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July 25, 2022

VIA E-MAIL

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 Federal Election Commission
 Office of Complaints Examination & Legal Administration
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Re: Matter Under Review 8010

Dear Mr. Luckett:

On June 8, 2022, the Federal Election Commission (“FEC” or “Commission”) notified our clients, the Alabama Conservatives Fund and Kaylen Melton, in her official capacity as Treasurer (collectively “ACF”), of a complaint filed by the Campaign Legal Center (“CLC”). The complaint alleges that Medical Place, Inc. (“Medical Place”) violated the ban on contributions by federal government contractors when Medical Place contributed to ACF, a federally-registered independent expenditure-only political committee.

The complaint neither names ACF as a respondent nor alleges that ACF did anything impermissible, so ACF should be dismissed from this matter at the threshold. Furthermore, the Federal Election Campaign Act of 1971, as amended (“FECA”), only imposes liability on political committees that “knowingly” solicit a contribution in violation of the federal contractor ban. Here, ACF was unaware of Medical Place’s alleged status as a federal contractor until after CLC filed its complaint – at which point, ACF refunded the full contribution. Indeed, ACF regularly informs prospective contributors – including the contributor here – that it cannot accept contributions from federal contractors. If Medical Place was a federal contractor when it contributed to ACF, ACF certainly had no knowledge of that fact. Because ACF did not “knowingly” solicit a contribution from a federal contractor in violation of the FECA, the Commission should dismiss ACF from this matter.

BACKGROUND

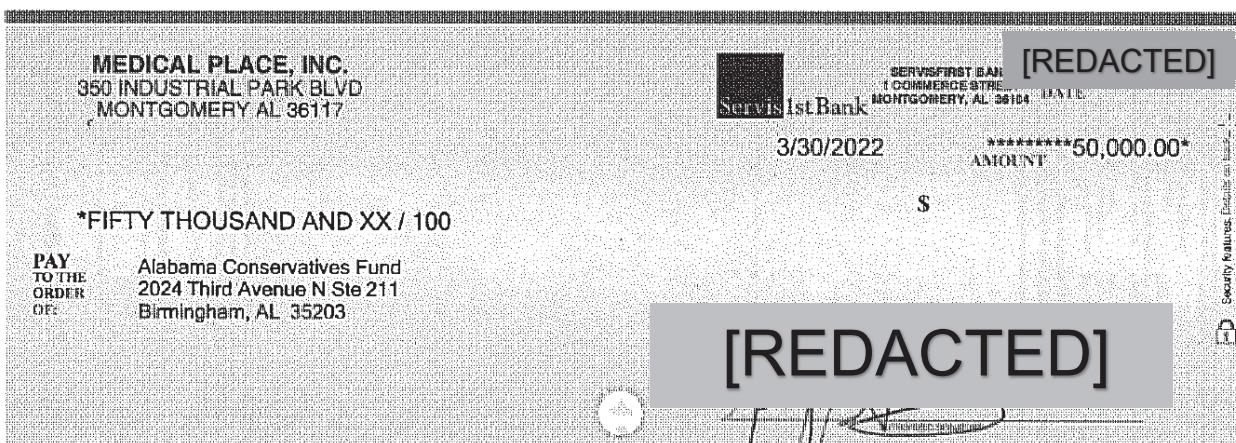
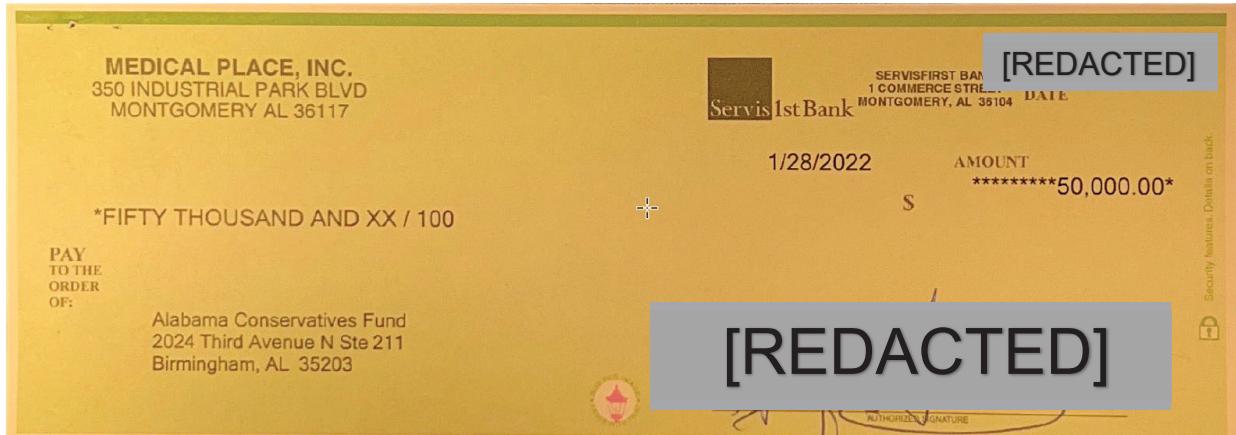
ACF is an independent expenditure-only committee, commonly referred to as a super PAC, that registered with the FEC on August 2, 2021.¹ ACF does not solicit contributions from federal contractors. Indeed, its website states that “[c]ontributions from foreign nationals and Federal contractors are prohibited.”²

