

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7569

DATE FILED: February 21, 2019

DATE OF NOTIFICATION: February 26, 2019

LAST RESPONSE RECEIVED: April 8, 2019

DATE ACTIVATED: August 20, 2019

EXPIRATION OF SOL: November 1, 2023

ELECTION CYCLE: 2018

COMPLAINANT: Campaign Legal Center

RESPONDENTS: 3M Company
Congressional Leadership Fund and
Caleb Crosby in his official capacity as
Treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30119(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

31 The Complaint alleges that 3M Company, a federal government contractor, made a
32 \$50,000 contribution to Congressional Leadership Fund and Caleb Crosby in his official capacity
33 as treasurer (“Committee”), an independent-expenditure-only political committee (“IEOPC”), in
34 violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). 3M Company
35 acknowledges that it was a federal contractor at the time that it made the contribution to the
36 Committee. The Committee denies that it knowingly solicited a contribution from a federal
37 contractor.

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1 The available record indicates that 3M was a federal contractor at the time of its
 2 contribution to the Committee. Accordingly, we recommend that the Commission find reason to
 3 believe that 3M Company violated 52 U.S.C. § 30119(a)(1). Further, we recommend that the
 4 Commission dismiss the Complaint as to the Committee and issue a letter of caution. Finally, we
 5 recommend that the Commission authorize pre-probable cause conciliation with 3M.

6 **II. FACTUAL BACKGROUND**

7 3M is a publicly traded company headquartered in St. Paul, Minnesota, and incorporated
 8 in Delaware.¹ 3M is also a federal contractor which had multiple contracts with the federal
 9 government at the time of its reported November 1, 2018 contribution to the Committee.² The
 10 Committee is an IEOPC that raised over \$157 million during the 2018 election cycle and spent
 11 over \$138 million in independent expenditures.³

12 The Complaint alleges that 3M violated the Act's prohibition on contributions made to
 13 political committees from federal government contractors when it made a \$50,000 contribution

¹ 3M Resp. at 2 (Apr. 8, 2019). 3M is a Fortune 500 company with operations in 70 countries and sales in 200 countries. *See* https://www.3m.com/3M/en_US/company-us/about-3m/history/. 3M is ranked 97th on Fortune Magazine's 2018 list of the top 500 U.S. companies in terms of total revenue. *See* <https://fortune.com/fortune500/2018/search/>.

² Compl. at 3 (Feb. 21, 2019), citing USA Spending.gov. *See* <https://www.usaspending.gov/#/search/ae9c88f69fe6034dda1ce6a4c8e82e89>. *See also* Compl. at 2, citing 3M's website. *See* https://www.3m.com/3M/en_US/government-solutions-us/contracts/.

³ Congressional Leadership Fund Amended Statement of Organization at 2 (May 17, 2017). *See* Congressional Leadership Fund 2017-2018 Financial Summary (Raising), *available at* <https://www.fec.gov/data/committee/C00504530/?tab=summary>; Committee 2017-2018 Financial Summary (Spending), *available at* <https://www.fec.gov/data/committee/C00504530/?tab=summary#cash-summary>.

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1 to the Committee on November 1, 2018.⁴ The Complaint also states that it is illegal for any
 2 person to knowingly solicit contributions from federal government contractors.⁵

3 3M confirms that it was a federal government contractor at all relevant times, and it states
 4 that when it learned from the Complaint that the contribution was prohibited under the Act, it
 5 requested a refund from the Committee, which it received on March 25, 2019.⁶ 3M asserts that
 6 at the time its in-house counsel reviewed and approved the contribution, counsel believed that
 7 the Supreme Court's decision in *Citizens United v. FEC*⁷ permitted a contribution by 3M to an
 8 IEOPC.⁸ 3M claims that it has taken steps to prevent a reoccurrence of a contribution to federal
 9 candidates by educating relevant personnel about the statutory prohibition on contributions by
 10 federal contractors.⁹

11 The Committee asserts that the matter must be dismissed as to Committee because the
 12 Complaint never alleges that it violated the Act or Commission regulations and that there is no

⁴ Compl. at 3. *See also* Congressional Leadership Fund 2018 30-Day Post-General Report at 31 (Dec. 6, 2018).

⁵ Compl. at 3. The Complaint does not allege that the Committee knowingly solicited this contribution from 3M.

