

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 7450**

6 DATE COMPLAINT FILED: August 1, 2018

7 DATE OF NOTIFICATION: August 8, 2018

8 DATE OF LAST RESPONSE: September 25, 2019

9 DATE OF ACTIVATION: February 5, 2019

10
11 ELECTION CYCLE: 2018

12 SOL EXPIRATION: Apr. 11, 2023/Aug. 22, 2023

13
14 **COMPLAINANT:**

Campaign Legal Center

15 **RESPONDENTS:**

Ashbritt, Inc.

16 America First Action, Inc. and Jon Proch in his
17 official capacity as treasurer

18
19 **RELEVANT STATUTES AND
20 REGULATIONS:**

52 U.S.C. § 30119

21 11 C.F.R. § 115.1

22 11 C.F.R. § 115.2

23 11 C.F.R. § 115.5

24 11 C.F.R. § 115.6

25
26 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

27
28 **FEDERAL AGENCIES CHECKED:**

None

29 **I. INTRODUCTION**

30 The Complaint alleges that Ashbritt, Inc. (“Ashbritt”) is a federal contractor that
31 contributed \$500,000 to America First Action, Inc. and Jon Proch in his official capacity as
32 treasurer (the “Committee” or “AFA”), an independent-expenditure-only political committee
33 (“IEOPC”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹
34 Ashbritt asserts that the contribution was from its Chairman, Randal Perkins, rather than Ashbritt

¹ Compl. at 1-2 (Aug. 1, 2018).

1 itself.² AFA asserts that it did not know that Ashbritt was a federal contractor when it received
2 the contribution.³ Both Ashbritt and AFA (collectively, “Respondents”) contend that AFA
3 corrected the contributor information in the relevant AFA disclosure report after learning that
4 AFA had reported the contribution as having been made by Ashbritt, not Perkins.⁴

5 Based on the available information and for the reasons set forth below, we recommend
6 that the Commission find reason to believe that Ashbritt made a contribution in violation of
7 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a). We further recommend that the Commission
8 take no action at this time as to AFA. Additionally, we recommend that the Commission
9 authorize compulsory process.

10 **II. FACTUAL BACKGROUND**

11 Ashbritt is a Subchapter S corporation registered in Florida, and its website states it
12 provides “rapid-response disaster recovery and special environmental services” as “a contractor
13 for the U.S. Army Corps of Engineers.”⁵ Perkins is the founder and Chairman of Ashbritt and is

² Ashbritt, Inc. Resp. at 1 (Sept. 17, 2018) (“Ashbritt Resp.”).

³ America First Action, Inc. Resp. at 1 (Sept. 25, 2018) (“AFA Resp.”).

⁴ *Id.*; Ashbritt Resp. at 1.

⁵ Ashbritt Resp. at 1; Ashbritt, About Us, <http://www.ashbritt.com/about/>; *see* Florida Div. of Corps., Detail by Entity Name, <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=ASHBRITT%20P920000006000&aggregateId=domp-p92000000600-f837aed0-d4df-436b-9f44-95cfcfb0bdc5&searchTerm=ashbritt&listNameOrder=ASHBRITT%20P920000006000>.

1 the “beneficial owner of a majority of Ashbritt’s stock.”⁶ AFA is an IEOPC registered with the
2 Commission.⁷

3 AFA reported receiving a \$500,000 contribution from Ashbritt, Inc. on April 11, 2018.⁸
4 The Complaint alleges that Ashbritt has numerous contracts with the federal government,
5 including several that were ongoing at the time of the contribution.⁹ For example, the Complaint
6 identifies a \$41,698,565 contract with the Department of Defense with a performance period of
7 January 12 to June 30, 2018.¹⁰ The Complaint also notes that for one of its contracts with the
8 Department of Defense, Ashbritt received a supplemental agreement worth \$459,675 on
9 April 10, 2018, just one day before Ashbritt made the contribution to AFA.¹¹ Ashbritt also had a
10 contract worth \$160,497,319 to provide debris removal services to the Department of Defense
11 with a performance period of December 8, 2017, to May 30, 2018.¹²

12 In its response, Ashbritt does not deny it was a federal contractor at the time of the
13 contribution. Instead, Ashbritt contends that “[u]pon learning that the contribution had been
14 reported as coming from Ashbritt, Mr. Perkins immediately advised [AFA] that it was a personal

⁶ Ashbritt Resp. at 1; *see also* Ashbritt 2019 Florida Profit Corp. Annual Report (Mar. 14, 2019), <http://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=domp-p92000000600-f837aed0-d4df-436b-9f44-95cfcfb0bdc5&transactionId=p92000000600-34d939c2-ab79-45f0-900e-1cdf169d8469&formatType=PDF> (stating that Perkins is Chairman of Ashbritt). Perkins is also listed as Operations Advisor on Ashbritt’s website. Ashbritt, Team Members, http://www.ashbritt.com/team_member/randal-r-perkins/.

