

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
1101 14th Street, NW, Suite 400
Washington, DC 20005
(202) 736-2200

v.

MUR No. **7885**

AMERICAN COLLEGE OF RADIOLOGY
1892 Preston White Drive
Reston, VA 20191

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that American College of Radiology 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 Senate Leadership Fund (ID: C00571703).
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. Senate Leadership Fund is an independent expenditure-only political action committee (*i.e.*, a “super PAC”).¹

¹ Senate Leadership Fund, Statement of Organization, FEC Form 1 at 1 (filed Jan. 20, 2015), <https://docquery.fec.gov/pdf/437/15031374437/15031374437.pdf>.

4. The “Donate” page on Senate Leadership Fund’s website redirects to a third-party contribution platform that contains a disclaimer requiring contributors to affirm that they are “not . . . a federal government contractor.”²
5. In the 2020 election cycle, Senate Leadership Fund reported over \$293.7 million in independent expenditures supporting or opposing federal candidates in U.S. Senate races across the country.³
6. American College of Radiology is a professional association that represents nearly 40,000 medical professionals, and is based in Reston, Virginia, according to its website.⁴ According to USAspending.gov, “the official source for spending data for the U.S. Government,”⁵ American College of Radiology, located at 1891 Preston White Drive, Suite 1, Reston, VA, 20191, is and has been the recipient of numerous federal contracts and grants active throughout 2020,⁶ including a contract with the Department of Veterans affairs for \$351,500 that began on July 1, 2018, and a contract with the Department of Health and Human Services for \$401,384 that began on August 19, 2019.⁷

² See *Donate*, SENATELEADERSHIPFUND.ORG, <https://senate-leadership-fund.rev.v.co/donate> (last visited Mar. 16, 2021).

³ See Senate Leadership Fund, Independent Expenditures, 2019–20, FEC.GOV, <https://www.fec.gov/data/committee/C00571703/?tab=spending&cycle=2020#independent-expenditures> (last visited Mar. 16, 2021).

⁴ *About ACR*, AMERICAN COLLEGE OF RADIOLOGY, <https://www.acr.org/About-ACR> (last visited Mar. 16, 2021).

⁵ USAspending.gov, *Mission*, <https://www.usaspending.gov/#/about> (last visited Mar. 16, 2021).

⁶ See Advanced Search for Recipient “American College of Radiology,” USASPENDING.GOV, <https://www.usaspending.gov/search/?hash=fb53f6ae8a673fc69cb69e9b5fdc2787> (last visited Mar. 16, 2021).

⁷ USAspending.gov, Contract Summary, Award ID 36C24518C0125, https://www.usaspending.gov/award/CONT_AWD_36C24518C0125_3600_-NONE_-NONE- (last visited Mar. 16, 2021) (showing a \$351,500 contract from the Department of Veterans Affairs to the American College of Radiology with a period of performance of July 1, 2018 through June 30, 2021); USAspending.gov, Contract Summary, Award ID 75D30119C06430, https://www.usaspending.gov/award/CONT_AWD_75D30119C06430_7523_-NONE_-NONE- (last visited Mar. 16, 2021) (showing a \$401,384 contract from the Department of Health and Human Services to the American College of Radiology with a period of performance of August 19, 2019 through August 27, 2021).

7. On December 21, 2020, Senate Leadership Fund received a \$10,000 contribution from “American College of Radiology,” 1892 Preston White Drive, Reston, VA, 20191, according to the committee’s 2020 Year-End Report filed with the Commission.⁸
8. Senate Leadership Fund has received at least six contributions from federal contractors in the 2020 cycle, including the contribution at issue in this complaint. According to Senate Leadership Fund’s September monthly report, it received \$500,000 from federal contractor Marathon Petroleum in August 2020,⁹ and following a Campaign Legal Center (“CLC”) complaint, refunded the contribution in November 2020.¹⁰ On Senate Leadership Fund’s October monthly report, it received \$25,000 from federal contractor Amedisys, Inc. in September 2020,¹¹ and following a CLC complaint, filed an amended report in December 2020 reattributing the contribution to Amedisys Inc.’s parent company.¹² Senate Leadership Fund reported receiving a \$50,000 contribution on November 20, 2020 from federal contractor Service Tire Truck Center on its 2020 Post-General report,¹³ and received three contributions from federal contractors on its 2020 Year-End report: besides the contribution from American College of Radiology, the committee received \$50,000 from Astellas Pharma

⁸ Senate Leadership Fund, 2020 Year-End Report, FEC Form 3X at 116 (filed Jan. 31, 2021), <https://docquery.fec.gov/pdf/297/202101319423702297/202101319423702297.pdf>.

⁹ Senate Leadership Fund, 2020 September Monthly Report, FEC Form 3X at 10 (filed Sep. 20, 2020), <https://docquery.fec.gov/pdf/071/202009209275581071/202009209275581071.pdf>.

¹⁰ Senate Leadership Fund, 2020 Post-General Report, FEC Form 3X at 284 (filed Dec. 03, 2020), <https://docquery.fec.gov/pdf/420/202012039340447420/202012039340447420.pdf>.

