



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

October 22, 2021

**VIA ELECTRONIC MAIL**

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Carol Laham, Esq.  
Andrew Woodson, Esq.  
Wiley Rein LLP  
1776 K Street NW  
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RE: MUR 7569  
3M Company

Dear Ms. Laham and Mr. Woodson:

On February 26, 2019, the Commission notified your client, 3M Company, of a complaint alleging that it violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and provided your client with a copy of the complaint.

After reviewing the allegations contained in the complaint and your client’s response, the Commission, on October 13, 2021, found reason to believe that 3M Company violated 52 U.S.C. § 30119(a)(1), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission’s finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

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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 your client is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or drigsby@fec.gov, within seven days of receipt of this letter. During conciliation, your client may submit any factual or legal materials that it believes are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within thirty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's Guidebook for Complaints and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/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.<sup>1</sup>

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 matter 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.

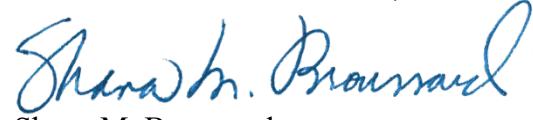
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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,



Shana M. Broussard  
Chair

Enclosures  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: 3M Company

MUR 7569

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission. The Complaint alleges that 3M Company, a federal government contractor, made a \$50,000 contribution to Congressional Leadership Fund and Caleb Crosby in his official capacity as treasurer (“Committee”), an independent-expenditure-only political committee (“IEOPC”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). 3M Company acknowledges that it was a federal contractor at the time that it made the contribution to the Committee.

The available record indicates that 3M was a federal contractor at the time of its contribution to the Committee. Accordingly, the Commission finds reason to believe that 3M Company violated 52 U.S.C. § 30119(a)(1).

**II. FACTUAL BACKGROUND**

3M was a federal contractor at the time of its reported November 1, 2018 contribution to the Committee.<sup>1</sup> The Committee is an IEOPC.<sup>2</sup>

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<sup>1</sup> Compl. at 3 (Feb. 21, 2019), citing USASpending.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/](https://www.3m.com/3M/en_US/government-solutions-us/contracts/).

<sup>2</sup> Congressional Leadership Fund Amended Statement of Organization at 2 (May 17, 2017).

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The Complaint alleges that 3M violated the Act's prohibition on contributions made to political committees from federal government contractors when it made a \$50,000 contribution to the Committee on November 1, 2018.<sup>3</sup>

3M confirms that it was a federal government contractor at all relevant times, and it states that when it learned from the Complaint that the contribution was prohibited under the Act, it requested a refund from the Committee, which it received on March 25, 2019.<sup>4</sup> 3M asserts that at the time its in-house counsel reviewed and approved the contribution, counsel believed that the Supreme Court's decision in *Citizens United v. FEC*<sup>5</sup> permitted a contribution by 3M to an IEOPC.<sup>6</sup> 3M claims that it has taken steps to prevent a reoccurrence of a contribution to federal candidates by educating relevant personnel about the statutory prohibition on contributions by federal contractors.<sup>7</sup>

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

<sup>4</sup> 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).

<sup>5</sup> 558 U.S. 310 (2010).

<sup>6</sup> 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.

<sup>7</sup> 3M Resp. at 5, 6.

### III. LEGAL ANALYSIS

A “contribution” is defined as “any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office.”<sup>8</sup> Under the Act, a federal contractor may not make contributions to political committees.<sup>9</sup> Specifically, the Act prohibits “any person . . . [w]ho enters into any contract with the United States . . . for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof” from making a contribution “if payment for the performance of such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”<sup>10</sup> These prohibitions begin to run at the beginning of negotiations or when proposal requests are sent out, whichever occurs first, and end upon the completion of performance of the contract or the termination of negotiations, whichever occurs last.<sup>11</sup> And these prohibitions apply to a federal contractor who makes contributions to any political party, political committee, federal candidate, or “any person for any political purpose or use.”<sup>12</sup>

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

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<sup>8</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>9</sup> 52 U.S.C. § 30119(a); 11 C.F.R. § 115.2.

<sup>10</sup> 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

<sup>11</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

<sup>12</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.