a $3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer's services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

[21] Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

where foreign national officers or directors of a U.S. company participated in the company's decisions to make contributions or in the management of its separate segregated fund.[22]

There is information that Crevaux participated in decision-making processes with in connection with LPF's election-related spending in his role as Chief of Staff to LPF Chairman Miralles.[23] While the record information does not detail the duties for this position, the record does indicate that the Chairman is the top position within LPF.[24] Given Crevaux's position as Chief of Staff to LPF's Chairman, it is likely that he participated in LPF's management or decision-making processes in connection with LPF's election-related spending. In fact, the record contains a communication from Crevaux, in his capacity as "Chief of Staff to the Chair," to "Regional Representatives" with instructions to acquire signatures from county-level affiliates in order to proceed with the Chair's "Operation: First Step" electoral strategy and an email from a "Regional Representative" expressing concern that a foreign national is involved in the committee's decision-making.[25]

Because it appears that Crevaux served in a position for LPF in which he was involved in the committee's management and decision-making processes in connection with the committees'

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22 *See, e.g.*, Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

23 *See* Compl. at 8.

24 *See* LIBERTARIAN PARTY OF FLORIDA, *Officers*, https://lpf.org/party/leadership/ (last visited Sept. 18, 2018).

25 *See* Compl. at 8, 9.

election-related spending, there is reason to believe that LPF violated the Act's foreign national prohibition.[26]

With respect to Crevaux's direct contribution, LPF apparently refunded Crevaux's $5 contribution the same day, which is within the ten-day timeframe allowed for a treasurer to refund a foreign national contribution.[27]

Based on the foregoing, the Commission finds reason to believe that LPF violated 52 U.S.C. § 30121(a).

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26 *See* 52 U.S.C. § 30121(a); 11 C.F.R. § 110.20(i); Advisory Op. 2004-26 at 2; MUR 6184 (Skyway Concession Company, LLC, *et al.*).

27 *See* 11 C.F.R. § 103.3(b).