

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

MUR 8010

DATE COMPLAINT FILED: 06/07/2022

DATE OF NOTIFICATIONS: 06/08/2022

DATE OF LAST RESPONSE: 07/25/2022

DATE ACTIVATED: 08/30/2022

EXPIRATION OF SOL:

Earliest: 02/02/2027

Latest: 04/06/2027

ELECTION CYCLE: 2022**COMPLAINANT:**

Campaign Legal Center

RESPONDENTS:

Medical Place, Inc.

Alabama Conservatives Fund and
Kaylen Melton in her official capacity
as treasurer**RELEVANT STATUTE
AND REGULATION:**

52 U.S.C. § 30119(a)

11 C.F.R. § 111.4(d)

11 C.F.R. § 115.2

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Medical Place, Inc. (“Medical Place”), a medical supplies company, made two \$50,000 contributions, totaling \$100,000, to an independent expenditure-only committee (“IEOPC”), Alabama Conservatives Fund and Kaylen Melton in her official capacity as treasurer (“ACF”), while Medical Place was a federal contractor in 2022, and raises questions as to whether ACF may have violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by soliciting a prohibited contribution from Medical Place. The Act

1 prohibits federal contractors from making, and any person from knowingly soliciting, such
2 contributions.

3 Medical Place acknowledges holding several federal contracts at the time it made the
4 contributions but argues that the Commission should exercise its prosecutorial discretion and
5 dismiss the matter for several reasons, including the prompt refund of the contributions from
6 ACF. Medical Place also argues that the contractor contribution ban is unconstitutional as
7 applied to contributions made to IEOPCs.

8 ACF contends that the Complaint neither identifies ACF as a respondent nor alleges that
9 it violated the Act, and therefore requests that it be dismissed from the matter. ACF generally
10 contends that it was unaware of the alleged federal contractor status of Medical Place at the time
11 of the contributions and regularly informs potential contributors — including Medical Place —
12 that it cannot accept federal contractor contributions. ACF also asserts that in connection with
13 one of the Medical Place contributions, it received a signed donor card attesting that the donor
14 was not from any of a list of prohibited sources, which included government contractors. ACF
15 also maintains that it promptly refunded the contribution upon learning of Medical Place's
16 government contractor status.

17 As explained below, Medical Place's arguments for dismissal are either unconvincing or
18 are more appropriately viewed as arguments for mitigation. Accordingly, we recommend that
19 the Commission find reason to believe that Medical Place violated 52 U.S.C. § 30119(a) and
20 11 C.F.R. § 115.2(a) by making prohibited contributions and that the Commission enter pre-
21 probable cause conciliation ("PPCC") with Medical Place. Although ACF submitted
22 information indicating that it provided information about the government contractor prohibition
23 in connection with one of the two contributions, there is insufficient information available to

1 assess the circumstances under which ACF may have solicited both contributions. We therefore
2 recommend, consistent with past matters in which there is insufficient information regarding a
3 potential solicitation, that the Commission take no action as to ACF at this time, pending the
4 development of additional information during conciliation with Medical Place.

5 **II. FACTUAL BACKGROUND**

6 Medical Place is a business located in Montgomery, Alabama specializing in medical,
7 respiratory, pharmaceutical, laboratory, and telemedicine equipment and supplies.¹ Federal
8 spending data confirms that Medical Place held several Indefinite Delivery Contract (“IDC”) and
9 Federal Supply Schedule (“FSS”) contracts at the time the contributions were made and received
10 orders on the contracts from the U.S. Department of Veteran’s Affairs (“VA”) and Defense
11 Logistics Agency.² Two of the IDCs were with the VA and were in effect from September 16,
12 2021 to September 30, 2022, and February 1, 2022 through February 28, 2022, respectively; and
13 the two FSS contracts (also known as “IDVs,” which stands for Indefinite Delivery Vendors)
14 were in effect from August 30, 2021 to March 30, 2022, and from March 7, 2022 to May 31,
15 2022, respectively.³

16 IDC contracts facilitate the delivery of supply and service orders during a set timeframe.⁴
17 FSS contracts are “indefinite delivery/indefinite quantity type contracts,” meaning that sales are
18 not guaranteed; instead, once an FSS contract is awarded, a vendor is added to a list of approved

¹ See Medical Place, Inc., <https://www.medicalplace.us/> (last visited November 2, 2022).

