



**FEDERAL ELECTION COMMISSION**  
Washington, DC

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
Service Tire Truck Centers, Inc.	)	MUR 7890
Senate Leadership Fund	)	
and Caleb Crosby in his official capacity as treasurer	)	
	)	

**STATEMENT OF REASONS OF CHAIRMAN ALLEN J. DICKERSON AND  
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. “TREY” TRAINOR, III**

This Matter involves allegations that Service Tire Truck Centers, Inc. (“STTC”), a regional chain of truck maintenance and repair shops, violated the Federal Election Campaign Act of 1971, as amended (the “Act”)’s federal government contractor contribution ban by contributing to a super PAC during the four-day period that a U.S. General Services Administration truck was having its tires replaced at STTC’s Harrisburg, Pennsylvania location.<sup>1</sup> The Complaint also intimates that the recipient super PAC, Senate Leadership Fund (“SLF”), may have violated the Act by knowingly soliciting a prohibited contribution from a federal government contractor.<sup>2</sup> Both STTC and SLC deny the allegations, arguing that STTC was not a federal contractor within the meaning of the Act.<sup>3</sup> SLC also argues that the Complaint fails to provide evidence that SLC knowingly solicited the contribution.<sup>4</sup>

Our Office of General Counsel (“OGC”) recommended that the Commission dismiss the allegation as to STTC pursuant to our prosecutorial discretion under *Heckler v. Chaney*<sup>5</sup> and find no reason to believe a violation had occurred as to SLF,<sup>6</sup> and we did so unanimously.<sup>7</sup>

We agree with OGC that the unique circumstances of this matter merited dismissal as to STTC, but we note that the theory put forth by the Complainant, while drafted as a seemingly innocuous invocation of the federal government contractor contribution ban, contains a poison pill that would unduly chill constitutionally protected activity. If Complainant’s theory were to hold, a wide variety of corporate entities that provide goods and services directly to the public—from auto repair garages that fix trucks, to sandwich shops that cater lunches, to companies that provide on-demand printing services—would be

<sup>1</sup> Compl. at 1, MUR 7890.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> SLF Resp. at 2, MUR 7890; STTC Resp. at 1–2, MUR 7890.

<sup>4</sup> SLF Resp. at 1.

<sup>5</sup> 470 U.S. 821 (1985).

<sup>6</sup> First Gen. Counsel’s Report at 2, MUR 7890.

<sup>7</sup> Certification, MUR 7890 (Jan. 11, 2022).

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obliged to verify that every transaction was not paid for by a person using a federal government credit card or reimbursed with federal government funds if it sought to make otherwise permitted contributions. For many companies, especially small businesses or sole proprietorships, this compliance burden could be costly and burdensome enough that the company would simply avoid political giving altogether.

In short, the Complaint's theory would impose onerous and likely insurmountable compliance obstacles to the exercise of a constitutional right.<sup>8</sup> We declined the invitation to proceed in this manner and write separately to explain why future complaints premised on the same theory are unlikely to prevail before the Commission or to survive constitutional scrutiny in the courts.

## I. FACTUAL BACKGROUND

STTC is a tire and automotive service company headquartered in Bethlehem, Pennsylvania.<sup>9</sup> According to its website, STTC operates 49 service center locations in eight states and has more than 850 employees.<sup>10</sup> The Complaint alleges, based on information publicly available at USASpending.gov, that STTC was a party to contracts with the GSA, a federal government agency. Specifically, the Complaint references three contracts with the GSA: (1) one performed between November 17-19, 2020, for \$3,609; (2) one performed between November 19-23, 2020, for \$3,646; and (3) one performed between November 27, 2020-December 2, 2020, for \$3,609.<sup>11</sup>

STTC does not dispute that, on November 20, 2020, it made a \$50,000 contribution to SLF, but it denies that its transactions with the federal government make it a federal contractor for the purposes of 52 U.S.C. § 30119.<sup>12</sup> STTC states that it is “unaware of participating in any federal procurement process,”<sup>13</sup> and 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>14</sup> Attached to the STTC Response are copies of the relevant invoices and credit card receipts showing what appear to

<sup>8</sup> *Citizens United v. Fed Election Comm'n*, 558 U.S. 319, 357 (2010) (“The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.”).

<sup>9</sup> *About*, SERVICE TIRE TRUCK CENTERS INC., <https://www.sttc.com/about-sttc/> (last visited Feb. 8, 2022).

<sup>10</sup> *Id.*

<sup>11</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-)).

<sup>12</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 Feb 8, 2022); STTC Resp. at 1.

<sup>13</sup> STTC Resp. at 1.

<sup>14</sup> *Id.*

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be point of sale purchases for routine truck maintenance expenses, including truck tire replacement and associated labor costs, tire disposal costs, and roadside towing services and mileage.<sup>15</sup>

SLF states that there is no information in the record that suggests it knowingly solicited prohibited contributions from STTC and asserts that the form its contributors fill out and return with their contribution includes three separate notices that contributions from federal government contractors are prohibited.<sup>16</sup>

## II. APPLICABLE LAW

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>17</sup> Under the Act, a federal contractor may not make contributions to political committees.<sup>18</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>19</sup>

These prohibitions commence at the beginning of negotiations or when proposal requests are sent out, whichever occurs first, and conclude upon the completion of performance of the contract or the termination of negotiations, whichever occurs last.<sup>20</sup> They apply 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>21</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>22</sup>

## III. ANALYSIS

We voted to dismiss these allegations for prudential reasons, considering the nature and size of the purchases and the preservation of Commission resources.

