

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL’S REPORT**

**MUR 7890**

DATE COMPLAINT FILED: Mar. 17, 2021

DATE OF NOTIFICATION: Mar. 24, 2021

DATE OF LAST RESPONSE: Apr. 16, 2021

DATE ACTIVATED: July 21, 2021

EXPIRATION OF SOL: Nov. 20, 2025

ELECTION CYCLE: 2020

**COMPLAINANT:**

Campaign Legal Center

**RESPONDENTS:**

Service Tire Truck Centers, Inc.

Senate Leadership Fund and Caleb Crosby  
in his official capacity as treasurer**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30119(a)

11 C.F.R. § 115.1

11 C.F.R. § 115.2

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that Service Tire Truck Centers, Inc. (“STTC”), violated the federal contractor prohibition of the Federal Election Campaign Act of 1971, as amended (the “Act”), by making a \$50,000 contribution to Senate Leadership Fund and Caleb Crosby in his official capacity as treasurer, an independent expenditure-only political committee (“IEOPC”), while STTC was a federal government contractor. The Complaint also raises questions as to whether Senate Leadership Fund violated the Act by knowingly soliciting a contribution from a federal contractor.

STTC denies the allegations, arguing that it was not a federal contractor within the meaning of the Act because of the nature of its transactions with the federal government. STTC

1 asserts that the transactions at issue appear to have been unsolicited, retail purchases at local  
2 STTC service center locations for routine repairs and maintenance. Senate Leadership Fund  
3 states that the Complaint provides no information suggesting it knowingly solicited a prohibited  
4 contribution, and states that its solicitation documents provide donors with notice that it does not  
5 accept contributions from federal contractors. Senate Leadership Fund similarly argues that  
6 these retail transactions do not constitute the type of federal contracts subject to the federal  
7 contractor contribution prohibition under the Act or Commission regulations.

8 As explained below, while the transactions between STTC and the General Services  
9 Administration (the "GSA") appear to constitute federal contracts subject to the prohibition and  
10 were being performed when STTC made the contribution, we recommend that the Commission  
11 dismiss the allegations for prudential reasons, considering the nature and size of the retail  
12 purchases, the unique circumstances of this matter, and the preservation of Commission  
13 resources. Therefore, we recommend that the Commission dismiss the allegation that STTC  
14 violated 52 U.S.C. § 30119(a)(1) as a matter of prosecutorial discretion. Further, as there is no  
15 information in the record to suggest that Senate Leadership Fund knowingly solicited  
16 contributions from a federal contractor, we recommend that the Commission find no reason to  
17 believe that Senate Leadership Fund violated 52 U.S.C. § 30119(a)(2).

## 18 **II. FACTUAL BACKGROUND**

19 STTC is a tire and automotive service company headquartered in Bethlehem,  
20 Pennsylvania.<sup>1</sup> According to its website, STTC operates 49 service center locations in 8 states

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<sup>1</sup> Compl. at 2 (Mar. 17, 2021); *About*, Service Tire Truck Centers Inc., <https://www.sttc.com/about-sttc/> (last visited Aug. 20, 2021).

1 and has more than 850 employees.<sup>2</sup> The Complaint alleges, based on information publicly  
 2 available at USASpending.gov, that STTC was a party to federal contracts, including contracts  
 3 with the GSA, a federal agency.<sup>3</sup> Specifically, the Complaint references three contracts with the  
 4 GSA: (1) a contract performed between November 17-19, 2020, for \$3,609; (2) a contract  
 5 performed between November 19-23, 2020, for \$3,646; and (3) a contract performed between  
 6 November 27, 2020 - December 2, 2020, for \$3,609.<sup>4</sup>

7 STTC does not dispute that, on November 20, 2020, it made a \$50,000 contribution to  
 8 Senate Leadership Fund,<sup>5</sup> but it denies that its transactions with the federal government make it a  
 9 federal contractor for purposes of 52 U.S.C. § 30119. STTC states that it is “unaware of  
 10 participating in any federal procurement process.”<sup>6</sup> STTC further states that “[i]n reviewing the  
 11 timeframe within the complaint, it appears that a representative or employee from the General  
 12 Services Administration [] pulled into a retail store and purchased tires and/or servicing for their  
 13 vehicles, as a result of either getting a flat tire, or having low tread.”<sup>7</sup> Attached to the STTC

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<sup>2</sup> History, Service Tire Truck Centers Inc., <https://www.sttc.com/about-sttc/history/> (last visited Sept. 14, 2021).

<sup>3</sup> Compl. at 2-3; *About Us - Our Mission's Evolution*, U.S. General Services Administration, <https://www.gsa.gov/about-us/mission-and-background/our-missions-evolution> (last visited Aug. 20, 2021).