⁷ AFA Amend. Statement of Organization (Nov. 14, 2017); AFA, <https://www.alapac.org/>.

⁸ AFA 2018 Pre-Primary Report at 6 (May 24, 2018).

⁹ Compl. at 2.

¹⁰ *Id.* at 4, note 9 (citing USASpending.gov, Contract Summary, <https://www.usaspending.gov/#/award/65497534>).

¹¹ *Id.* at 4 (citing USASpending.gov, Contract Summary, <https://www.usaspending.gov/#/award/66926361>).

¹² *See id.* at note 9 (citing USASpending.gov, Contract Summary, <https://www.usaspending.gov/#/award/62661522>).

1 contribution.”¹³ Ashbritt asserts that it “maintains a loan and distribution account for” Perkins
2 and that “[f]rom time to time, checks may be written on Ashbritt’s account that are personal (and
3 not corporate) expenses and are properly chargeable to the Randy Perkins loan/distribution
4 account.”¹⁴ Ashbritt states that this “was the case with the contribution at issue here.”¹⁵
5 Specifically, Ashbritt states the \$500,000 check was written “from an Ashbritt account” but “was
6 charged to Mr. Perkins’s personal loan/distribution account.”¹⁶ Ashbritt did not provide any
7 documentation of a charge to Perkins’s loan/distribution account.

8 In AFA’s Response, it contends that the Complaint fails to allege that it violated the Act
9 and states that it had no knowledge that Ashbritt was a federal government contractor when it
10 received the contribution, marked “Ashbritt, Inc.,” and filed its 2018 Pre-Primary Report.¹⁷
11 Further, AFA asserts that it filed an amended report after Perkins notified it that “he used his
12 personal funds for the contribution.”¹⁸

13 **III. LEGAL ANALYSIS**

14 **A. Federal Contractor Contribution**

15 A “contribution” is defined as “any gift . . . of money or anything of value made by any
16 person for the purpose of influencing any election for Federal office.”¹⁹ Under the Act, a federal

¹³ Ashbritt Resp. at 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ AFA Resp. at 1.

¹⁸ *Id.*; see AFA Amend. 2018 Pre-Primary Report at 18 (Aug. 22, 2018).

¹⁹ 52 U.S.C. § 30101(8)(A)(i).

1 contractor may not make contributions to political committees.²⁰ Specifically, the Act prohibits
2 “any person . . . [w]ho enters into any contract with the United States . . . for the rendition of
3 personal services or furnishing any material, supplies, or equipment to the United States or any
4 department or agency thereof” from making a contribution “if payment for the performance of
5 such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”²¹
6 These prohibitions begin to run at the beginning of negotiations or when proposal requests are
7 sent out, whichever occurs first, and end upon the completion of performance of the contract or
8 termination of negotiations, whichever occurs last.²² And these prohibitions apply to a federal
9 contractor who makes contributions to any political party, political committee, federal candidate,
10 or “any person for any political purpose or use.”²³ Stockholders, officers, or employees of a
11 corporation that is a federal contractor are not prohibited from making contributions or
12 expenditures from their personal assets.²⁴

13 In matters involving transfers of funds from corporations to political committees, the
14 Commission has determined that funds not yet distributed to shareholders are corporate, not
15 personal, funds. In MUR 3191 (Christmas Farm Inn), the Commission found probable cause to
16 believe that a candidate committee accepted corporate contributions by receiving loans from the
17 candidate's Subchapter S corporation's assets rather than the candidate's personal funds.²⁵ In

²⁰ 52 U.S.C. § 30119(a); 11 C.F.R. § 115.2.

²¹ 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

²² 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

²³ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2; *see also* MUR 7099 (Suffolk Construction Company) (Commission found reason to believe that federal government contractor made a prohibited contribution to an IEOPC).

²⁴ *See* 11 C.F.R. § 115.6.