¹¹ Senate Leadership Fund, 2020 October Monthly Report, FEC Form 3X at 36 (filed Oct. 20, 2020), <https://docquery.fec.gov/pdf/808/202010209297963808/202010209297963808.pdf>.

¹² Senate Leadership Fund, 2020 October Monthly at 36 (amended Dec. 1, 2020), <https://docquery.fec.gov/pdf/626/202012019337371626/202012019337371626.pdf> (reattributing contribution to Amedisys Holding, Inc., Amedisys Inc.’s parent company.)

¹³ Senate Leadership Fund, 2020 Post-General Election Report, FEC Form 3X at 191 (amended Jan. 14, 2021), <https://docquery.fec.gov/pdf/244/202101149404569244/202101149404569244.pdf>.

US Inc. on November 30, 2020¹⁴ and \$10,000 from Martin Marietta Materials, Inc. on December 21, 2020.¹⁵

SUMMARY OF THE LAW

9. “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).
10. 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 negotiations for a federal contract and the completion of performance or termination of negotiations for the contract. 52 U.S.C. § 30119(a)(1).
11. Federal law additionally prohibits any person from knowingly soliciting such a contribution from a federal contractor. 52 U.S.C. § 30119(a)(2).
12. 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).
13. 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).

¹⁴ Senate Leadership Fund, 2020 Year-End Report, FEC Form 3X at 43 (filed Jan. 31, 2021), <https://docquery.fec.gov/pdf/297/202101319423702297/202101319423702297.pdf>.

¹⁵ *Id.* at 117 (Martin Marietta Materials, Inc.).

14. 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*¹⁶ and the D.C. Circuit decision in *SpeechNow.org v. FEC*.¹⁷ 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 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).
15. 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.
16. In 2019, the Commission found reason to believe that federal contractor Ring Power Corporation violated 52 U.S.C. § 30119(a)(1) when it contributed \$50,000 to the super PAC

¹⁶ 130 S. Ct. 876 (2010).

¹⁷ 599 F.3d 686 (D.C. Cir. 2010).

New Republican PAC while holding active federal contracts. MUR 7451 (Ring Power Corporation), Notification to Campaign Legal Center at 1 (June 19, 2019). The Commission found reason to believe, and entered into pre-probable cause conciliation, even though the super PAC ultimately refunded the illegal contribution. MUR 7451, Conciliation Agreement at 2-3 (June 4, 2019). In recommending a reason-to-believe finding, the Commission’s Office of General Counsel emphasized that Ring Power Corporation’s assertion that the active contract constituted only a small proportion of the company’s overall revenue “does not negate the company’s status as a federal contractor under the Act, or obviate the violation.” MUR 7451, First General Counsel’s Report at 6 (Apr. 8, 2019). “Similarly,” OGC proceeded, “Ring Power’s remedial measures—obtaining a refund and other steps taken to ensure it would no longer make prohibited contributions—do not excuse the violation.” *Id.* Pursuant to the conciliation agreement, Ring Power Corporation agreed to pay the Commission a \$9,500 penalty. MUR 7451, Conciliation Agreement at 2-3.

17. Similarly, in 2020, the Commission found reason to believe that Alpha Marine Services violated 52 U.S.C. § 30119(a)(1) by contributing \$100,000 to the super PAC Congressional Leadership Fund while holding active federal contracts, notwithstanding the fact that Alpha Marine sought and obtained a refund upon learning of the complaint. MUR 7458 (Alpha Marine Services), Notification to Campaign Legal Center at 1 (July 22, 2020); MUR 7458, Conciliation Agreement at 3-4. Alpha Marine Services agreed to pay the Commission a \$17,000 penalty. MUR 7458, Conciliation Agreement at 4.
18. 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. AMERICAN COLLEGE OF RADIOLOGY VIOLATED THE CONTRACTOR CONTRIBUTION BAN

19. 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.
20. According to USAspending.gov, “the official source for spending data for the U.S. Government,” American College of Radiology is a federal contractor and was a federal contractor when it made the \$10,000 contribution to Senate Leadership Fund on December 21, 2020.¹⁸
21. Consequently, there is reason to believe that American College of Radiology, as a federal contractor, violated the federal contractor contribution ban by making a “contribution to any political . . . committee,” namely Senate Leadership Fund, during the period its federal contracts were being negotiated and/or performed. 52 U.S.C. § 30119(a)(1).

PRAYER FOR RELIEF

22. Wherefore, the Commission should find reason to believe that American College of Radiology violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
23. 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

¹⁸ *See supra* ¶ 5.

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,

Handwritten signature of Brendan M. Fischer, consisting of the letters 'B' and 'F' in a stylized, cursive font.

Campaign Legal Center, by
Brendan M. Fischer
1101 14th Street, NW, Suite 400
Washington, DC 20005
(202) 736-2200

Brendan M. Fischer
Campaign Legal Center
1101 14th Street, NW, Suite 400
Washington, DC 20005
Counsel to the Campaign Legal Center

March 17, 2021

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

Bf

Brendan M. Fischer

Sworn to and subscribed before me this 16 day of March 2021.

Natasha C. Johnson

Notary Public

My Commission Expires
January 14, 2024

