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COMMISSION

ORIGINAL

2010 NOV 15 PM 1:08

OFFICE OF GENERAL
COUNSEL

October 19, 2010 original filing
November 5, 2010 revised filing

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

MUR # 6432

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.

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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

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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. Farther, 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 entity. 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

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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,

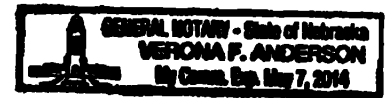
Jane Fleming Kleeb

Jane Fleming Kleeb

Executive Director

Bold Nebraska

Notary



Subscribed and sworn to me on this 5th day of November, 2010."

Verona F. Anderson

Note: Exhibits cited above are on file already with the FEC, mailed on October 19, 2010.

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NEBRASKA
ACCOUNTABILITY AND
DISCLOSURE COMMISSION
11th Floor, State Capitol
P.O. Box 95086
Lincoln, NE 68509
(402) 471-2522

BEFORE COMPLETING THIS FORM
READ THE FILING REQUIREMENTS
ON PAGES 9, 10 & 11

CAMPAIGN STATEMENT

Candidate and
Ballot Question Committee

NADC FORM B-1

MARK
DATE
MICROFILM
NUMBER

4/12/10
8200231

OFFICE USE ONLY

- All political committees required to register with the Commission must file periodic Campaign Statements (See Filing Requirements on pages 9 and 10.)
- Attach all schedules (A-D) and type or print all information.
- Late filing fee for filing this statement after the date it is due is \$25 for each day the statement remains not filed, not to exceed \$750.
- Persons who fail to file this report or otherwise do not comply with the reporting provisions of the law are subject to penalties.

ITEM 1 NAME OF COMMITTEE AND COMMITTEE TREASURER ☐ Check here if any information in Item 1 is new

Committee Name The Governor Heineman Committee Telephone No. (402) 474-3283
Address 1610 N Street, Suite 100 Lincoln NE 68508
STREET ADDRESS OR RURAL ROUTE CITY STATE ZIP CODE
Treasurer Bryan P. Robertson
Home Address 7611 Stevens Ridge Road Lincoln, NE 68316 Home Telephone No. (402) 489-0516
STREET ADDRESS OR RURAL ROUTE CITY STATE ZIP CODE
Business Address Business Telephone No. (402) 436-2600
STREET ADDRESS OR RURAL ROUTE CITY STATE ZIP CODE

ITEM 2 DATE OF ELECTION FOR WHICH STATEMENT IS FILED: May 11, 2010
MONTH DAY YEAR

ITEM 3 NATURE OF FILING (Check appropriate box)

Primary Election Campaign Statements	General Election Campaign Statements	Other Campaign Statements
<input checked="" type="checkbox"/> Thirty days before election	<input type="checkbox"/> Thirty days before election	<input type="checkbox"/> Amended Statement for _____
<input type="checkbox"/> Ten days before election	<input type="checkbox"/> Ten days before election	<input type="checkbox"/> Annual statement due January 31st
<input type="checkbox"/> Forty days after election	<input type="checkbox"/> Seventy days after election	<input type="checkbox"/> Final Statement-Attach form A-2, Statement of Dissolution

Additional Ballot Question Campaign Statements - Statewide ballot question committees only

☒ Last day of calendar month in which petition is filed with the Secretary of State
☐ Monthly Report for _____ MONTH
☐ Thirty days after the deadline for filing petitions with the Secretary of State

ITEM 4 REPORTING PERIOD (See instructions pages 9 and 11)

THIS STATEMENT COVERS A PERIOD FROM January 1, 2010 TO April 6, 2010
MONTH DAY YEAR MONTH DAY YEAR

ITEM 5 NATURE OF COMMITTEE

☒ Candidate - Office Sought Governor
(INCLUDE DISTRICT NUMBER WHERE APPLICABLE)
☐ Ballot Question - Ballot Issue _____

Schedule B - Contributions Over \$250 Received from all Sources except Individuals

List all businesses, political committees and other entities which contributed more than \$250 during the period covered by the report and those which have contributed a cumulative total of over \$250 during the election period. (Do not include contributions from individuals. Contributions from individuals should be listed on Schedule A.) All contributions from the same donor must be listed under that donor. In the first column list the name and address of each business, political committee or other entity which contributed a cumulative total of over \$250 during the election period. In the next column list the date(s) of the contributions, except those which have been listed on previous reports. In Column A, list the total amount of the contributions received to date during the election period as of the beginning of the reporting period from each of donors listed. If you are filing your first Campaign Statement for the Primary Election or an annual statement, this column will show zero. If you are filing your second Campaign Statement for the election or any subsequent election statement, this column must include amounts listed on previous election Campaign Statements. In Columns B, C, and D, list the contributions received during this period. In Column E, list the total contributions received from each of the donors listed for the election period to date. (E.g. A PAC who gave \$150 during the Primary Election and \$125 during the General Election would have its contributions listed as the cumulative total contributed during the election if over \$250.)

