



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 8038
Angel Staffing, Inc., <i>et al.</i>)	
)	

STATEMENT OF REASONS OF VICE CHAIRMAN SEAN J. COOKSEY

The Complaint in this matter alleged that Angel Staffing, Inc. made a prohibited federal-contractor contribution to Protect and Serve PAC in the weeks before Texas’s 2022 congressional primaries. While the record showed that Angel Staffing was in fact a federal contractor at the time the contribution was made, further evidence indicated that the intended contributor was in fact Angel’s Staffing’s sole owner, Shannon Ralston. Considering the particular and mitigating circumstances surrounding this matter, as well as the uncertainties of the underlying law and past Commission practice, I voted against the Office of General Counsel’s (“OGC”) enforcement recommendations and instead voted to dismiss as a matter of prosecutorial discretion. This statement explains why.

I. Factual Background

Shannon Ralston is the owner, president, and CEO of Angel Staffing, a medical staffing company incorporated in Texas that recruits medical professionals for both public and private inpatient treatment facilities and provides disaster relief healthcare workers in Texas and elsewhere.¹ In 2022, Ralston wanted to participate in the political process by making a personal contribution to Protect and Serve PAC (“PSP”), an independent expenditure-only political committee that planned to make expenditures leading up to the March 1st primary election for Texas’s 28th Congressional District.²

According to Ralston, working with a PSP consultant, she attempted to make a \$250,000 contribution to PSP on February 22, 2022, from her personal bank account, but she ran into issues with her bank.³ Under pressure to make the contribution in time for the primary election, and after seeking advice from her attorney and tax advisors, Ralston opted to route the funds from a different account—Angel Staffing’s nonrepayable drawing account—in which Ralston had deposited \$4

¹ Response of Angel Staffing and Shannon Ralston at 1 (Oct. 3, 2022), MUR 8038 (Angel Staffing, *et al.*).

² *Id.*, Ralston Aff. ¶ 2., MUR 8038 (Angel Staffing, *et al.*).

³ *Id.* at 2.

million one week earlier as part of a personal loan to the company.⁴ PSP subsequently reported the contribution and listed Angel Staffing as the source, not Ms. Ralston personally.⁵

But this created a problem. Angel Staffing is a government contractor—at the time the contribution was made, Angel Staffing reportedly had nine open contracts with subagencies of the United States Department of Defense.⁶ Under federal law, federal contractors are prohibited from making political contributions.⁷ Because Ralston had used funds that she had deposited in an Angel Staffing account, and because Angel Staffing was the reported contributor, this Complaint was filed alleging a violation of that prohibition. Realizing the error, Ralston requested that PSP amend its report to show herself individually as the contributor, which PSP did.⁸

Upon examining the Complaint and Responses, the Office of General Counsel recommended enforcement against Angel Staffing for making a prohibited federal-contractor contribution in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), on the theory that the true source of the contribution was Angel Staffing, not Ralston.⁹ I disagreed and instead voted to dismiss the allegations as a matter of prosecutorial discretion.¹⁰ The Commission subsequently voted to close the file.¹¹

II. Applicable Law

Under the Act and the Commission’s regulations, any person who enters into a contract with the federal government to furnish “materials, supplies, or equipment,” is prohibited from making political contributions if the federal contract is paid “in whole or in part from funds appropriated by Congress.”¹² 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.¹³

The federal-contractor prohibition kicks in at the start of negotiations or when proposal requests are sent out, whichever occurs first, and ends upon the contract’s completion or the

⁴ *Id.*

⁵ Protect & Serve PAC, Original 2022 April Quarterly Report, Sched. A at 6 (April 15, 2022), *available at* <https://docquery.fec.gov/pdf/555/202204159496293555/202204159496293555.pdf>.

⁶ Complaint ¶ 9 (July 25, 2022), MUR 8038 (Angel Staffing, *et al.*) (citing USAspending.gov).

⁷ 52 U.S.C. § 30119.

⁸ *See* Response of Protect and Serve PAC (Sept. 13, 2022), MUR 8038 (Angel Staffing, *et al.*).

⁹ First General Counsel’s Report at 2, 13 (Feb. 8, 2023), MUR 8038 (Angel Staffing, *et al.*).

¹⁰ Certification (May 31, 2023), MUR 8038 (Angel Staffing, *et al.*).

¹¹ *Id.*

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

¹³ 11 C.F.R. § 115.1(c).

termination of negotiations, whichever occurs last.¹⁴ The statute bars such contractors from making contributions to any political party, political committee, federal candidate, or “any person for any political purpose or use,”¹⁵ and the Commission has enforced the prohibition with respect to contributions to independent expenditure-only political committees.¹⁶

III. Legal Analysis

In the course of its review, OGC concluded that the means by which Ralston structured her contribution to PSP caused Angel Staffing to make a prohibited federal-contractor contribution because the funds came through an Angel Staffing account. OGC therefore recommended that the Commission find reason to believe Angel Staffing violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).¹⁷ Notwithstanding OGC’s formalistic reasoning, however, I disagreed with the recommendations in light of the uncertainty of OGC’s legal theory and this matter’s specific circumstances.