¹ See Ala. Conservatives Fund, *Statement of Organization*, <https://docquery.fec.gov/pdf/992/202108029465832992/202108029465832992.pdf>.

² Ala. Conservatives Fund, *Donate Now*, <https://secure.winred.com/alabama-conservatives-fund/donate-now/>.

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Prior to the 2022 Alabama Senate primary, an Alabama-based corporation called "Medical Place, Inc." contributed \$100,000 to ACF in two \$50,000 increments. Images of the two checks dated January 28, 2022, and March 30, 2022 follow:



ACF's records indicate that Medical Place transmitted at least one of its checks with ACF's contributor attestation form signed by Medical Place. In two separate places, the form informs contributors of the federal contractor prohibition:

If the personal donation box is checked, I am a United States citizen or an individual admitted with permanent residence status (e.g. a "green card holder"). Contributions from federal government contractors or foreign corporations are prohibited. This contribution, whether personal or corporate, will not be reimbursed by another person or entity.

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And:

Contributions to Alabama Conservatives Fund are not deductible as charitable contributions for federal income tax purposes. Alabama Conservatives Fund is registered with the Federal Election Commission (FEC) and is an independent expenditure-only committee. Alabama Conservatives Fund does not make contributions to, or coordinate its spending with, any candidates or political parties. Alabama Conservatives Fund may accept unlimited contributions from individuals, corporations, and other business entities. Contributions from foreign nationals, foreign corporations, and federal contractors are prohibited. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation, and employer of individual donors whose aggregate contributions exceed \$200 in a calendar year.

After CLC filed its complaint, ACF received a request from Medical Place to refund its contributions. ACF refunded the total amount of \$100,000 and disclosed the refund on ACF's July 15, 2022 Quarterly Report.³

THE COMPLAINT

The complaint asserts that when Medical Place made its two contributions to ACF, Medical Place "had active federal contracts to supply medical devices, including continuous positive airway pressure (CPAP) machines and equipment, as well as ventilators, heating pads, and other healthcare equipment, to [certain federal departments]." The complaint reasons that, because "[f]ederal law prohibits a federal contractor from making any 'contribution to any political party, committee, or candidate for public office,'"⁴ "Medical Place violated the prohibition on federal contractor contributions."⁵

The complaint neither identifies ACF as a respondent nor alleges that ACF did anything impermissible. Rather, the complaint simply asserts – without further elaboration – that "[f]ederal law additionally prohibits any person from knowingly soliciting such a contribution from a federal contractor."⁶

THE LAW

Federal law states that it is "unlawful for any person . . . knowingly to solicit [a] contribution from" any other person that "enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof" within certain prescribed time periods.⁷

³ ACF, *July 15 Quarterly Report*, at 21.