Name, Street Address, City and State of Each Contributor (except individuals) Which Contributed a Cumulative Total of Over \$250 During the Election Period	Date of Each Contribution Not Previously Listed	Total Contribution Previously Reported During the Election Period	Other Contributions This Period	In-kind Contributions This Period	Legal/Political Funds This Period	Total Contributions Election Period to Date
		A	B	C	D	E

NOTE: CONTRIBUTIONS FROM POLITICAL COMMITTEES MUST ALSO INCLUDE THE NAME OF THE TREASURER OF THE CONTRIBUTING COMMITTEE. IN-KIND CONTRIBUTIONS MUST BE DESCRIBED IN THE FIRST COLUMN OR IN THE SPACE PROVIDED ON PAGE 2.

- REFERENCE CANDIDATE COMMITTEE TREASURER'S GUIDE FOR EXAMPLES -

Ruth Mueller Robak LLC 530 S. 13th Street, Suite 110 Lincoln NE 68508	03/17/2010		250.00			750.00
State Troopers Assoc of NE 150 NW 40th Street Lincoln NE 68528-	03/12/2010		2000.00			2000.00
Tenet Health Systmes 801 Pennsylvania Avenue Washington DC 20004- Eric Burch	01/12/2010		1000.00			1000.00
Tenet Health Systmes 801 Pennsylvania Avenue Washington DC 20004- Eric Burch	02/26/2010		250.00			1250.00
Trans Canada Keystone Pipeline 450 - 1st Street Omaha NE 68104-	01/26/2010		2500.00			2500.00
Tyson Foods, Inc PO Box 2020 Springdale AR 72765-2020 Archie Schaffer III	01/26/2010			3000.00		3000.00

***REMINDER:** All candidates for the Legislature, and all candidates for other covered elective offices (under the CFLA), are subject to mandatory limits on contributions from sources other than individuals during the election period. It is important that candidates for these offices be aware of and comply with these limits.

NEBRASKA
ACCOUNTABILITY AND
DISCLOSURE COMMISSION
11th Floor, State Capitol
P.O. Box 98088
Lincoln, NE 68509
(402) 471-2522

BEFORE COMPLETING THIS FORM
READ THE FILING REQUIREMENTS
ON PAGES 9, 10 & 11

CAMPAIGN STATEMENT

Candidate and Ballot Question
Committees

NADC FORM B-1

POSTMARK DATE	40
MICROFILM NUMBER	8200208

OFFICE USE ONLY

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2010 APR 12 PM 12:24

- All political committees required to register with the Commission must file periodic Campaign Statements (See Filing Requirements on pages 9 and 10).
- Attach all schedules (A-D) and type or print all information.
- Late filing fee for filing this statement after the due date is \$25 for each day the statement remains not filed, not to exceed \$750.
- Persons who fail to file this report or otherwise do not comply with the reporting provisions of the law are subject to penalties.

ITEM 1 NAME OF COMMITTEE AND COMMITTEE TREASURER ☐ Check here if any information in Item 1 is new

Committee Name Bruning for Attorney General Telephone No. 402 438-2400

Address PO Box 83527 Lincoln NE 68501
STREET ADDRESS OR RENTAL ROUTE CITY STATE ZIP CODE

Treasurer Douglas Ayer

Home Address 20910 Schofield Cir, Omaha, NE 68128 Home Telephone No. (402) 697-5943

Business Address _____ Business Telephone No. ()

ITEM 2 DATE OF ELECTION FOR WHICH STATEMENT IS FILED: May 11 2010
MONTH DAY YEAR

ITEM 3 NATURE OF FILING (Check appropriate box)