<sup>4</sup> Compl. at 2-3 (citing USASpending.gov, Contract Summary, Award ID 47QMCC21PE025, [https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE025\\_4732\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE025_4732_-NONE_-NONE-); USASpending.gov, Contract Summary, Award ID 47QMCC21PE028, [https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE028\\_4732\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE028_4732_-NONE_-NONE-); USASpending.gov, Contract Summary, Award ID 47QMCC21PE035, [https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE025\\_4732\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE025_4732_-NONE_-NONE-)).

Our review of USASpending.gov reveals a total of 12 transactions with federal agencies dating back to 2010, totaling \$78,349, each for truck or tire maintenance or repair. The largest was a 2012 transaction with the Department of Defense in the amount of \$19,976. USAspending.gov, Spending by Award Search, “Service Truck Tire Center,” <https://www.usaspending.gov/search/?hash=a8abeb97f566ac71aace73bea2c9a180>.

<sup>5</sup> 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#navpanes=0> (last visited Nov. 2, 2021).

<sup>6</sup> STTC Resp. at 1 (Apr. 16, 2021).

<sup>7</sup> *Id.*

Response are copies of the relevant invoices and credit card receipts showing what appears to be point of sale purchases for routine truck maintenance expenses.<sup>8</sup>

Senate Leadership Fund states that there is no information in the record which suggests it knowingly solicited such prohibited contributions and that its solicitation documents provide donors with notice that it does not accept contributions from federal contractors.<sup>9</sup>

### III. LEGAL ANALYSIS

#### A. The Commission Should Exercise its Prosecutorial Discretion and Dismiss the Allegations that STTC Violated 52 U.S.C. § 30119(a)(1) by Making a Prohibited Federal Contractor Contribution

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>10</sup> Under the Act, a federal contractor may not make contributions to political committees.<sup>11</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>12</sup> These prohibitions begin to run at the beginning of negotiations or when proposal requests are

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<sup>8</sup> *Id.*

<sup>9</sup> STTC Resp., Ex. A.

<sup>10</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>11</sup> *Id.* § 30119(a); 11 C.F.R. § 115.2.

<sup>12</sup> 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

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.<sup>13</sup>

3 The federal contractor contribution prohibition applies to any federal contractor who  
 4 makes contributions to any political party, political committee, federal candidate, or “any person  
 5 for any political purpose or use.”<sup>14</sup> Commission regulations define “contract” to include:

6 (1) A sole source, negotiated, or advertised procurement conducted  
 7 by the United States or any of its agencies;

8  
 9 (2) A written (except as otherwise authorized) contract, between  
 10 any person and the United States or any of its departments or  
 11 agencies, for the furnishing of personal property, real property, or  
 12 personal services; and

13  
 14 (3) Any modification of a contract.<sup>15</sup>  
 15

16 STTC argues that its transactions with the GSA were “purely random and unsolicited  
 17 retail transactions” and that such transactions are not contracts under the Act or Commission  
 18 regulations.<sup>16</sup> But, this limited understanding of the term contract is contrary to both the plain  
 19 language of 11 C.F.R. § 115.1(c) and Commission precedent. The regulation defines “contract”  
 20 to include a “contract between any person and the United States or any of its departments or  
 21 agencies, for the furnishing personal property . . . or personal services.”<sup>17</sup> The Commission has  
 22 explained that “section 115.2(c)(2) expands the meaning of contract . . . beyond only  
 23 procurement contracts.”<sup>18</sup> Further, the Commission has stated that “there is no distinction

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<sup>13</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

<sup>14</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.

<sup>15</sup> 11 C.F.R. § 115.1(c).

<sup>16</sup> STTC Resp. at 1 (stating that the transactions were “unsolicited” and not “made pursuant to any contract, agreement, or previously entered into price list between STTC and a federal agency”).

<sup>17</sup> 11 C.F.R. § 115.1(c)(2).

<sup>18</sup> Advisory Op 1993-12 (Mississippi Band of Choctaw Indians) at 3.

1 between a negotiated contract and a competitively bid contract. This conclusion follows from  
 2 the language of [the prohibition] which refers to ‘any contract.’”<sup>19</sup>

3 The agreements in the present matter fit squarely within the section 115.1(c)(2) definition  
 4 of a contract. As described by STTC, and as represented in the invoices STTC has provided, it  
 5 appears that a GSA employee requested and a STTC retail outlet provided tires — *i.e.*, personal  
 6 property — and tire changing services — *i.e.*, personal services. These agreements, evidenced  
 7 by the invoices and receipts that STTC provided, appear to be contractual in nature, creating  
 8 legal obligations between the parties. Respondents have not argued, and no information  
 9 indicates, that the transactions were not “authorized” purchases by the government.<sup>20</sup> Because  
 10 one of these contracts was being performed on November 20, when the contribution was made, it  
 11 appears that STTC violated the Act by making a prohibited federal contractor contribution.<sup>21</sup>