² Compl.at 3 (July 7, 2022); *see also* Compl., Attach. C.

³ Compl., Attach. C.

⁴ See “Indefinite Delivery Contract,” <https://www.usaspending.gov/?glossary=indefinite-delivery-contract-idc> (last visited November 2, 2022); *see also* Compl., Attach. C.

1 suppliers from which multiple agencies may choose to make purchases.⁵ In this instance, federal
2 spending data shows that the Medical Place has been awarded \$249.5 million in federal contracts
3 pursuant to IDV contracts from the VA, U.S. Department of Defense, U.S. Department of
4 Justice, U.S. Department of Health and Human Services and U.S. Department of Homeland
5 Security.⁶

6 On February 2 and April 6, 2022, Medical Place, while holding the above-referenced IDC
7 and FSS contracts, made two separate \$50,000 corporate contributions to ACF.⁷ Neither
8 Medical Place nor ACF have provided information regarding whether or how ACF solicited the
9 contributions or the circumstances under which the contributions were made.⁸ On June 21,
10 2022, approximately two weeks after the Commission notified Respondents of the Complaint in
11 this matter, ACF refunded the contributions to Medical Place.⁹

⁵ See U.S. Dep't of Veterans Affairs, *VA Federal Supply Schedule Service*, <https://www.fss.va.gov/>; Compl., Attach. C; see also <https://www.usaspending.gov/recipient/78ae7b8d-4fea-93a6-9e16-b31d62927309-C/all> (last visited Nov. 2, 2022) (detailing Medical Place's IDV and FSS contracts). The VA recommends that prospective contractors "conduct market research to identify and assess your competition prior to submitting a proposal," as contract holders must market their products to federal purchasers once an FSS is awarded, and the competition is "fierce." Dep't of Veterans Affairs, *Prospective Contractors*, <https://www.va.gov/opal/nac/fss/prospective.asp> (last visited Oct. 29, 2021); Dep't of Veterans Affairs, *Marketing to the Federal Government*, <https://www.va.gov/opal/nac/fss/marketing.asp> (last visited Oct. 29, 2021).

⁶ USASpending.gov, *Award Profile – Indefinite Delivery Vehicle*, https://www.usaspending.gov/award/CONT_IDV_V797D30296_3600 (last visited Oct. 29, 2021) (showing approximately \$3 million in purchases under "Child Award Orders" tab).

⁷ Alabama Conservatives Fund, April 2022 Quarterly Report at 7 (Apr. 15, 2022), <https://docquery.fec.gov/pdf/243/202204159496531243/202204159496531243.pdf>; Medical Place Resp. at 1 ("MP Resp.") (July 21, 2022); ACF Resp. at 2 (July 25, 2022); Alabama Conservatives Fund, 12-Day Pre-Primary Report at 6 (May 12, 2022), <https://docquery.fec.gov/pdf/223/202205129502793223/202205129502793223.pdf>; MP Resp. at 1; ACF Resp. at 2 (July 25, 2022).

⁸ MP Resp., generally; ACF Resp., generally. A review of the Commission's contribution database does not indicate that any other contributions were made by Medical Place to ACF or any other committee. See Commission Contr. Database for Medical Place.

⁹ Alabama Conservatives Fund, 2022 July Quarterly Report at 15 (July 15, 2022), <https://docquery.fec.gov/pdf/378/202207159521490378/202207159521490378.pdf> (reporting a refund disbursed on June 21, 2022; Medical Place Notif. Letter at 1 (June 8, 2022); ACF Notif. Letter at 1 (June 8, 2022)).

1 The Complaint contends that Medical Place made prohibited government contractor
2 contributions to ACF.¹⁰ Medical Place acknowledges that it was a government contractor but
3 asks that the Commission nonetheless exercise its prosecutorial discretion and dismiss this
4 matter.¹¹ Medical Place states that upon learning of the potential impermissibility of the
5 contributions, it promptly requested and received a refund of the contributions on June 21,
6 2022.¹² Medical Place further contends that the federal contractor contribution prohibition is
7 unconstitutional as applied to its contributions to IEOPCs and that prosecutorial discretion is
8 additionally warranted because “pursuing enforcement necessarily would rest on a
9 constitutionally questionable application of the law.”¹³

10 ACF contends that the Complaint neither names it as a respondent nor alleges that it
11 violated the Act.¹⁴ Additionally, ACF contends that it was not aware of Medical Place’s
12 government contractor status, that it does not solicit contributions from federal contractors, and
13 that its website states that contributions from foreign nationals and federal contractors are
14 prohibited.¹⁵ ACF represents that Medical Place provided a signed attestation form along with
15 one of its contributions and includes what appears to be an image of a portion of the ACF-
16 specific form informing contributors in two separate places of the federal contractor prohibition,
17 and seeking representations that the contributor is not a prohibited source.¹⁶ Further, ACF states

¹⁰ Compl. at 1.