Primary Election Campaign Statements

☒ Thirty days before election

☐ Ten days before election

☐ Forty days after election

General Election Campaign Statements

☐ Thirty days before election

☐ Ten days before election

☐ Seventy days after election

Other Campaign Statements

☐ Amended Statement for _____

☐ Annual statement due January 31st

☐ Final Statement - Attach A-2
Statement of Dissolution

Additional Ballot Question Campaign Statements - Statewide ballot question committees only

☐ Last day of calendar month in which petition is filed with the Secretary of State

☐ Monthly Report for _____

MONTH

☐ Thirty days after the deadline for filing petitions with the Secretary of State

ITEM 4 REPORTING PERIOD (See instructions pages 9 and 11)

THIS STATEMENT COVERS A PERIOD FROM January 1 2010 TO April 6 2010
MONTH DAY YEAR MONTH DAY YEAR

ITEM 5 NATURE OF COMMITTEE

☒ Candidate - Office Sought Attorney General
(INCLUDE DISTRICT NUMBER WHERE APPLICABLE)

☐ Ballot Question - Ballot Issue _____

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Schedule B - Contributions Over \$250 Received from all Sources except Individuals

List all businesses, political committees and other entities which contributed more than \$250 during the period covered by the report and those which have contributed a cumulative total of over \$250 during the election period. (Do not include contributions from individuals. Contributions from individuals should be listed on Schedule A.) All contributions from the same donor must be listed under that donor. In the first column list the name and address of each business, political committee or other entity which contributed a cumulative total of over \$250 during the election period. In the next column list the date(s) of the contributions, except those which have been listed on previous reports. In Column A, list the total amount of the contributions received to date during the election period as of the beginning of the reporting period from each of donors listed. If you are filing your first Campaign Statement for the Primary Election or an annual statement, this column will show zero. If you are filing your second Campaign Statement for the election or any subsequent election statement, this column must include amounts listed on previous election Campaign Statements. In Columns B, C, and D, list the contributions received during this period. In Column E, list the total contributions received from each of the donors listed for the election period to date. (E.g. A PAC who gave \$150 during the Primary Election and \$125 during the General Election, would have its contributions listed as the cumulative total contributed during the election if over \$250.)

Name, Street Address, City and State of Each Contributor (except individuals) Which Contributed a Cumulative Total of Over \$250 During the Election Period	Date of Each Contribution Not Previously Listed	Total Contributions Previously Reported During the Election Period	Cash Contributions This Period	In-Kind Contributions This Period	Unpaid Refunds This Period	Total Contributions Election Period to Date
		A	B	C	D	E

NOTE: CONTRIBUTIONS FROM POLITICAL COMMITTEES MUST ALSO INCLUDE THE NAME OF THE TREASURER OF THE CONTRIBUTING COMMITTEE. IN-KIND CONTRIBUTIONS MUST BE DESCRIBED IN THE FIRST COLUMN OR IN THE SPACE PROVIDED ON PAGE 2.

- REFERENCE CANDIDATE COMMITTEE TREASURER'S GUIDE FOR EXAMPLES -

Thomas Livestock Co., Inc. 1910 Westridge Dr Broken Bow NE 68822-1414		500.00				500.00
TransCanada Keystone Pipeline, LP	01/22/2010		2500.00			2500.00
Union Pacific Railroad Omaha NE 68179-1001	02/09/2010	1000.00	1000.00			2000.00
UnitedHealthcare Lincoln NE 68510		500.00				500.00
Valero Political Action Committee Jim Greenwood San Antonio TX 78269-		2500.00				2500.00
Werner Enterprises Omaha NE 68138-	02/09/2010		500.00			500.00

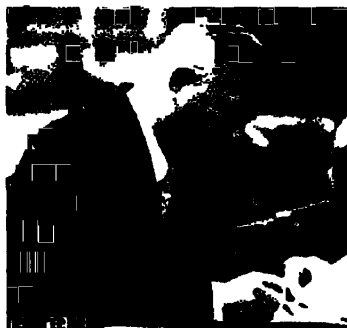
***REMINDER:** All candidates for the Legislature, and all candidates for other covered elective offices (under the CFLA), are subject to mandatory limits on contributions from sources other than individuals during the election period. It is important that candidates for these offices be aware of and comply with these limits.

- Nebraska Watchdog - <http://nebraska.watchdog.org> -**Exclusive: Pipeline Contributions Raise More Questions**Posted By [Joe Jordan](#) On October 8, 2010 @ 12:33 am In [News, State Politics](#) | [5 Comments](#)

[1] An investigation by **Nebraska Watchdog** has uncovered more questions surrounding a pair of \$2,500 campaign contributions, one to **Nebraska Governor Dave Heineman (R)** the other to **Attorney General Jim Bruning (R)**.