12 Nonetheless, we recommend that the Commission dismiss the allegations for prudential  
 13 reasons, considering the nature and size of the purchases, and the preservation of Commission  
 14 resources.<sup>22</sup> Each of the government contracts noted by the Complaint was only a few thousand  
 15 dollars, amounts that appear consistent with ordinary retail transactions at an establishment  
 16 providing truck-tire repair and replacement services.<sup>23</sup> Moreover, STTC has only had a limited  
 17 number of transactions with the federal government, just 12 purchases dating back to 2010.<sup>24</sup>

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<sup>19</sup> Advisory Opinion 1975-110 (further noting that “[s]ince the word contract is used in a general rather than a limited sense, there is no basis in the statutory language for the differentiation . . . . If a more limited meaning had been intended, it is logical to assume that Congress would have incorporated it into the statute”) (discussing prior version of the prohibition, then located at 18 U.S.C. § 611, which used the same “any contract” language).

<sup>20</sup> See 11 C.F.R. § 115.2(c)(2).

<sup>21</sup> Compl. at 2-3 (citing USAspending.gov, Contract Summary, Award ID 47QMCC21PE028, [https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE028\\_4732\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE028_4732_-NONE_-NONE-)).

<sup>22</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

<sup>23</sup> Compl. at 2-3; STTC Resp., Ex. A.

<sup>24</sup> See *supra* note 4.

Neither the GSA nor any other government agency was a frequent customer of STTC. It is also unclear what information the GSA employees initially provided STTC when initiating the purchase prior to the completion of the contract. Even the final invoices do not make it readily apparent that the customer was a federal government.<sup>25</sup> The nature of the transactions were such that they could arise with little or no notice and last only for a few days. Consequently, STTC officers making contribution decisions may not have had sufficient information to know that the company was a federal contractor at the time of the contribution.<sup>26</sup>

Accordingly, under these circumstances, we recommend that the Commission exercise its prosecutorial discretion under *Heckler v. Chaney* and dismiss the allegations that STTC violated 52 U.S.C. § 30119(a)(1) by making a prohibited federal contractor contribution.

**B. The Commission Should Find No Reason to Believe that Senate Leadership Fund Violated 52 U.S.C. § 30119(a)(2) by Knowingly Soliciting a Prohibited Contractor Contribution**

The Act also prohibits any person from knowingly soliciting any federal contractor contribution.<sup>27</sup> In the present matter, the Complaint does not specifically allege that Senate Leadership Fund knowingly solicited the STTC contribution or provide any information that would indicate that it knew that STTC was a federal contractor. Senate Leadership Fund asserts that the form that its contributors fill out and return to Senate Leadership Fund with their

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<sup>25</sup> The invoices do provide some indication that the customer was the federal government, or an agency thereof, listing “Jessup Cash – GDYR Gov’t,” “GSA Wolf Creek,” and “GSA-Fleet Management” on the “sold to” line of the invoices, STTC Resp., Ex. A, but none of them specifically indicate the payor as a federal government agency. Even the invoice that does reference “Gov’t” does not make clear that it is federal as opposed to state or local.

<sup>26</sup> See Factual & Legal Analysis at 9-10, MUR 6403 (Alaskans Standing Together) (dismissing apparent violations of the federal contractor contribution prohibition considering the size and unsolicited nature of the contracts as well as affidavits by executives of the contributor stating that they were not aware of the contracts until after the complaint was filed).

<sup>27</sup> 52 U.S.C. § 30119(a)(2); *see also* 11 C.F.R. § 115.2(c).

contribution includes three separate notices that contributions from federal government contractors are prohibited.<sup>28</sup>

Even though it appears, as discussed above, STTC was a federal government contractor at the time it contributed to Senate Leadership Fund, there is no information suggesting that Senate Leadership Fund had knowledge of STTC's limited federal government sales. As such, there is no basis on which to reasonably conclude that Senate Leadership Fund knowingly solicited the contribution from a federal contractor. Accordingly, we recommend that the Commission find no reason to believe that Senate Leadership Fund violated 52 U.S.C. § 30119(a)(2).<sup>29</sup>

#### IV. RECOMMENDATIONS

1. Dismiss the allegation that Service Tire Truck Centers, Inc., violated 52 U.S.C. § 30119(a)(1) by making a prohibited federal contractor contribution as an act of prosecutorial discretion;
2. Find no reason to believe that Senate Leadership Fund and Caleb Crosby in his official capacity as treasurer violated 52 U.S.C. § 30119(a)(2) by knowingly soliciting a prohibited federal contractor contribution;
3. Approve the attached Factual and Legal Analysis;
4. Approve the appropriate letters; and

<sup>28</sup> Senate Leadership Fund Resp. at 1, Attach. A (Apr. 16, 2021).