¹¹ MP Resp. at 1-3.

¹² *Id.* at 1-2.

¹³ *Id.* at 5; *see also id.* at 2-4.

¹⁴ ACF Response at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 2-3. ACF provided an excerpted portion of the alleged attestation form that purports to advise Medical Place of the prohibition on federal contractor contributions in two separate places. *Id.*

1 that it refunded the full contributions as soon as it became aware of the Complaint.¹⁷ ACF also
2 asserts that because there is no basis for concluding that it knowingly solicited a contribution
3 from a federal contractor, the Commission should dismiss the matter.¹⁸

4 **III. LEGAL ANALYSIS**

5 The Act and the Commission's regulations prohibit contributions to political committees
6 by any person who enters into a contract with the United States or its departments or agencies for
7 "furnishing any material, supplies, or equipment," if payment on such contract "is to be made in
8 whole or in part from funds appropriated by Congress."¹⁹ Such contributions are barred for the
9 period between (1) the earlier of commencement of negotiations or when requests for proposal
10 are sent out, and (2) the later of the completion of performance on or termination of negotiations
11 for the contract.²⁰ The prohibition covers contributions to any political party, political
12 committee, federal candidate, or "any person for any political purpose or use."²¹ The Act also
13 bars any person from knowingly soliciting a contribution from a federal contractor during the
14 prohibited period.²²

¹⁷ *Id.* at 1.

¹⁸ *Id.* (citing to Cert., MUR 7843 (Marathon Petroleum Company LP) (Feb. 14, 2022) (dismissing solicitation allegation); Cert., MUR 7842 (TonerQuest, Inc.) (Feb. 14, 2022) (dismissing solicitation allegation); Cert., MUR 7099 (Suffolk Construction Co.) (Sept. 20, 2017) (finding no reason to believe a solicitation violation occurred)).

¹⁹ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2(a).

²⁰ 11 C.F.R. § 115.1(b).

²¹ *Id.* § 115.2(a).

²² 52 U.S.C. § 30119(a)(2); 11 C.F.R. § 115.2(c).

1 **A. The Commission Should Find Reason to Believe that Medical Place**
2 **Violated the Federal Contractor Prohibition**

3 Medical Place acknowledges that it was a federal contractor at the time it made the
4 \$100,000 contributions to ACF.²³ Specifically, at the relevant times, Medical Place held several
5 Indefinite Delivery Contract (“IDC”) and Federal Supply Schedule (“FSS”) contracts with the
6 VA and DLA.²⁴ Medical Place contends that the Commission should exercise its prosecutorial
7 discretion and dismiss this matter, but its arguments are not compelling.

8 The Commission has exercised prosecutorial discretion to dismiss allegations under the
9 federal contractor ban in certain unique circumstances, but those conditions are not met here. In
10 MUR 6403 (*Alaskans Standing Together, et al.*), the Commission exercised its prosecutorial
11 discretion when the relevant contractors did not ordinarily contract with the government, such
12 that their officers responsible for the contributions were not aware of the contracts; the
13 companies did not seek the contracts but were approached by the federal government; and the
14 amounts paid for the contracts were relatively small considering the contractors’ other income
15 and assets.²⁵ Medical Place does not satisfy any of the unique circumstances present in the
16 matters where the Commission exercised its prosecutorial discretion.

²³ MP Resp. at 1.

²⁴ See U.S. Dep’t of Veterans Affairs, *VA Federal Supply Schedule Service*, <https://www.fss.va.gov/>; Compl., Attach. C; see also <https://www.usaspending.gov/recipient/78ae7b8d-4fea-93a6-9e16-b31d62927309-C/all> (last visited Nov. 2, 2022) (detailing Medical Place’s IDV and FSS contracts).