⁶ 3M Resp. at 1, 3, and attached Declaration of Joseph Otterstetter ("Otterstetter Decl.") ¶ 7 (3M Associate General Counsel for International Operations). *See also* Congressional Leadership Fund 2019 Mid-Year Report at 48 (July 31, 2019) (refund reported on March 22, 2019).

⁷ 558 U.S. 310 (2010).

⁸ 3M Resp. at 1, 3, 4; Otterstetter Decl. ¶ 12 ("At the time I reviewed and approved the proposed contribution, I believed that *Citizens United v. FEC*, 558 U.S. 310 (2010), permitted such contributions."). 3M also asserts that enforcement of 52 U.S.C. § 30119 against 3M may be unconstitutional by citing to language in the *Speech Now* and *Wagner* cases involving the Commission. 3M Resp. at 6-7 (discussing *Speech Now.org v. FEC*, 569 F.3d 686 (D.C. Cir. 2010) (en banc); *Wagner v. FEC*, 793 F.3d 1 (D.C. Cir. 2015) (en banc)). In *Wagner*, the Court, en banc, unanimously upheld the federal contractor ban on making contributions because in serving sufficiently important government interests, the statute employs means closely drawn to avoid unnecessary abridgement of associational freedoms, and does not deprive plaintiffs of equal protection of the laws. 793 F.3d at 34.

⁹ 3M Resp. at 5, 6.

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1 allegation that the Committee knew 3M was a federal government contractor.¹⁰ Further, the
 2 Committee asserts that when, as a result of the Complaint, it became aware that 3M was a federal
 3 contractor it immediately refunded the contribution.¹¹ The Committee also asserts that its online
 4 donation page requires donors to expressly confirm that they are not federal government
 5 contractors.¹² Finally, the Committee asserts that the Commission has routinely dismissed
 6 actions against unknowing recipients of such contributions, and cites to MUR 7099 (Suffolk
 7 Construction Company).¹³

8 **III. LEGAL ANALYSIS**

9
 10 A “contribution” is defined as “any gift . . . of money or anything of value made by any
 11 person for the purpose of influencing any election for Federal office.”¹⁴ Under the Act, a federal
 12 contractor may not make contributions to political committees.¹⁵ Specifically, the Act prohibits
 13 “any person . . . [w]ho enters into any contract with the United States . . . for the rendition of
 14 personal services or furnishing any material, supplies, or equipment to the United States or any
 15 department or agency thereof” from making a contribution “if payment for the performance of
 16 such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”¹⁶
 17 These prohibitions begin to run at the beginning of negotiations or when proposal requests are

¹⁰ Committee Resp. at 1 (March 25, 2019).

¹¹ *Id.*

¹² *Id.*, n.1. 3M asserts that it made the contribution to the Committee via a check. 3M Resp. at 3, and Otterstetter Decl. ¶ 14.

¹³ Committee Resp. at 1.

¹⁴ 52 U.S.C. § 30101(8)(A)(i).

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

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

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1 sent out, whichever occurs first, and end upon the completion of performance of the contract or
 2 the termination of negotiations, whichever occurs last.¹⁷ And these prohibitions apply to a
 3 federal contractor who makes contributions to any political party, political committee, federal
 4 candidate, or “any person for any political purpose or use.”¹⁸

5 3M has acknowledged that it was a federal contractor at the time that it made a
 6 contribution of \$50,000 to the Committee. Accordingly, we recommend that the Commission
 7 find reason to believe that 3M violated 52 U.S.C. § 30119(a)(1).¹⁹

8 The Act prohibits any person from knowingly soliciting any federal contractor
 9 contributions.²⁰ The Complaint does not specifically allege that the Committee knowingly
 10 solicited federal contractor contributions. The Committee has denied that it knowingly solicited
 11 contributions from 3M, and it refunded the contribution after receiving the Complaint.²¹
 12 Committee treasurers, however, shall be responsible under Commission regulations for
 13 examining all contributions received for evidence of illegality.²² While the Committee asserts
 14 that its website requires donors to expressly confirm that they are not federal contractors,²³ the
 15 contribution that the Committee received from 3M was made by a check,²⁴ and the Committee

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

¹⁸ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.

¹⁹ See Factual and Legal Analysis at 3 in MUR 7568 (Alpha Marine Services Holdings, LLC); Factual and Legal Analysis at 4 in MUR 7451 (Ring Power Corporation).