<sup>29</sup> See Cert., MUR 7568 (Alpha Marine Services Holdings, LLC) (July 2, 2020); Cert., MUR 7451 (Ring Power Corp.) (June 12, 2019); Cert., MUR 7099 (Suffolk Construction Co.) (Sept. 20, 2017).



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5. Close the file.

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Associate General Counsel  
for Enforcement




11/08/2021  
Date

Claudio J. Pavia  
Acting Deputy Associate General  
Counsel for Enforcement



Mark Shonkwiler  
Assistant General Counsel



Nicholas O. Mueller  
Attorney

Attachment:  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

Respondents: Service Tire Truck Centers, Inc.  
Senate Leadership Fund and Caleb Crosby  
in his official capacity as treasurer

MUR 7890

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission alleging that Service Tire Truck Centers, Inc. (“STTC”), violated the federal contractor prohibition of the Federal Election Campaign Act of 1971, as amended (the “Act”), by making a \$50,000 contribution to Senate Leadership Fund and Caleb Crosby in his official capacity as treasurer, an independent expenditure-only political committee (“IEOPC”), while STTC was a federal government contractor. The Complaint also raises questions as to whether Senate Leadership Fund violated the Act by knowingly soliciting a contribution from a federal contractor.

STTC denies the allegations, arguing that it was not a federal contractor within the meaning of the Act because of the nature of its transactions with the federal government. STTC asserts that the transactions at issue appear to have been unsolicited, retail purchases at local STTC service center locations for routine repairs and maintenance. Senate Leadership Fund states that the Complaint provides no information suggesting it knowingly solicited a prohibited contribution, and states that its solicitation documents provide donors with notice that it does not accept contributions from federal contractors. Senate Leadership Fund similarly argues that these retail transactions do not constitute the type of federal contracts subject to the federal contractor contribution prohibition under the Act or Commission regulations.

As explained below, while the transactions between STTC and the General Services Administration (the “GSA”) appear to constitute federal contracts subject to the prohibition and

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were being performed when STTC made the contribution, the Commission dismisses the allegations for prudential reasons, considering the nature and size of the retail purchases, the unique circumstances of this matter, and the preservation of Commission resources. Therefore, the Commission dismisses the allegation that STTC violated 52 U.S.C. § 30119(a)(1) as a matter of prosecutorial discretion. Further, as there is no information in the record to suggest that Senate Leadership Fund knowingly solicited contributions from a federal contractor, the Commission finds no reason to believe that Senate Leadership Fund violated 52 U.S.C. § 30119(a)(2).

## II. FACTUAL BACKGROUND

STTC is a tire and automotive service company headquartered in Bethlehem, Pennsylvania.<sup>1</sup> According to its website, STTC operates 49 service center locations in 8 states and has more than 850 employees.<sup>2</sup> The Complaint alleges, based on information publicly available at USASpending.gov, that STTC was a party to federal contracts, including contracts with the GSA, a federal agency.<sup>3</sup> Specifically, the Complaint references three contracts with the GSA: (1) a contract performed between November 17-19, 2020, for \$3,609; (2) a contract performed between November 19-23, 2020, for \$3,646; and (3) a contract performed between November 27, 2020 - December 2, 2020, for \$3,609.<sup>4</sup>

<sup>1</sup> Compl. at 2 (Mar. 17, 2021); *About*, Service Tire Truck Centers Inc., <https://www.sttc.com/about-sttc/> (last visited Aug. 20, 2021).

<sup>2</sup> *History*, Service Tire Truck Centers Inc., <https://www.sttc.com/about-sttc/history/> (last visited Sept. 14, 2021).

<sup>3</sup> Compl. at 2-3; *About Us - Our Mission's Evolution*, U.S. General Services Administration, <https://www.gsa.gov/about-us/mission-and-background/our-missions-evolution> (last visited Aug. 20, 2021).

<sup>4</sup> Compl. at 2-3 (citing USASpending.gov, Contract Summary, Award ID 47QMCC21PE025, [https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE025\\_4732\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE025_4732_-NONE_-NONE-); USASpending.gov, Contract Summary, Award ID 47QMCC21PE028,

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STTC does not dispute that, on November 20, 2020, it made a \$50,000 contribution to Senate Leadership Fund,<sup>5</sup> but it denies that its transactions with the federal government make it a federal contractor for purposes of 52 U.S.C. § 30119. STTC states that it is “unaware of participating in any federal procurement process.”<sup>6</sup> STTC further states that “[i]n reviewing the timeframe within the complaint, it appears that a representative or employee from the General Services Administration [] pulled into a retail store and purchased tires and/or servicing for their vehicles, as a result of either getting a flat tire, or having low tread.”<sup>7</sup> Attached to the STTC Response are copies of the relevant invoices and credit card receipts showing what appears to be point of sale purchases for routine truck maintenance expenses.<sup>8</sup>