²⁵ Factual & Legal Analysis (“F&LA”) at 4, 10, MUR 6403 (*Ahtna, Inc. and NANA Regional Corp., Inc.*); F&LA at 8, MUR 6403 (*Arctic Slope Regional Corp.*). *But see* F&LA at 4, MUR 7099 (*Suffolk Construction Co., Inc.*) (concluding that respondent’s argument that its federal contract work represented a “small fraction” of its business did not negate the company’s status as a federal contractor, and noting that “[w]hile Suffolk may consider its federal contract work a “*de minimis*” portion of its overall work, its \$200,000 in contributions to the Committee are not *de minimis*.”).

1 In support of its request for dismissal, Medical Place points out that it requested and
2 received a full refund shortly after being notified of the Complaint.²⁶ The Commission has, in
3 some previous matters, exercised prosecutorial discretion after a refund was made. However, in
4 those matters, the Commission's dismissal was animated in part by the relatively modest
5 amounts at issue (\$1,000 in one case and approximately \$1,700 in the other).²⁷ Here, the amount
6 in violation is significantly higher (\$100,000), and well in excess of the Commission's threshold
7 for pursuing an enforcement action regarding a federal contractor contribution.²⁸ In prior federal
8 contractor matters involving a refunded contribution to an IEOPC, however, the Commission has
9 consistently found reason to believe and considered the refund as a mitigating factor in
10 calculating the penalty.²⁹

11 Medical Place also argues that dismissal is appropriate based on its contention that the
12 federal contractor contribution prohibition is unconstitutional as applied to its contributions to

²⁶ MP Resp. at 1.

²⁷ F&LA at 3-4, MUR 7394 (O'Donnell for Congress, *et al.*) (dismissal citing the modest amount in violation and "remedial actions taken"); F&LA at 3, MUR 7338 (Rick for Congress, *et al.*) (same).

²⁸ The total verified activity (\$100,000) exceeds the referral threshold of \$25,000 for typical referrals to the Office of General Counsel. *See* Enforcement Prioritization System Approved Rating Sheet ¶ A.2.g, MUR 8010 (Medical Place *et al.*).

²⁹ First Gen. Counsel's Report at 12, MUR 7886 (Astellas *et. al.*), Certification ¶ 4 (Jan. 22, 2022), MUR 7886 (Astellas *et. al.*) (approving conciliation agreement recommended in First Gen. Counsel's Report); First Gen. Counsel's Report at 5-6, MUR 7568 (Alpha Marine Services Holdings, LLC, *et al.*) (recommending a penalty of 25% of the refunded amount of \$100,000, minus a 25% PPCC discount); Certification ¶ 5 (Aug. 19, 2019), MUR 7568 (Alpha Marine Services Holdings, LLC, *et al.*) (approving conciliation agreement recommended in First Gen. Counsel's Report); First Gen. Counsel's Report at 8 & n.33, MUR 7099 (Suffolk Construction Co., Inc., *et al.*) (recommending a penalty of 25% of the refunded amount of \$200,000, minus a 25% PPCC discount); Certification ¶ 4 (May 23, 2017), MUR 7099 (Suffolk Construction Co., Inc., *et al.*) (approving conciliation agreement recommended in First Gen. Counsel's Report). The Commission has found reason to believe in a federal contractor matter even when the contractor represented that it proactively sought the refund. F&LA at 1, MUR 7451 (Ring Power Corp.). The available information indicates that Medical Place initiated the request for a refund from ACF. *See* MP Resp. at 1; ACF Resp. at 3.

1 IEOPC.³⁰ However, no court has made such a ruling,³¹ and under those circumstances the
2 Commission has continued to enforce the ban as to IEOPCs, even where respondents have made
3 similar arguments about the constitutionality of the federal contractor prohibition in this
4 context.³² Accordingly, we recommend that the Commission find reason to believe that Medical
5 Place violated 52 U.S.C. § 30119(a) and 11 C.F.R. § 115.2(a) by making prohibited
6 contributions totaling \$100,000 to ACF.

7 **B. The Commission Should Take No Action at This Time as to ACF**

8 As noted above, the Act prohibits any person from knowingly soliciting a federal
9 contractor contribution.³³ The Complaint in this matter does not expressly allege that ACF
10 knowingly solicited such a contribution,³⁴ and ACF generally asserts that it had no knowledge
11 that Medical Place was a federal contractor.³⁵ Further, ACF asserts that it does not solicit
12 contributions from federal contractors and that its website states that contributions from foreign
13 nationals and federal contractors are prohibited.³⁶ ACF has provided portions of an alleged

³⁰ MP Resp. at 2-4.

