

BEFORE THE FEDERAL ELECTION COMMISSION

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FEC MAIL CENTER
2019 FEB 21 AM 11:47CAMPAIGN LEGAL CENTER
1411 K Street NW, Suite 1400
Washington, DC 20005

v.

MUR No. 7570SKYTRON, LLC
P.O. Box 888615
Grand Rapids, MI 495882019 FEB 21 PM 2:30
OFFICE OF
GENERAL COUNSEL

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Skytron, LLC has violated FECA's prohibition on federal contractors making contributions to political committees while negotiating or performing federal contracts, 52 U.S.C. § 30119(a)(1), by contributing \$10,000 to Outsider PAC (ID: C00678920).
2. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission *shall* make an investigation of such alleged violation . . ." 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

3. Outsider PAC is an independent expenditure-only political action committee (i.e., a "super PAC").¹
4. In the 2018 election cycle, Outsider PAC reported over \$857,000 in independent expenditures to the Commission, all of which were in the Michigan U.S. Senate race.²

¹ Outsider PAC, Statement of Organization, FEC Form 1, at 5 (filed May 16, 2018), <http://docquery.fec.gov/pdf/347/201805169112069347/201805169112069347.pdf>.

² *See* Outsider PAC, Independent Expenditures, 2017-18, FEC.gov, <https://www.fec.gov/data/committee/C00678920/?tab=spending> (last visited Feb. 21, 2019).

5. Skytron, LLC is a private, Michigan-based company that distributes equipment for the healthcare industry.³ According to USASpending.gov, “the official source for spending data for the U.S. Government,”⁴ Skytron is and has been the recipient of multiple federal contracts.⁵
6. On November 1, 2018, Outsider PAC received a \$10,000 contribution from “Skytron,” P.O. Box 888615, Grand Rapids, Michigan, according to its 2018 post-general report filed with the Commission.⁶

SUMMARY OF THE LAW

7. “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.” 52 U.S.C. § 30101(8)(A)(i).
8. Federal law prohibits a federal contractor from making any “contribution to any political party, committee, or candidate for public office” at any time between the commencement of

³ *About Us*, Skytron, <http://www.skytron.us/about.html> (last visited Feb. 21, 2019).

⁴ USASpending.gov, *Mission*, <https://www.usaspending.gov/#/about> (last visited Feb. 21, 2019).

⁵ See USASpending.gov, Keyword Search for “Skytron,”

https://www.usaspending.gov/#/keyword_search/%22skytron%22 (last visited Feb. 21, 2019); *see also, e.g.*,

USASpending.gov, Contract Summary, Award ID 36C25018C0017,

<https://www.usaspending.gov/#/award/6810297> (showing a contract with the U.S. Department of Veterans Affairs, with a period of performance of November 2, 2017 through November 1, 2019 and a potential award amount of \$136,000); USASpending.gov, Contract Summary, Award ID HHSI245201800127P,

<https://www.usaspending.gov/#/award/23256046> (showing a contract with the U.S. Department of Health and Human Services with a period of performance of December 4, 2017 through December 31, 2018 and a potential award amount of \$11,500). Both contracts were awarded to Skytron at the address 5085 Corporate Exchange Blvd SE, Grand Rapids, MI 49512. This address matches that of Skytron’s “world headquarters.” Skytron, *Contact Us*, <http://www.skytron.us/contactus.html> (last visited Feb. 21, 2019). Elsewhere, this address is identified as Skytron’s physical address, while P.O. Box 888615 is identified as its mailing address. *See, e.g., Skytron*, INDUSTRYNET, <https://www.industry.net.com/listing/3447432/skytron> (last visited Feb. 21, 2019) (showing the Corporate Exchange Blvd address as Skytron’s “physical address” and P.O. Box 888615 as its “mailing address”); Skytron, Application for OSHPD Preapproval of Manufacturer’s Certification, N.Y. OSHPD, <https://oshpd.ca.gov/ml/v1/resources/document?rs:path=/Construction-And-Finance/PreApproval/OPM-0285-13.pdf> (showing Skytron’s “mailing address” as P.O. Box 88615 and, on the next line, showing the same phone number, 800-759-8766, that is displayed alongside the Corporate Exchange Blvd “world headquarters” address on Skytron’s website).

⁶ Outsider PAC, 30-Day Post-General Report, FEC Form 3X, at 11 (filed Dec. 6, 2018), <http://docquery.fec.gov/pdf/225/201812069134579225/201812069134579225.pdf>.

negotiations for a federal contract and the completion of performance or termination of negotiations for the contract. 52 U.S.C. § 30119(a)(1).