Senate Leadership Fund states that there is no information in the record which suggests it knowingly solicited such prohibited contributions and that its solicitation documents provide donors with notice that it does not accept contributions from federal contractors.<sup>9</sup>

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[https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE028\\_4732\\_-NONE\\_-NONE-;](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE028_4732_-NONE_-NONE-;USAspending.gov,ContractSummary,AwardID47QMCC21PE035)  
USAspending.gov, Contract Summary, Award ID 47QMCC21PE035  
[https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE025\\_4732\\_-NONE\\_-NONE-\).](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE025_4732_-NONE_-NONE-)

Our review of USAspending.gov reveals a total of 12 transactions with federal agencies dating back to 2010, totaling \$78,349, each for truck or tire maintenance or repair. The largest was a 2012 transaction with the Department of Defense in the amount of \$19,976. USAspending.gov, Spending by Award Search, “Service Truck Tire Center,” <https://www.usaspending.gov/search/?hash=a8abeb97f566ac71aace73bea2c9a180>.

<sup>5</sup> 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#navpanes=0> (last visited Nov. 2, 2021).

<sup>6</sup> STTC Resp. at 1 (Apr. 16, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> STTC Resp., Ex. A.

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### III. LEGAL ANALYSIS

#### A. The Commission Exercises its Prosecutorial Discretion and Dismisses the Allegations that STTC Violated 52 U.S.C. § 30119(a)(1) by Making a Prohibited Federal Contractor Contribution

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>10</sup> Under the Act, a federal contractor may not make contributions to political committees.<sup>11</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>12</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>13</sup>

The federal contractor contribution prohibition applies to any federal contractor who makes contributions to any political party, political committee, federal candidate, or “any person for any political purpose or use.”<sup>14</sup> Commission regulations define “contract” to include:

(1) A sole source, negotiated, or advertised procurement conducted by the United States or any of its agencies;

(2) A written (except as otherwise authorized) contract, between any person and the United States or any of its departments or

<sup>10</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>11</sup> *Id.* § 30119(a); 11 C.F.R. § 115.2.

<sup>12</sup> 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

<sup>13</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

<sup>14</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.

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agencies, for the furnishing of personal property, real property, or  
personal services; and

(3) Any modification of a contract.<sup>15</sup>

STTC argues that its transactions with the GSA were “purely random and unsolicited  
retail transactions” and that such transactions are not contracts under the Act or Commission  
regulations.<sup>16</sup> But, this limited understanding of the term contract is contrary to both the plain  
language of 11 C.F.R. § 115.1(c) and Commission precedent. The regulation defines “contract”  
to include a “contract between any person and the United States or any of its departments or  
agencies, for the furnishing personal property . . . or personal services.”<sup>17</sup> The Commission has  
explained that “section 115.2(c)(2) expands the meaning of contract . . . beyond only  
procurement contracts.”<sup>18</sup> Further, the Commission has stated that “there is no distinction  
between a negotiated contract and a competitively bid contract. This conclusion follows from  
the language of [the prohibition] which refers to ‘any contract.’”<sup>19</sup>

The agreements in the present matter fit squarely within the section 115.1(c)(2) definition  
of a contract. As described by STTC, and as represented in the invoices STTC has provided, it  
appears that a GSA employee requested and a STTC retail outlet provided tires — *i.e.*, personal  
property — and tire changing services — *i.e.*, personal services. These agreements, evidenced  
by the invoices and receipts that STTC provided, appear to be contractual in nature, creating

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<sup>15</sup> 11 C.F.R. § 115.1(c).

<sup>16</sup> STTC Resp. at 1 (stating that the transactions were “unsolicited” and not “made pursuant to any contract, agreement, or previously entered into price list between STTC and a federal agency”).

<sup>17</sup> 11 C.F.R. § 115.1(c)(2).

<sup>18</sup> Advisory Op 1993-12 (Mississippi Band of Choctaw Indians) at 3.

<sup>19</sup> Advisory Opinion 1975-110 (further noting that “[s]ince the word contract is used in a general rather than a limited sense, there is no basis in the statutory language for the differentiation . . . . If a more limited meaning had been intended, it is logical to assume that Congress would have incorporated it into the statute”) (discussing prior version of the prohibition, then located at 18 U.S.C. § 611, which used the same “any contract” language).