Each of STTC’s “contracts” cited by the Complaint—which are more accurately characterized as purchase orders for discrete transactions, rather than formalized business relationships between STTC and GSA—lasted only for a few days, which is consistent with the length of time it would take to complete the tire-replacement services listed on each

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<sup>15</sup> *Id.* at Ex. A.

<sup>16</sup> SLC Resp. at 1 and Ex. A.

<sup>17</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>18</sup> *Id.* § 30119(a); 11 C.F.R. § 115.2.

<sup>19</sup> 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

<sup>20</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

<sup>21</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.

<sup>22</sup> 11 C.F.R. § 115.1(c).

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invoice.<sup>23</sup> Each transaction was for no more than a few thousand dollars, which is consistent with ordinary retail transactions at an establishment providing truck-tire repair and replacement services.<sup>24</sup>

These distinct, relatively small transactions are distinguishable from GSA’s normal process for soliciting and negotiating contracts, which the agency itself notes is “a challenging process for a company of any size.”<sup>25</sup> Vendors who wish to get on the GSA schedule must navigate a labyrinth of regulatory requirements and agency-specific restrictions, including the Federal Acquisition Regulation and the General Services Administration Acquisition Manual.<sup>26</sup> The Complaint does not allege, and the available information does not indicate, that STTC was subject to any of these requirements. Instead, it simply appears that, in advance of the winter months, several conscientious GSA employees noticed that the tire treads on their government vehicles were low and brought them to one of STTC’s shops for maintenance.

Although the invoices provided by STTC and paid at the termination of its services note that the payor was “GSA-Fleet Management,”<sup>27</sup> it is not clear whether the GSA employee who initiated the services prior to invoicing notified STTC that the payor would be the federal government. Moreover, the nature of the transactions indicates that they could arise with little or no notice—indeed, one of the invoices, from November 19<sup>th</sup>, 2020, noted that roadside service and towing was required for one of the GSA vehicles at issue.<sup>28</sup> Consequently, the STTC employee who accepted the vehicles for repair may not have been aware that the payor would be the federal government, and the STTC personnel making political contribution decisions may not have had sufficient information about those transactions at the time of the contribution.

If the Commission had acceded to the Complaint’s request that we find reason to believe a violation had occurred in this Matter, one wouldn’t need a weathervane to see which way the wind would blow with respect to future applications of the government contractor contribution ban. Although the instant fact pattern is unique in the Commission’s experience to date, it is easily analogized to other, similarly-situated businesses that provide goods and services to retail customers—for example, the sandwich shop that accepts a catering order for an agency’s Christmas lunch, or the printing and stationery store that is asked to run off a sheaf of professionally bound documents at an agency’s request. While such transactions qualify as “contracts” in the sense that they involve a binding agreement for one party to pay for goods or services that the other party provides, they are typically not long-term or high-dollar arrangements that require compliance and reporting on the vendor’s part. Requiring that the sandwich or print shop either (1) verify that every customer that walks in the door

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<sup>23</sup> Compl. at 2–3 (the cited contracts are listed as having a period of performance between, respectively, November 17 and 19, 2020; November 19 and 23, 2020; and November 27 and December 2, 2020).

<sup>24</sup> Compl. at 2–3; STTC Resp., Ex. A.

<sup>25</sup> *How to Get on Schedule*, U.S. GEN. SERVS. ADMIN., <https://www.gsa.gov/about-us/events-and-training/gsa-training-programs/training-for-vendors/how-to-get-on-schedule>.

<sup>26</sup> *About GSA Schedule*, U.S. GEN. SERVS. ADMIN., <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedule/about-gsa-schedule>.

<sup>27</sup> STTC Resp., Ex. A.

<sup>28</sup> *Id.*

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is not paying with a government credit card or being reimbursed by the government, or (2) refrain entirely from engaging in otherwise permitted political speech, would function in practice as a ban on a wide swath of political contributions. In our view, this is not a worthwhile or constitutionally sound endeavor, and we decline to open the door to the flood of picayune complaints that would result from a finding of reason to believe in this Matter.

Finally, we note, as we have in the past,<sup>29</sup> the “substantial doubt about the constitutionality of any limits on Super PAC contributions” in the wake of the *Citizens United* and *SpeechNow.org* decisions.<sup>30</sup> We are skeptical of the Commission’s ability to identify a sufficient anticorruption interest in limiting government contractor contributions made to fund independent expenditures, and suspect that future litigation will test that skepticism.

For the foregoing reasons, we voted to dismiss the Complaint’s allegations as to STTC pursuant to our discretion under *Heckler v. Chaney*, and to find no reason to believe with respect to SLF.

February 15, 2022

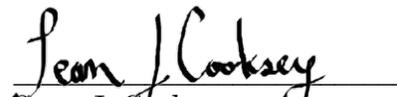
Date



Allen J. Dickerson  
Chairman

February 15, 2022

Date



Sean J. Cooksey  
Commissioner

February 15, 2022

Date



James E. “Trey” Trainor, III  
Commissioner

<sup>29</sup> Statement of Reasons of Vice Chair Allen Dickerson and Comm’rs Sean J. Cooksey and James E.” Trey” Trainor, III at 6, MUR 7180 (GEO Corrections Holdings, Inc.).

<sup>30</sup> *Wagner v. Fed. Election Comm’n*, 901 F. Supp. 2d 101, 107 (D.D.C. 2012), *vacated*, 717 F.3d 1007 (D.C. Cir. 2013); *see Citizens United v. Fed Election Comm’n*, 558 U.S. 310, 357 (“Limits on independent expenditures, such as §441b, have a chilling effect extending well beyond the Government’s interest in preventing *quid pro quo* corruption. The anticorruption interest is not sufficient to displace the speech here in question.”); *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (*en banc*) (“In light of the Court’s holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption.”).