9. Federal law additionally prohibits any person from knowingly soliciting such a contribution from a federal contractor. 52 U.S.C. § 30119(a)(2).
10. The contractor contribution ban applies to any person “who enters into any contract with the United States or any department or agency thereof” for “the rendition of personal services” or for “furnishing any material, supplies, or equipment,” or for “selling any land or building,” if “payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress.” 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(a).
11. The ban applies from when a request for proposals is sent out (or when contractual negotiations commence) until the completion of performance of the contract or the termination of negotiations. 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).
12. Since 2011, the Commission has made clear that the government contractor prohibition applies to contributions to independent expenditure-only political committees (i.e., “super PACs”) following the U.S. Supreme Court’s decision in *Citizens United v. FEC*⁷ and the D.C. Circuit decision in *SpeechNow.org v. FEC*.⁸ See, e.g., Advisory Opinion 2011-11 (Colbert) at 4-5, 10 (June 30, 2011); see also Press Release, FEC, *FEC statement on Carey v. FEC reporting guidance for political committees that maintain a non-contribution account*, n.1 (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>. In MUR 6403, the Commission emphasized that a contractor making a contribution to a political committee to fund independent expenditures is not itself making an expenditure; therefore, a

⁷ 130 S. Ct. 876 (2010).

⁸ 599 F.3d 686 (D.C. Cir. 2010).

contribution to such a committee falls “squarely within the statute’s prohibitions.” MUR 6403 (*Alaskans Standing Together*), Notification with Factual and Legal Analysis to Ahtna, Inc. and NANA Regional Corporation, Inc. at 5, 9 (Nov. 10, 2011). In 2017, the Commission found reason to believe that federal contractor Suffolk Construction Company, Inc. had violated 52 U.S.C. § 30119(a)(1) by contributing \$200,000 to Priorities USA Action, a super PAC supporting then-presidential candidate Hillary Clinton. *See* MUR 7099 (*Suffolk Construction Company, Inc.*), Notification to Campaign Legal Center at 1 (Sep. 25, 2017). The Commission emphasized that there is no *de minimis* exception to section 30119(a)(1), finding that even if a contributor’s federal contract work is only a “small fraction” of its overall business, this “does not negate the company’s status as a federal contractor.” MUR 7099, Factual and Legal Analysis at 4-5.

13. The federal contractor ban was upheld unanimously by the *en banc* D.C. Circuit in *Wagner v. Fed. Election Comm’n*, 793 F.3d 1 (D.C. Cir. 2015) (*en banc*). The *en banc* court stressed that “the record offers every reason to believe that, if the dam barring contributions were broken, more money in exchange for contracts would flow through the same channels already on display.” *Id.* at 18.

CAUSE OF ACTION

I. SKYTRON, LLC VIOLATED THE CONTRACTOR CONTRIBUTION BAN

14. Federal law and Commission regulations prohibit a federal contractor from making any contribution to any political committee during the period in which a federal contract is being negotiated or performed. 52 U.S.C. § 30119(a)(1), 11 C.F.R. Part 115.

15. According to USAspending.gov, “the official source for spending data for the U.S. Government,” Skytron, LLC is a federal contractor and was a federal contractor when it made the \$10,000 contribution to Outsider PAC on November 1, 2018.⁹
16. Consequently, there is reason to believe that Skytron, LLC, as a federal contractor, violated the federal contractor contribution ban by making a “contribution to any political . . . committee,” namely Outsider PAC, during the period its federal contracts were being negotiated and/or performed. 52 U.S.C. § 30119(a)(1).¹⁰

PRAYER FOR RELIEF

17. Wherefore, the Commission should find reason to believe that Skytron, LLC violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
18. The Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,



Campaign Legal Center, by
Brendan M. Fischer

⁹ See *supra* ¶¶5-6.

¹⁰ Skytron, LLC should have been on notice that federal law prohibits federal contractors from making contributions. On August 16, 2018, the Campaign Legal Center filed a complaint with the Commission alleging that the federal contractor Haworth, Inc. violated the contractor contribution ban by contributing \$10,000 to the same super PAC, Outsider PAC. See Complaint, Campaign Legal Center v. Haworth, Inc. (Aug. 16, 2018), <https://bit.ly/2LrnjzW>. Haworth, Inc. then stated publicly that it would be asking for its contribution to be refunded. See Melissa Ann Burke, Contractor Scrutinized for Giving \$10K to James Super PAC, *The Detroit News* (Aug. 16, 2018), <https://www.detroitnews.com/story/news/local/michigan/2018/08/16/complaint-contractor-haworth-donated-ohm-james/1006903002/>.

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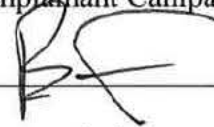
February 21, 2019

VERIFICATION

The complainant listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center



Brendan M. Fischer

Sworn to and subscribed before me this 21 day of February 2018.



Notary Public