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1 legal obligations between the parties. Respondents have not argued, and no information  
2 indicates, that the transactions were not “authorized” purchases by the government.<sup>20</sup> Because  
3 one of these contracts was being performed on November 20, when the contribution was made, it  
4 appears that STTC violated the Act by making a prohibited federal contractor contribution.<sup>21</sup>

5 Nonetheless, the Commission dismisses the allegations for prudential reasons,  
6 considering the nature and size of the purchases, and the preservation of Commission  
7 resources.<sup>22</sup> Each of the government contracts noted by the Complaint was only a few thousand  
8 dollars, amounts that appear consistent with ordinary retail transactions at an establishment  
9 providing truck-tire repair and replacement services.<sup>23</sup> Moreover, STTC has only had a limited  
10 number of transactions with the federal government, just 12 purchases dating back to 2010.<sup>24</sup>  
11 Neither the GSA nor any other government agency was a frequent customer of STTC. It is also  
12 unclear what information the GSA employees initially provided STTC when initiating the  
13 purchase prior to the completion of the contract. Even the final invoices do not make it readily  
14 apparent that the customer was a federal government.<sup>25</sup> The nature of the transactions were such  
15 that they could arise with little or no notice and last only for a few days. Consequently, STTC

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<sup>20</sup> See 11 C.F.R. § 115.2(c)(2).

<sup>21</sup> Compl. at 2-3 (citing USAspending.gov, Contract Summary, Award ID 47QMCC21PE028, [https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE028\\_4732\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE028_4732_-NONE_-NONE-)).

<sup>22</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

<sup>23</sup> Compl. at 2-3; STTC Resp., Ex. A.

<sup>24</sup> See *supra* note 4.

<sup>25</sup> The invoices do provide some indication that the customer was the federal government, or an agency thereof, listing “Jessup Cash – GDYR Gov’t,” “GSA Wolf Creek,” and “GSA-Fleet Management” on the “sold to” line of the invoices, STTC Resp., Ex. A, but none of them specifically indicate the payor as a federal government agency. Even the invoice that does reference “Gov’t” does not make clear that it is federal as opposed to state or local.

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officers making contribution decisions may not have had sufficient information to know that the company was a federal contractor at the time of the contribution.<sup>26</sup>

Accordingly, under these circumstances, the Commission exercises its prosecutorial discretion under *Heckler v. Chaney* and dismiss the allegations that STTC violated 52 U.S.C. § 30119(a)(1) by making a prohibited federal contractor contribution.

**B. The Commission Finds No Reason to Believe that Senate Leadership Fund Violated 52 U.S.C. § 30119(a)(2) by Knowingly Soliciting a Prohibited Contractor Contribution**

The Act also prohibits any person from knowingly soliciting any federal contractor contribution.<sup>27</sup> In the present matter, the Complaint does not specifically allege that Senate Leadership Fund knowingly solicited the STTC contribution or provide any information that would indicate that it knew that STTC was a federal contractor. Senate Leadership Fund asserts that the form that its contributors fill out and return to Senate Leadership Fund with their contribution includes three separate notices that contributions from federal government contractors are prohibited.<sup>28</sup>

Even though it appears, as discussed above, STTC was a federal government contractor at the time it contributed to Senate Leadership Fund, there is no information suggesting that Senate Leadership Fund had knowledge of STTC's limited federal government sales. As such, there is no basis on which to reasonably conclude that Senate Leadership Fund knowingly

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<sup>26</sup> See Factual & Legal Analysis at 9-10, MUR 6403 (Alaskans Standing Together) (dismissing apparent violations of the federal contractor contribution prohibition considering the size and unsolicited nature of the contracts as well as affidavits by executives of the contributor stating that they were not aware of the contracts until after the complaint was filed).

<sup>27</sup> 52 U.S.C. § 30119(a)(2); *see also* 11 C.F.R. § 115.2(c).

<sup>28</sup> Senate Leadership Fund Resp. at 1, Attach. A (Apr. 16, 2021).



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- 1 solicited the contribution from a federal contractor. Accordingly, the Commission finds no
- 2 reason to believe that Senate Leadership Fund violated 52 U.S.C. § 30119(a)(2).<sup>29</sup>

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<sup>29</sup> See Cert., MUR 7568 (Alpha Marine Services Holdings, LLC) (July 2, 2020); Cert., MUR 7451 (Ring Power Corp.) (June 12, 2019); Cert., MUR 7099 (Suffolk Construction Co.) (Sept. 20, 2017).

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

Respondents: Service Tire Truck Centers, Inc.  
Senate Leadership Fund and Caleb Crosby  
in his official capacity as treasurer

MUR 7890

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission alleging that Service Tire Truck Centers, Inc. (“STTC”), violated the federal contractor prohibition of the Federal Election Campaign Act of 1971, as amended (the “Act”), by making a \$50,000 contribution to Senate Leadership Fund and Caleb Crosby in his official capacity as treasurer, an independent expenditure-only political committee (“IEOPC”), while STTC was a federal government contractor. The Complaint also raises questions as to whether Senate Leadership Fund violated the Act by knowingly soliciting a contribution from a federal contractor.