²⁰ See 52 U.S.C. § 30119(a)(2); see also 11 C.F.R. § 115.2 (c).

²¹ Committee Resp. at 1.

²² 11 C.F.R. § 103.3(b).

²³ Committee Resp. at 1, n.1.

²⁴ 3M Resp. at 3.

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1 does not provide any information regarding efforts to examine this contribution for evidence of
 2 illegality. The Committee was established in 2011, raised over \$11 million and \$12 million
 3 during the 2012 and 2014 election cycles, respectively, and over \$51 million and \$157 million
 4 during the 2016 and 2018 election cycles, respectively,²⁵ indicating ample means to ensure
 5 compliance with applicable campaign finance regulations including those set forth in 11 C.F.R.
 6 § 103.3(b). In 2018, 3M was ranked 97th on Fortune magazine's list of the top 500 U.S.
 7 companies in terms of total revenue; the company manufactures and sells a variety of products
 8 for business and industry as well for consumers.²⁶ Under these circumstances, it appears that the
 9 Committee should have considered the contribution from 3M as raising a genuine question
 10 regarding whether it could be accepted or not, including with respect to the prospect that a well-
 11 known company like 3M could have been a federal contractor, and engaged in best efforts to
 12 resolve that question.²⁷ In MUR 7451 (Ring Power Corporation), New Republican PAC
 13 received a contribution from Ring Power, a Florida-based regional company and federal
 14 contractor that sells and leases industrial machinery, and in MUR 7099 (Suffolk Construction
 15 Company), Priorities USA Action received two contributions from Suffolk, a Massachusetts-
 16 based company and federal contractor that primarily served as general contractor and
 17 construction manager for privately funded projects, circumstances that may not have as readily

²⁵ See Congressional Leadership Fund Statement of Organization (Oct. 24, 2011). *See also* <https://www.fec.gov/data/committee/C00504530/>.

²⁶ See <https://fortune.com/fortune500/2018/search/>. *See also* https://www.3m.com/3M/en_US/company-us/about-3m/.

²⁷ If such a contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution by making at least one written or oral request for evidence of the legality of the contribution. *See* 11 C.F.R. § 103.3(b)(1).

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1 raised a question as to whether they could be accepted.²⁸ Nevertheless, this apparent lack of due
2 diligence by the Committee does not suggest that the Committee knowingly solicited a federal
3 contractor contribution. Accordingly, we recommend the Commission dismiss the Complaint
4 and issue a letter of caution to the Committee regarding its obligations under 11 C.F.R.
5 § 103.3(b).

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²⁸ New Republican PAC stated in response to the MUR 7451 Complaint that the contribution from Ring Power Corporation was accompanied by a PAC form containing language that contributions from foreign nationals, foreign corporations and federal contractors are prohibited. *See* New Republican PAC Resp. at 2. And Priorities USA Action stated in response to the MUR 7099 Complaint that Suffolk initially informed Priorities USA that it was not a federal contractor when it made the contributions, but later informed the committee that it was a possibly a federal contractor at that time. *See* Priorities USA Action Resp. at 2, 4. *See also* MUR 7568 (Alpha Marine Services Holdings, LLC) (open matter) (Alpha Marine Services Holdings, which made a contribution to Congressional Leadership Fund, is a Louisiana-based tugboat manufacturing and marine transportation company and federal contractor).

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3 **V. RECOMMENDATIONS**

- 4 1. Find reason to believe that 3M Company violated 52 U.S.C. § 30119(a)(1) by
- 5 making a federal government contractor contribution;
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- 7 2. Dismiss the Complaint as to Congressional Leadership Fund and Caleb Crosby in
- 8 his official capacity as treasurer and issue a letter of caution;
- 9
- 10 3. Approve the attached Factual and Legal Analyses;
- 11
- 12 4. Enter into conciliation with 3M Company prior to a finding of probable cause to
- 13 believe;
- 14
- 15 5. Approve the attached conciliation agreement with 3M Company;
- 16
- 17 6. Approve the appropriate letters; and

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1 7. Close the file as to Congressional Leadership Fund and Caleb Crosby in his official
2 capacity as treasurer.

3
4 Lisa J. Stevenson
5 Acting General Counsel
6
7

8 11/18/2019

9 Date

10 Charles Kitcher by MA

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