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William B. Canfield III
Attorney at Law
Suite 201
6723 Whittier Avenue
McLean, VA 22101
703- 891-9988 (o)
Canfieldwilliam@gmail.com

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Mark Shonkwiler, Esq.
Assistant General Counsel
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

**VIA Electronic Mail**

**Re: Matter Under Review # 8011**

Sir:

Pursuant to the executed Designation of Counsel form of June 14, 2022, I represent Daniel Defense LLC and its principals, in the above captioned matter. I also represent Daniel Defense, LLC in Matter Under Review # 7889. As a result of these two Designations and as a consequence of the undisputed fact that both of these Matters Under Review flow from the exact same factual predicate, I hereby request that the Federal Election Commission formally join MUSs # 7889 and 8011 into one combined MUR.

For the reasons set forth below, we hereby request that the Federal Election Commission (the "Commission") dismiss Matter Under Review # 8011 and take no further action against my clients.

FACTS: Daniel Defense LLC is an American manufacturer of firearms, with facilities in Georgia. Upon information and belief, the Gun Owners Action Fund is an Independent Expenditure-Only committee (an "IEOPC") registered as such with the Commission.

On or about January 6, 2021, Daniel Defense LLC ("Daniel") was directly solicited by the IEOPC to make a voluntary contribution to the IEOPC in support their political efforts advocating for the Second Amendment to the Constitution of the United States. As a domestic manufacturer of firearms, the Second Amendment to the Constitution is simply and inarguably the very foundation of the commercial enterprise carried out by Daniel Defense LLC.

On or about the date of this solicitation by the IEOPC and since 2005, Daniel Defense LLC held one or more contracts with the Department of Defense and its constituent components for the production of firearms to be used by selected members of the Armed Forces. The fact that Daniel was and is a government contractor (as defined at 52 U.S.C para 30119(a)(1) and 11 C.F.R. para 115.2(a) is specifically established by Daniel on its website (www.danieldefense.com) and its status as a government contractor can readily be ascertained through an elementary Google search. The Department of Defense deems Daniel Defense LLC and its parent company, M.C. Daniel Group, Inc. as the contractor. The Department does not deem Marty Daniel or any officer or employee of Daniel or its

parent as a "government contractor." Daniel is engaged in defense contracting and procurement, a fact that should be obvious from its very name.

At the time of the solicitation of Daniel by the IEOPPC, Daniel was unaware of the restriction found at 52 U.S.C. para 30119(a)(1) for the simple reason that Daniel had never previously been solicited to make a contribution to a federal political committee and had never made a contribution to a federal political committee. Notwithstanding the fact that the status of Daniel as a government contractor could be easily obtained by (1) a simple Google search or (2) reference to the Daniel website or (3) a review of the meaning behind its corporate name, it appears that no one at the IEOPC making the solicitation made any inquiry of Daniel as to its status as a government contractor and the obvious implications that could flow from that fact, as embodied in 52 U.S.C. para 30119(a)(1). In responding to the solicitation of the IEOPC, Daniel was operating under a good faith expectation that the IEOPC was aware of any and all federal restrictions as to the source of contributions it was soliciting. It was not until your letter of February 16, 2022 was received that Daniel first became aware of the prohibition on the making of a contribution by a federal contractor. **Having learned of this prohibition, Daniel formally requested and has received a complete refund of its contribution to the IEOPC.**

Daniel is a muti-million-dollar manufacturing company, It's founder and Chief Executive Officer is Martin C. Daniel. Mr. Daniel owns 96% of the company. There is one minority owner. At the time of the solicitation at issue here, Mr. Daniel had sufficient personal resources from which he could have made the contribution personally and directly. There was no financial reason why the contribution had to have been made by Daniel. At the time of the solicitation, Mr. Daniel discussed the needs of the then newly-created IEOPC with its principal, Chris Cox. In that discussion. Mr. Daniel simply asked Mr. Cox if and how Mr. Daniel's company could be helpful to the IEOPC. Mr. Daniel's sole purpose in offering to be helpful to the IEOPC was fundamentally and exclusively based on the underlying purpose of the IEOPC, to support and defend the Second Amendment to the Constitution...the very essence of the commercial business of Daniel.

LAW: It is axiomatic that the so-called "government contractor" prohibition, found at 52 U.S.C. para 30119(a)(1) must be narrowly applied lest a misapplication should result in a Constitutional challenge to the overly-broad application of that provision. The intent of Congress in enacting the prohibition is clear, on its face. The express concern of Congress was that an actual or potential contractor seeking to obtain or maintain an existing contract with the federal government, might make political contributions to the candidate committees of those elected officials who might be in a position to influence the awarding of a particular government contract. The potential for an actual or apparent conflict of interest with such a contribution was obvious to Congress.

This predicate has recently been recognized by the Commission in the Statement of Reasons of Commissioners Broussard and Weintraub in MUR 7180 of September 16, 2021. In their Statement, the Commissioners wrote that:

> "For over 80 years, federal contractors have been prohibited from making political contributions to prevent undue influence in awarding taxpayer-funded contracts. This prohibition serves as an important purpose of protecting merit-based administration of government contracts, avoiding pay-to-play, and ensuring that government personnel involved in contracting decisions are free from political coercion."

Clearly, the public policy underpinning the government contractor prohibition is based upon a conflicts of interest concern that contributions to the President, Vice President and to Members of Congress by those seeking government contracts or possessing existing government contracts could have the potential of suborning the independent judgment of such officials in the exercise of their oversight of or authorization for federal programs that are based upon government contracts.