STTC denies the allegations, arguing that it was not a federal contractor within the meaning of the Act because of the nature of its transactions with the federal government. STTC asserts that the transactions at issue appear to have been unsolicited, retail purchases at local STTC service center locations for routine repairs and maintenance. Senate Leadership Fund states that the Complaint provides no information suggesting it knowingly solicited a prohibited contribution, and states that its solicitation documents provide donors with notice that it does not accept contributions from federal contractors. Senate Leadership Fund similarly argues that these retail transactions do not constitute the type of federal contracts subject to the federal contractor contribution prohibition under the Act or Commission regulations.

As explained below, the Commission dismisses the allegations for prudential reasons, considering the nature and size of the retail purchases, the unique circumstances of this matter,

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and the preservation of Commission resources as a matter of prosecutorial discretion. Further, as there is no information in the record to suggest that Senate Leadership Fund knowingly solicited contributions from a federal contractor, the Commission finds no reason to believe that Senate Leadership Fund violated 52 U.S.C. § 30119(a)(2).

## II. FACTUAL BACKGROUND

STTC is a tire and automotive service company headquartered in Bethlehem, Pennsylvania.<sup>1</sup> According to its website, STTC operates 49 service center locations in 8 states and has more than 850 employees.<sup>2</sup> The Complaint alleges, based on information publicly available at USASpending.gov, that STTC was a party to federal contracts, including contracts with the GSA, a federal agency.<sup>3</sup> Specifically, the Complaint references three contracts with the GSA: (1) a contract performed between November 17-19, 2020, for \$3,609; (2) a contract performed between November 19-23, 2020, for \$3,646; and (3) a contract performed between November 27, 2020 - December 2, 2020, for \$3,609.<sup>4</sup>

<sup>1</sup> Compl. at 2 (Mar. 17, 2021); *About*, Service Tire Truck Centers Inc., <https://www.sttc.com/about-sttc/> (last visited Aug. 20, 2021).

<sup>2</sup> *History*, Service Tire Truck Centers Inc., <https://www.sttc.com/about-sttc/history/> (last visited Sept. 14, 2021).

<sup>3</sup> Compl. at 2-3; *About Us - Our Mission's Evolution*, U.S. General Services Administration, <https://www.gsa.gov/about-us/mission-and-background/our-missions-evolution> (last visited Aug. 20, 2021).

<sup>4</sup> Compl. at 2-3 (citing USASpending.gov, Contract Summary, Award ID 47QMCC21PE025, [https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE025\\_4732\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE025_4732_-NONE_-NONE-); USASpending.gov, Contract Summary, Award ID 47QMCC21PE028, [https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE028\\_4732\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE028_4732_-NONE_-NONE-); USASpending.gov, Contract Summary, Award ID 47QMCC21PE035, [https://www.usaspending.gov/award/CONT\\_AWD\\_47QMCC21PE025\\_4732\\_-NONE\\_-NONE-](https://www.usaspending.gov/award/CONT_AWD_47QMCC21PE025_4732_-NONE_-NONE-)).

Our review of USASpending.gov reveals a total of 12 transactions with federal agencies dating back to 2010, totaling \$78,349, each for truck or tire maintenance or repair. The largest was a 2012 transaction with the Department of Defense in the amount of \$19,976. USAspending.gov, Spending by Award Search, “Service Truck Tire Center,” <https://www.usaspending.gov/search/?hash=a8abeb97f566ac71aace73bea2c9a180>.

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STTC does not dispute that, on November 20, 2020, it made a \$50,000 contribution to Senate Leadership Fund,<sup>5</sup> but it denies that its transactions with the federal government make it a federal contractor for purposes of 52 U.S.C. § 30119. STTC states that it is “unaware of participating in any federal procurement process.”<sup>6</sup> STTC further states that “[i]n reviewing the timeframe within the complaint, it appears that a representative or employee from the General Services Administration [] pulled into a retail store and purchased tires and/or servicing for their vehicles, as a result of either getting a flat tire, or having low tread.”<sup>7</sup> Attached to the STTC Response are copies of the relevant invoices and credit card receipts showing what appears to be point of sale purchases for routine truck maintenance expenses.<sup>8</sup>

Senate Leadership Fund states that there is no information in the record which suggests it knowingly solicited such prohibited contributions and that its solicitation documents provide donors with notice that it does not accept contributions from federal contractors.<sup>9</sup>

### III. LEGAL ANALYSIS

#### A. The Commission Exercises its Prosecutorial Discretion and Dismisses the Allegations that STTC Violated 52 U.S.C. § 30119(a)(1) by Making a Prohibited Federal Contractor Contribution

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>10</sup> Under the Act, a federal

<sup>5</sup> 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#navpanes=0> (last visited Nov. 2, 2021).