²⁵ Certification, MUR 3191 (Christmas Farm Inn) (Sept. 14, 1994) (available at <https://www.fec.gov/files/legal/murs/3191.pdf> at 565); *see also* Gen. Counsel's Rpt. at 7-15, MUR 3191 (Christmas

1 MUR 3119 (Edmar Corp.), the Commission found probable cause to believe that a Subchapter S
 2 corporation contributed to a candidate who was the corporation's majority shareholder by
 3 loaning her funds that she used to make contributions to her campaign.²⁶ The Commission also
 4 found reason to believe that respondents in MUR 5655 (Rick Renzi for Congress) violated the
 5 Act in connection with loans the candidate made to his campaign that had come from two
 6 Subchapter S corporations that he owned.²⁷

7 It is undisputed that Ashbritt was a federal contractor at the time the contribution was
 8 made. Ashbritt's website states that it "has been a contractor for the U.S. Army Corps of
 9 Engineers (USACE) for 20 years," and government records indicate that it was engaged in
 10 several federal contracts in April 2018, and therefore, was prohibited from making a contribution
 11 to a political committee.²⁸ For the reasons set forth below, we conclude that there is reason to

Farm Inn) (available at <https://www.fec.gov/files/legal/murs/3191.pdf> at 528) (explaining that corporate assets of closely-held corporations are separate from those of its shareholders, shareholders have no vested interest in the corporate property or assets until such time as distribution occurs in the form of dividends, and that the conversion of corporate assets into personal assets does not occur until the time of distribution).

²⁶ Certification, MUR 3119 (Edmar Corp.) (Jan. 6, 1993) (available at <https://www.fec.gov/files/legal/murs/3119.pdf> at 193); *see also* Gen. Counsel's Rpt. at 2-5, MUR 3119 (Edmar Corp.) (available at <https://www.fec.gov/files/legal/murs/3119.pdf> at 184) (rejecting respondents' argument that the corporation's Subchapter S status made the corporation's funds effectively the candidate's personal funds).

²⁷ Certification, MUR 5655 (Rick Renzi for Congress) (May 4, 2005); *see also* Gen. Counsel's Rpt. #2 at 2-4, MUR 5655 (Rick Renzi for Congress) (noting that the Commission's investigation determined that the funds loaned by Renzi to his campaign were in fact his personal funds); *cf.* Advisory Op. 1984-10 (Arnold & Porter LLP) (determining that the partnership, which was a federal contractor, owned the account from which the law firm wished to issue checks for authorized contributions made by partners and subsequently charge partners' personal accounts, and therefore, the partnership could not issue the checks); Advisory Op. 1982-13 (Sutherland, Asbill & Brennan) (approving a law firm's plan in which authorized contributions were attributed to partners and charged to their respective personal firm account and then deducted from the partners' respective monthly income distributions); Advisory Op. 1981-50 (Hansell, Post, Brandon & Dorsey) (determining that it was permissible for a law firm to charge authorized contributions to a partner's firm account and deduct the amount from that partner's account); Advisory Op. 1997-09 (Chicago Board of Trade) at 7 (determining that traders could use their personal margin accounts to make contributions only if the accounts held sufficient funds to cover the entirety of the contributions, so that the firm was "not extending credit to the trader or advancing firm funds to the trader and thus making the contribution itself").

²⁸ Ashbritt, About Us, <http://www.ashbritt.com/about/>; *see, e.g.*, USASpending.gov, Contract Summary, <https://www.usaspending.gov/#/award/65497534>. Ashbritt also contributed to political committees in past election cycles. In 2016, Ashbritt contributed \$25,000 to Floridians for a Strong Middle Class, and in 2013, Ashbritt

1 believe that Ashbritt violated the Act and Commission regulations by making a contribution to
2 AFA while serving as a federal contractor.