The recipient of the contribution at issue here, Gun Owners Action Fund (the "Fund"), is an Independent Expenditure-Only Committee (an IEOPC). Such Committees were created by the Supreme Court of the United States (the "Court") in the seminal decision of Citizens United v. Federal Election Commission (558 U.S. 310 – 2010) and by the Court of Appeals for the D.C. Circuit in Speech Now v. Federal Election Commission (599 F. 3rd 1 – 2010). Upon information and belief, Gun Owners Action Fund is not directed or controlled by any federal candidate or incumbent Member of Congress. Upon information and belief, the Fund does not exist to support or oppose an individual incumbent or challenger, as distinct from the campaign finance actions of the vast majority of IEOPCs. The Fund is thus not directed or controlled by any incumbent Member of Congress but simply financially supports those Members of Congress, both Democrats and Republicans, who take a principled stand in support of the Second Amendment. The Fund is, in essence, a single-issue Independent Expenditure vehicle whose sole purpose is to financially support any candidate that aligns with the Fund on the issue of the Second Amendment. As a consequence, a contribution to the Fund cannot reasonable be viewed as an effort by the contributor to curry favor with or gain access to a particular incumbent or challenger. Contributors to the Fund support it because it is exclusively focused on any federal candidate who supports the Second Amendment, regardless of party affiliation or position within Congress.

In both Citizens United and Speech Now, the Courts have taken the position that political speech must prevail against laws that would suppress such speech either by design or inadvertence and that any law that burdens political speech must be subject to strict scrutiny. As applied broadly to any contribution by a government contractor to any federal political committee, including to an IEOPC, regulators must be careful to give due deference to the First Amendment's protections for most forms of political speech. Where a contribution to an IEOPC by a federal contractor is broadly precluded, notwithstanding that no evidence of a corrupt motive or the expectation of a quid-pro-quo by the contributor is presented, an overly broad application of this prohibition to the facts in this particular matter, must be given strict scrutiny.

As the Complainant in this matter, Campaign Legal Center, formally acknowledges in its complaint, the very premise of the Federal Contractor prohibition is that: "[A]llowing federal contractors like Daniel Defense to make political contributions would risk creating a 'pay to play' culture of political corruption, in which companies benefitting from tax-payer federal contracts receive favored treatment in exchange for their political contributions." This IEOPC is an Independent Expenditure-Only committee. This IEOPC expends its resources in support of the Second Amendment. This IEOPC does not play any role in the awarding of federal contracts. This IEOPC does not engage with any federal decision-maker as to the awarding of federal contracts. This IEOPC is not connected with or sponsored by any candidate for federal office, either incumbent or challenger. **Hence, the possibility of a corrupt 'pay to play' scenario outlined by the Complainant simply cannot exist.**

CONCLUSION: The contribution at issue in MUR # 8011 was a contribution to an IEOPC that was issue related and not candidate specific. The contribution to the Fund was solicited by the Fund and due

diligence by the Fund would have clearly shown that Daniel was a defense contractor at the time of the solicitation. In making the solicitation, the Fund did not seek to ascertain from Daniels whether or not it was a federal government contractor and did not express to Daniel any concern as to the possible application of 52 U.S.C. 30119(a)(1) to such contribution. Daniel had never before been solicited to make a contribution to an IEOPC or to any other federal political committee and therefore had no knowledge of the prohibition found at 52 U.S.C. 30119(a)(1). Daniel, in good faith, relied upon the expertise of the Fund with respect to federal campaign finance law, unfortunately. Daniel made the contribution to the Fund for the simple reason that the Fund supports the Constitutional Amendment that is at the very core of the commercial business undertaken by Daniel. There is no evidence that the Daniel contribution to the Fund was intended by Daniel to curry favor with or gain access to a decision-maker on Capitol Hill who might be able to influence the awarding of a government contract to Daniel, going forward. There is no evidence that the Daniel contribution was intended as a quid-pro-quo for some form of favorable treatment by anyone in the federal government who might be responsible for granting a government contract to Daniel. Quite the contrary, Daniel contributed to the Fund because of Daniel's well documented interest in preserving and protecting the essence of the Second Amendment and for no other reason. Out of an abundance of caution and with the knowledge that this matter is pending before the Commission, Dniel has directed the Fund to refund the contribution to Daniel.

As noted above, the Commission has recently had before it two different matters that involved the application of the government contractor provision to a contribution to a federal political committee. In both of those matters, the Controlling Commissioners provided a Statement of Reasons in support of their decision not to move forward with the matter before them. In those two Statements of Reason, the Controlling Commissioners presented their skepticism as to an overly broad application of the government contractor prohibition to any federal committee.

With respect to the disposition of MUR # 7180, Commissioners Dickerson, Cooksey and Trainor wrote that:

> "...we note the 'substantial doubt about the constitutionality of any limits on SuperPAC contributions' in the wake of Citizens United and Speech Now.org decisions. Although the ban on contractor contributions to candidates and political parties was upheld in the D.C. Circuit in Wagner v. FEC, the plaintiffs in that case specified that their challenge did not encompass super PAC contributions, and the court did not reach the question. 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 will test that skepticism litigation."

Similarly, those same Controlling Commissioners indicated, in their Statement of Reasons on the disposition of MUR # 7890 that:

> "...we note, as we have in the past, the 'substantial doubt about the constitutionality of any limits on SuperPAC contributions' in the wake of the Citizens United and Speech Now.org decisions. 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 reasons set forth above, I ask the Commission to reject any effort to advance this matter and ask the Commission to take no further action against my clients.

Sincerely,

William B. Canfield
Counsel to Daniel Defense LLC and Its Principals

Attachment: Designation of Counsel Form