<sup>6</sup> STTC Resp. at 1 (Apr. 16, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> STTC Resp., Ex. A.

<sup>10</sup> 52 U.S.C. § 30101(8)(A)(i).

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contractor may not make contributions to political committees.<sup>11</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>12</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>13</sup>

The federal contractor contribution prohibition applies to any federal contractor who makes contributions to any political party, political committee, federal candidate, or “any person for any political purpose or use.”<sup>14</sup> Commission regulations define “contract” to include:

(1) A sole source, negotiated, or advertised procurement conducted by the United States or any of its agencies;

(2) A written (except as otherwise authorized) contract, between any person and the United States or any of its departments or agencies, for the furnishing of personal property, real property, or personal services; and

(3) Any modification of a contract.<sup>15</sup>

The Commission dismisses the allegations for prudential reasons, considering the nature and size of the purchases, and the preservation of Commission resources.<sup>16</sup> Each of the

<sup>11</sup> *Id.* § 30119(a); 11 C.F.R. § 115.2.

<sup>12</sup> 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

<sup>13</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

<sup>14</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.

<sup>15</sup> 11 C.F.R. § 115.1(c).

<sup>16</sup> *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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transactions noted by the Complaint was a few thousand dollars, amounts that appear consistent with ordinary retail transactions at an establishment providing truck-tire repair and replacement services.<sup>17</sup> Moreover, STTC has only had a limited number of transactions with the federal government, just 12 purchases dating back to 2010.<sup>18</sup> It is also unclear what information the GSA employees initially provided STTC when initiating the purchase prior to the completion of the services. The final invoices do not make it readily apparent that the customer was a federal government.<sup>19</sup> The nature of the transactions were such that they could arise with little or no notice and last only for a few days. Consequently, STTC officers making contribution decisions may not have had sufficient information about the transactions at the time of the contribution.<sup>20</sup>

Accordingly, under these circumstances, the Commission exercises its prosecutorial discretion under *Heckler v. Chaney* and dismiss the allegations that STTC violated 52 U.S.C. § 30119(a)(1) by making a prohibited federal contractor contribution.

**B. The Commission Finds No Reason to Believe that Senate Leadership Fund Violated 52 U.S.C. § 30119(a)(2) by Knowingly Soliciting a Prohibited Contractor Contribution**

The Act also prohibits any person from knowingly soliciting any federal contractor contribution.<sup>21</sup> In the present matter, the Complaint does not specifically allege that Senate

<sup>17</sup> Compl. at 2-3; STTC Resp., Ex. A.

<sup>18</sup> *See supra* note 4.

<sup>19</sup> The invoices do provide some indication that the customer was the federal government, or an agency thereof, listing “Jessup Cash – GDYR Gov’t,” “GSA Wolf Creek,” and “GSA-Fleet Management” on the “sold to” line of the invoices, STTC Resp., Ex. A, but none of them specifically indicate the payor as a federal government agency. Even the invoice that does reference “Gov’t” does not make clear that it is federal as opposed to state or local.

<sup>20</sup> *See* Factual & Legal Analysis at 9-10, MUR 6403 (Alaskans Standing Together) (dismissing apparent violations of the federal contractor contribution prohibition considering the size and unsolicited nature of the contracts as well as affidavits by executives of the contributor stating that they were not aware of the contracts until after the complaint was filed).

<sup>21</sup> 52 U.S.C. § 30119(a)(2); *see also* 11 C.F.R. § 115.2(c).

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1 Leadership Fund knowingly solicited the STTC contribution or provide any information that  
2 would indicate that it knew that STTC was a federal contractor. Senate Leadership Fund asserts  
3 that the form that its contributors fill out and return to Senate Leadership Fund with their  
4 contribution includes three separate notices that contributions from federal government  
5 contractors are prohibited.<sup>22</sup>

6 There is no information suggesting that Senate Leadership Fund had knowledge of  
7 STTC's limited federal government sales. As such, there is no basis on which to reasonably  
8 conclude that Senate Leadership Fund knowingly solicited the contribution from a federal  
9 contractor. Accordingly, the Commission finds no reason to believe that Senate Leadership  
10 Fund violated 52 U.S.C. § 30119(a)(2).<sup>23</sup>

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<sup>22</sup> Senate Leadership Fund Resp. at 1, Attach. A (Apr. 16, 2021).

<sup>23</sup> See Cert., MUR 7568 (Alpha Marine Services Holdings, LLC) (July 2, 2020); Cert., MUR 7451 (Ring Power Corp.) (June 12, 2019); Cert., MUR 7099 (Suffolk Construction Co.) (Sept. 20, 2017).