3 Although officers and employees of corporations may make contributions from their
4 personal funds, the limited information Ashbritt provided does not substantiate that Perkins used
5 his personal funds to make the contribution.²⁹ Ashbritt asserts that the contribution was charged
6 to Perkins's "loan/distribution account,"³⁰ but provides no documents supporting its position,
7 such as an affidavit, a copy of the contribution check, or a cover letter supporting the
8 characterization of the funds as Perkins's, not Ashbritt's. There is no information in the record
9 that the contribution appeared to be anything other than a contribution from Ashbritt; in fact, the
10 record indicates that the funds in question were in an Ashbritt account when the check was
11 issued. AFA disclosed it as such, and its response says that the check was marked "Ashbritt,
12 Inc."³¹ To the extent that the check was "chargeable" to Perkins's "loan/distribution account,"
13 the funds may have belonged to the corporation when the contribution was made.³² Further, the
14 statement that the funds were "chargeable" to Perkins's loan/distribution account is ambiguous,

contributed \$5,000 to Ready PAC (then known as "Ready for Hillary"). *See* Floridians for a Strong Middle Class 2016 30-Day Post-General Report at 6 (Dec. 8, 2016); Ready PAC Amend. 2013 Year-End Report at 28 (Sept. 2, 2014).

²⁹ Ashbritt Resp. at 1; *see* 11 C.F.R. § 115.6.

³⁰ Ashbritt Resp. at 1.

³¹ AFA Resp. at 1.

³² Also relevant is the fact that Respondents received notice of the Complaint before AFA amended its report to show Perkins as the contributor — August 8 and August 22, 2018, respectively. And the four-month period between Ashbritt's contribution and AFA's amendment raises questions whether any company records existed during that time indicating that the \$500,000 contribution was chargeable to Perkins personally, an area we would explore in the proposed investigation.

1 and one reasonable interpretation of that statement is that Perkins received a loan from Ashbritt
2 to make the contribution, which, depending on the circumstances, could be a violation itself.³³

3 The available record indicates that Ashbritt was a federal contractor at the time of the
4 contribution, and Ashbritt has not sufficiently supported its position that the \$500,000
5 contributed by Ashbritt to AFA were actually Perkins's personal funds. Accordingly, we
6 recommend that the Commission find reason to believe that Ashbritt made a contribution in
7 violation of 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).

8 **B. Solicitation of Federal Contractor Contribution**

9 The Act prohibits any person from knowingly soliciting any federal contractor
10 contribution.³⁴ The Complaint does not specifically allege that AFA solicited the \$500,000
11 contribution with the knowledge that Ashbritt was a federal contractor. AFA states that it had
12 “no knowledge [that] Ashbritt is a federal government contractor” when it disclosed the
13 \$500,000 contribution and that it “promptly” amended the relevant disclosure report to show that
14 Perkins was the contributor after learning that the contribution was meant to be from Perkins.³⁵
15 Nevertheless, the available record does not include information regarding the making of the
16 contribution, and the responses provided by AFA and Ashbritt are unsworn. Because the
17 proposed investigation would examine the circumstances of the contribution and may provide

³³ See 52 U.S.C. § 30122 (prohibition against contributions in the name of another); Gen. Counsel's Brief at 11, MUR 3191 (Christmas Farm Inn) (“Because the funds at issue came in the form of loans which [the candidate] was obligated to repay, the funds were controlled by the [c]orporation, not by [the candidate].”).

³⁴ 52 U.S.C. § 30119(a)(2); *see also* 11 C.F.R. § 115.2(c).

³⁵ AFA Resp. at 1.

1 information regarding any knowledge on the part of AFA, we recommend that the Commission
2 take no action at this time with respect to AFA.

3 **IV. PROPOSED INVESTIGATION**

4 Our investigation would seek to determine whether the funds disbursed from Ashbritt's
5 account were Perkins's funds, rather than those of the corporation, at the time the contribution
6 check was issued to AFA. We would seek information regarding Ashbritt's bylaws and other
7 relevant information as it pertains to the corporation's "loan/distribution accounts" and
8 information regarding Perkins's authority to "charge" expenses to his "loan/distribution
9 account." In addition, we would seek documentation of the purported \$500,000 "charge" to
10 Perkins's "loan/distribution account." We also would seek information from Perkins himself and
11 Ashbritt employees to determine if they provided any guidance to AFA regarding the identity of
12 the contributor, including, but not limited to, a copy of the check itself and any communications
13 regarding the contribution. We will seek to conduct our investigation through voluntary means
14 but recommend that the Commission authorize the use of compulsory process, including the
15 issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as
16 necessary.

17 **V. RECOMMENDATIONS**

- 18 1. Find reason to believe that Ashbritt, Inc. violated 52 U.S.C. § 30119(a)(1) and
19 11 C.F.R. § 115.2(a);
- 20 2. Take no action at this time as to America First Action, Inc.;
- 21 3. Approve the attached Factual and Legal Analysis; and