³¹ Medical Place points to dicta questioning the federal contractor ban as applied to IEOPCs at the district court level in *Wagner v. FEC*, 901 F. Supp. 2d 101, 107 (D.D.C. 2012). MP Resp. at 3-4. However, the D.C. Circuit, sitting *en banc* in *Wagner v. FEC*, upheld the validity of the federal contractor ban and did not address the ban specifically as applied to contributions made to IEOPCs. 793 F.3d 1 (D.C. Cir. 2015).

³² See F&LA at 1, MUR 7886 (*Astellas et. al*) (finding reason to believe that a federal contractor made a prohibited contribution to the Senate Leadership Fund, an IEPOC).

³³ 52 U.S.C. § 30119(a)(2); *see also* 11 C.F.R. § 115.2 (c).

³⁴ Recipient committees have routinely been notified as respondents in similar matters. *See, e.g.*, Notif. Letters, MUR 7887 (Hamilton) (Mar. 22, 2021); Notif. Letters, MUR 7886 (Astellas Pharm.) (Mar. 24, 2021); Notif. Letters, MUR 7568 (Alpha Marine Services) (Feb. 25, 2019); Notif. Letters, MUR 7450 (Ashbritt) (Aug. 8, 2018); Notif. Letters, MUR 7451 (Ring Power) (Aug. 6, 2018).

³⁵ ACF Resp. at 2.

³⁶ ACF Resp. at 1; *see also* Ala. Conservatives Fund, *Donate Now*, <https://secure.winred.com/alabama-conservatives-fund/donate-now/> (last visited November 8, 2022).

1 signed attestation form accompanying one of the contributions from Medical Place that allegedly
2 references the federal contractor prohibition in two separate places.³⁷

3 While neither Medical Place nor ACF's Response provide information regarding whether
4 or how ACF might have solicited Medical Place for the contributions at issue, or the
5 circumstances under which ACF came to receive the contributions from Medical Place (other
6 than that they were made by check), the partial images of the alleged signed attestation form
7 containing the information on the federal contractor prohibition could be understood in different
8 ways.³⁸ On one hand, ACF appears to be justified in arguing, based on the attestation form, that
9 it affirmatively provided notice to contributors that it could not legally accept contributions from
10 prohibited sources such as Medical Place. On the other hand, ACF's assertion that Medical
11 Place provided a signed copy of a form making specific reference to ACF along with one of the
12 \$50,000 contributions indicates some level of communication between ACF and Medical Place.
13 But even presuming that communication occurred, it does not necessarily undermine ACF's
14 assertion that it was unaware of Medical Place's status as a federal contractor.

15 The available information is not sufficient to fully assess the circumstances under which
16 ACF solicited the contribution. However, discussion toward a possible resolution of this matter
17 during PPCC with Medical Place may reveal additional information about the circumstances of
18 the contributions, including any solicitation efforts by ACF. In similar circumstances in other
19 federal contractor matters, the Commission has taken no action against the recipient committee.³⁹

³⁷ *Id.* at 2. ACF provides a snapshot of a portion of the attestation form that would have advised Medical Place of the prohibition on federal contractor contributions. *Id.*

³⁸ *Id.* at 1-6. Medical Place, in its Response, also does not describe the circumstances of the contribution. *Id.* at 1-5.

³⁹ *E.g.*, First Gen. Counsel's Report at 5, MUR 7568 (Alpha Marine Services Holdings, LLC, *et al.*) ("[T]he available record does not include information regarding the making of the contribution, and the Committee's denial

1 Accordingly, we recommend that the Commission take no action at this time as to ACF
2 regarding the allegation that it knowingly solicited a prohibited federal contractor contribution.

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is unsworn and did not include [the contractor's] signed attestation.”); Certification ¶ 2 (Aug. 19, 2019), MUR 7568 (Alpha Marine Services Holdings, LLC, *et al.*) (taking no action as to IEOPC).

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Mark Shonkwiler

Mark Shonkwiler
Assistant General Counsel

Kimberly D. Hart

Kimberly D. Hart
Attorney