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October 5, 2020

The Honorable Gerald E. Connolly
Chairman, Subcommittee on Government Operations
Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Responses to Post-Hearing Questions
from Chairman Gerald E. Connolly
September 14, 2020 Hearing: “Postal Update”

Question1, Chairman Connolly: If allegations of reimbursing employees for political donations are true, how are Mr. DeJoy’s actions in violation of federal election laws?

If the allegations are true, the actions by Mr. DeJoy are in clear violation of two provisions of federal election laws. Under 52 U.S.C. Section 30122, it is unlawful for any person to make a contribution in the name of another, or for any person to permit his or her name to be used to make such a contribution. The Federal Election Commission regulation which implements this statutory provision, 11 C.F.R. Section 110.4(b)(2)(i) and (ii) provides examples of violations of the law, that “Giving money or anything of value, all 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 another person when in fact the contributor is the source” and “Making a contribution of money or anything of value and attributing

as the source of the money or thing of value to another person when in fact the contributor is the source.” Additionally, this ban is violated by the “augmentation of compensation paid to an employee, in any manner, where such augmentation is done to effect a contribution in the employee’s name to Federal candidates or political committees.” FEC Advisory Opinion 1986-41, at 2-3, (Air Transport) 12-5-86.

These “straw donor” or conduit violations are intended to conceal the true donor’s identity. According to “Federal Prosecution of Election Offenses, Eighth Edition, December 2017, Election Crimes Branch, Public Integrity Section (DOJ), p.141, “A common type of conduit scheme involves a corporate official who instructs the corporation’s employees to make contributions to a federal candidate, and then reimburses the employees from corporate funds generally through fictitious bonuses or pay raises”. This reflects precisely the allegations concerning Mr. DeJoy’s actions.

The law regarding “straw donors” has been upheld by the courts as it prohibits conduct often used by perpetrators to disguise other campaign finance violations, such as contributions which are over the limits or are from prohibited sources, and because the law insure the complete and accurate disclosure of the source of contributions to Federal candidates or political committees.

In providing such reimbursement through bonuses, illegal corporate funds are laundered to the candidate in violation of 52 U.S.C. Sections 30122 and 30118. Contributions by corporations to candidate committees are prohibited under Section 30118, unless made to a SuperPAC. Additionally, consenting to any prohibited contribution by any officer of a corporation is prohibited.

Other potential violations could be triggered by a scheme involving two or more participants to thwart the statutory duties of the FEC to enforce reporting requirements and prohibitions, and to provide the public with accurate data. These can be prosecuted as a conspiracy under 18 U.S.C. Section 2C1, cmt.n.7. These alleged actions could also be charged as willfully causing false statements to be made to a federal agency under 18 U.S.C. Section 100(a)(2).

Question 2, Chairman Connolly: Can and should the Federal Elections Commission (FEC) or any other federal agency hold Mr. DeJoy accountable if these allegations are true?

The Federal Elections Commission or the Department of Justice (in the case of a willful violation) should investigate and hold Mr. DeJoy accountable if these allegations are true. The purpose of campaign finance laws is to provide full and truthful disclosure to the public about who is financing campaigns. The importance and constitutionality of such disclosure has been upheld by the United States Supreme Court in many decisions. Campaign finance laws, such as the requirement that a contribution be made in the name of its true source, ensures that voters will have the information needed to evaluate candidates and issues in order to vote. The laws are also intended to provide a fair electoral process, and to prevent undue influence over electoral outcomes by the very wealthy.

No one, regardless of status, should be able to violate the law with impunity and not be held accountable. Failing to investigate and hold Mr. DeJoy accountable will increase the American public's lack of trust in government and their sense that the wealthy and privileged can violate the law with no consequence.

Many have suggested that because the Federal Election Campaign Act of 1971, in 28 U.S.C. Section 2462, contains a 5 year statute of limitations, there is no legal basis for an investigation of this matter as many of the contributions made under the alleged unlawful DeJoy scheme were made within the five year period.

However, because the alleged violations and actions were fraudulently concealed, the statute can be tolled under the doctrine of equitable estoppel, or fraudulent concealment. The doctrine provides that when wrongful conduct is concealed which prevented the Commission or the DOJ from timely discovering the violations,

the statute does not run until the violation is discovered, or could have been discovered. In a case such as this, where the alleged wrongdoing is fraudulent, and was clearly concealed as it is the statutory obligation of DeJoy and New Breed Logistics to file truthful reports and to clearly disclose the true source of the contributions. Because of that concealment, it would not have been possible to discover these violations. So the fraudulent concealment doctrine would enable the FEC or DOJ to investigate these allegations, despite the statute of limitations.

Even if the statute of limitations is not tolled, Section 2462 does not preclude the FEC from obtaining equitable relief more than five years after the violation. Under Section 2462, agencies can request relief in the form of an order from DeJoy and his company to correct the allegedly false disclosures and to identify the true source of the contributions.

The FEC should exercise its authority to enforce the law and investigate these allegations.

Question 3, Chairman Connolly: If the straw donor allegations are true, Mr. DeJoy would be in violation of North Carolina campaign finance laws because his company, New Breed Logistics was located in High Point, North Carolina. North Carolina law does not have a statute of limitations for the violations alleged. What should the next steps be for North Carolina State officials to ensure accountability, and does the FEC play a role in a state investigation?

North Carolina officials should be investigating these allegations to determine if they are within the scope of the state campaign finance laws. While the FEC has authority only over Federal campaign finance laws, which applies to federal candidates and committees, the FEC could assist North Carolina in the investigation since it is clearly within the purview of the FEC to investigate and assure compliance with the law in federal campaigns.

Question 4, Chairman Connolly: What are the likely effects of the recent orders by Judge Stanley Bastian in Eastern Washington's U.S. District Court and Judge Victor Marrero in New York's Southern District to temporarily block the Postal Service and Postmaster General Louis DeJoy from changing USPS policies or protocols ahead of November's election?

The orders by these Judges, as well as by U.S. District Judge Gerald Austin McHugh, in the Eastern District of Pennsylvania and U.S. District Court Judge Emmet G. Sullivan of the District of Columbia, have prohibited the Postal Service from implementing the measures which were enacted by Louis DeJoy and would have had a direct impact on efficient and timely voting by mail. Additionally, many other states have sued the Postal Service alleging that the operational changes needed clearance from the Postal Regulatory Commission, and have also infringed on the states' constitutional authority over elections.

There is an attempt by the Postal Service to negotiate with the states on issues relating to election mail and service delays, the orders by Judge Bastian, Marrero and Sullivan will be in effect through the election to prevent Mr. DeJoy from further attempt to impart vote by mail in the country. Any attempt by Mr. DeJoy to avoid compliance with the orders will undoubtedly cause the Judges to enjoin changes which are inconsistent with their orders.

The orders already issued by the Federal bench will prevent Mr. DeJoy and the USPS from any actions which will curtail the agency's operations to make it more difficult for Americans to exercise their right to vote and participate in our democracy.