⁴ Compl. ¶ 12.

⁵ *Id.* ¶ 2; see also *id.* at ¶ 24 (requesting "the Commission [to] find reason to believe that Medical Place, Inc. violated 52 U.S.C. § 30101 et seq., and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2)), 6 (stating that "Medical Place, Inc. Violated the Federal Contractor Contribution Ban") (cleaned up).

⁶ *Id.* ¶ 13.

⁷ 52 U.S.C. § 30119; see also 11 C.F.R. §§ 115.1 et seq. While the Commission has enforced these restrictions against federal government contractors in the past, multiple commissioners have noted that the prohibition may be unconstitutional. See, e.g., FEC MUR 7890 (Service Truck Tire Ctr.), Statements of Reasons of Chairman Allen J. Dickerson and Commissioners Sean J. Cooksey and James

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When examining a complaint alleging a violation of this prohibition, “the Commission looks first to whether the [contributing] entity met the statutory and regulatory definition of government contractor at the time the contribution was made.”⁸ If the Commission concludes that the entity was a federal government contractor at the time of the contribution, the Commission then examines whether the federal contractor contribution was “knowingly” solicited by the recipient.⁹ To satisfy this second factor, the recipient must have “knowledge of the facts rendering its conduct unlawful.”¹⁰

DISCUSSION

As an initial matter, the complaint neither identifies ACF as a respondent, nor alleges that ACF violated the FECA. Importantly, the complaint does not identify any basis to allege that ACF had knowledge of Medical Place’s claimed status as a federal contractor. Without such an allegation, the Commission should dismiss ACF from this matter at the threshold.¹¹

Furthermore, there is simply no basis to conclude that ACF “knowingly” solicited a contribution from a federal contractor. ACF’s publicly available website clearly states that federal law prohibits federal contractors from contributing to ACF. Moreover, Medical Place signed a contributor attestation form that twice warned that federal government contractors may not contribute. Even if Medical Place was a federal contractor at the time of the contributions, ACF did not possess any contemporaneous knowledge to that effect. To the contrary, Medical Place’s signed contributor attestation form indicated to ACF that Medical Place was not a federal contractor. Thus, as in similar cases,¹² the Commission should dismiss ACF from this matter.

CONCLUSION

For the foregoing reasons, the Commission should find no reason to believe that ACF and its Treasurer violated the FECA and dismiss ACF from this matter.

E. “Trey” Trainor, III, at 5 (Feb. 15, 2022). ACF reserves the right to advance these same arguments at a later date, if necessary.

⁸ FEC MUR 6403 (Alaskans Standing Together), Factual and Legal Analysis at 5 (Nov. 10, 2011).

⁹ *Id.* at 9 (quoting *FEC v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986)).

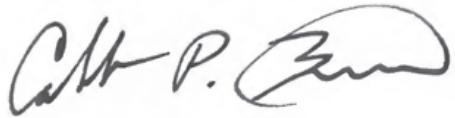
¹⁰ *Dramesi*, 640 F. Supp at 987 (knowledge of the amount contributed required for a knowing violation of the contribution limits).

¹¹ See 11 C.F.R. § 111.4(d) (requiring a complaint to “clearly identify as a respondent each person or entity who is alleged to have committed a violation [and provide] a clear and concise recitation of the facts which describe a violation of a statute or regulation”).

¹² See, e.g., MUR 7843 (Marathon Petroleum Company LP), Vote Certification of Feb. 14, 2022 (dismissing solicitation allegation); MUR 7842 (TonerQuest, Inc.), Vote Certification of Feb. 14, 2022 (dismissing solicitation allegation); MUR 7099 (Suffolk Construction Co.), Vote Certification of Sept. 20, 2017 (finding no “reason to believe” a solicitation violation occurred).

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Sincerely,



Caleb P. Burns
Andrew G. Woodson