The contributions were made by Canadian oil giant **TransCanada**, which is in the process of trying to build a controversial oil pipeline across several states including Nebraska. [2]

Earlier this week Heineman and Bruning returned the money, after the **Nebraska Accountability**



and **Disclosure Commission (NADC)** notified them that there could be legal questions surrounding the TransCanada contributions. According to the **Federal Election Commission**, [3] foreign nationals are prohibited "from contributing, donating or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly."

NADC Executive Director, **Frank Daley**, says it would be up to the federal government to decide if any laws were broken. [4]

TransCanada's lobbyist at the State Capitol in Lincoln, **Gordon Kissel** [5], tells **Nebraska Watchdog** the contributions were legal because the company, which has an office in Omaha, is incorporated in Delaware.



According to **Nebraska Watchdog's** investigation, the questionable donations were first discovered when an NADC auditor noticed Bruning's campaign filing only carried the name TransCanada and a street address. There was no city or state listed. According to Daley the report simply said "TransCanada, 450 1st Street S. W." When NADC checked further it realized that "450 1st Street S.W." is TransCanada's address in Calgary, Alberta.



[6] Heineman's filing listed the contribution from TransCanada as "Trans Canada Keystone Pipeline 450 1st Street Omaha, NE 68104."

Nebraska Watchdog asked Daley if his office would have found the questionable contributions if Bruning's report had added the words "Omaha, Nebraska" as Heineman's report had. Daley replied, "Probably not."

Daley says it's not clear why the campaigns made the incorrect entries.

Dean Bernhardt, the Heineman campaign's finance director, tells **Nebraska Watchdog** it was an "honest

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mistake." [7]

Kissel, the lobbyist for TransCanada who insists the contributions were legal, tells **Nebraska Watchdog** he has "no idea" why Heineman and Bruning returned the donations.



Dennhardt says it was in the Heineman campaign's "best interests to return the money." Dennhardt then added, "The last thing you want to do as a fundraiser is give the money back." The Lincoln Journal Star reported that Dennhardt said Heineman would have "absolutely no comment" on the contribution.

Heineman, who is running for re-election against Democrat Mike Meister, has raised nearly \$2 million compared to Meister's \$83,000.

In late August during an exclusive interview with **Nebraska Watchdog**, Heineman took a hands off approach to TransCanada's proposed **XL Keystone Pipeline**. Heineman said, "I just haven't focused on that issue to any great extent because it's a federal regulatory issue. So I've let our congressional delegation deal with that."

Nebraska Watchdog has been unable to reach Bruning for comment. Bruning who is running unopposed for re-election has raised just over \$900,000.

The **Sierra Club of Nebraska**, which opposes the pipeline, is asking the U.S. Attorney to investigate the TransCanada contributions. It's not clear if an investigation will be launched.

Reported by Joe Jordan, joed@nebraskawatchdog.org [8]

Editor's note: to subscribe to News Updates from **Nebraska Watchdog** at no cost, [click here](#) [9]

Article printed from Nebraska Watchdog: <http://nebraska.watchdog.org>

URL to article: <http://nebraska.watchdog.org/9243/exclusive-pipeline-contributions-raise-more-questions/>

URLs in this post:

- [1] Image: <http://nebraska.watchdog.org/files/2010/10/022.jpg>
- [2] Image: <http://nebraska.watchdog.org/files/2010/10/Heineman-and-pen.jpg>
- [3] Federal Election Commission : <http://www.fec.gov/pages/brochures/foreign.shtml>
- [4] Image: <http://nebraska.watchdog.org/files/2010/10/bruning-3.jpg>
- [5] Gordon Kissel: <http://www.kisseles.com/bios.asp>
- [6] Image: <http://nebraska.watchdog.org/files/2010/10/Keystone-Pipeline-System1.jpg>
- [7] Image: <http://nebraska.watchdog.org/files/2010/10/005.jpg>
- [8] joed@nebraskawatchdog.org; <mailto:joed@nebraskawatchdog.org>
- [9] click here: <http://nebraskawatchdog.us1.list-manage.com/subscribe?u=6d198a77b46a077ab2b3a62b181d1a63179af54>

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