The Commission is the sole agency charged with civil enforcement of the Act. In exercising that authority, the Commission must necessarily exercise discretion in how it sets enforcement priorities and accounts for the particularities of each matter. As the Supreme Court recognized in *Heckler v. Chaney*,¹⁸ agencies must make determinations about the best uses of their limited resources, and “[a]n agency generally cannot act against each technical violation of the statute it is charged with enforcing.”¹⁹

First, because I concluded that the alleged violation—if it was a violation at all—was entirely technical in nature, I believe that this matter warranted dismissal. As noted above, the facts show that Angel Staffing is a closely held corporation owned and run by Ralston herself. The funds at issue were part of a loan Ralston had made to her firm one week earlier, where Ralston acted as both the lender and the borrower to the loan agreement.²⁰ There is no dispute that Ralston herself has a legal right to make unlimited contributions to PSP and other independent expenditure-only political committees from her personal funds.²¹ But in the case of a closely held corporation that is also a government contractor, the Act makes legal distinctions about from whom contributions come. At issue here is the fact that the contribution to PSP came from an Angel Staffing bank account. If Ralston, as the sole owner and operator of Angel Staffing, had instead first appropriately withdrawn funds from the Angel Staffing account to her personal account—and then

¹⁴ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b). There is a significant incongruity between the statute and the Commission’s regulation: while the regulation states that the prohibition begins at the start of negotiations or when requests for proposals are sent, whichever is earlier, the statute makes no mention of the prohibition starting when requests for proposals are sent out.

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

¹⁶ See, e.g., MUR 7843 (*Marathon Petroleum, et al.*); MUR 7842 (*TonerQuest, Inc., et al.*).

¹⁷ First General Counsel’s Report at 13 (Feb. 8, 2023), MUR 8038 (*Angel Staffing, et al.*).

¹⁸ 470 U.S. 821 (1985).

¹⁹ *Id.* at 831.

²⁰ See Response of Angel Staffing and Shannon Ralston, Ex. B, MUR 8038 (*Angel Staffing, et al.*).

²¹ *Buckley v. Valeo*, 424 U.S. 1, 44–51 (1976) (per curiam).

used those funds to make a contribution to PSP—there would plainly be no violation. Consequently, the fact that the same contribution could be accomplished legally through a slightly different financial structure is what makes this matter, in my view, a technical violation, distinct from other contractor-contribution matters,²² and more deserving of discretionary dismissal.

The Commission has a practice of dismissing other matters based on technical violations of financial-structure requirements. In MURs 7585 and 7588 (Lori Trahan), for example, the Commission rejected OGC’s recommendation to scrutinize the financial arrangements between a candidate and her spouse with respect to a series of loans and subsequent self-funded contributions, and it dismissed several violations with respect to reporting and loan deposits.²³ The Commission has similarly dismissed other matters involving bank deposit and withdrawal errors.²⁴ And it has exercised its prosecutorial discretion in other federal-contractor matters.²⁵

Other details in this matter also counsel in favor of dismissal. Ralston does not appear to be an experienced political contributor with an eye toward gaming the system. Prior to this matter, she has made a handful of modest contributions. Further, during her efforts to make this contribution, Ralston first attempted to make the transfer from her personal bank account.²⁶ It was only after running into issues with her bank to complete the transfer from her personal account did she resort to seeking an alternative solution.²⁷ She even sought the advice of legal counsel and a tax consultant for guidance on how to proceed to ensure the contribution was made from personal funds.²⁸ All of these mitigating circumstances suggest any violation was entirely inadvertent and not suitable for enforcement.

Finally, I believe the exercise of prosecutorial discretion is appropriate in light of the significant legal uncertainty and litigation risk that arises from this matter. Commission precedents relating to contributions involving closely held corporations have been conflicting and often confusing. Here, OGC determined that this was a prohibited contribution from a government contractor and not a personal contribution from Ralston. But other Commission precedents involving closely held corporations can be read to counsel the opposite—that what is relevant is the provenance of the funds, not the direct account from which a contribution is made—and therefore imply that no violation occurred here.²⁹ Similarly, the Commission’s enforcement

²² See, e.g., MUR 7569 (3M Company, *et al.*); MUR 7843 (Marathon Petroleum, *et al.*).

²³ See Statement of Reasons of Chair Lindenbaum, Vice Chairman Cooksey, and Commissioners Dickerson and Trainor at 4–7 (Feb. 22, 2023), MURs 7585 & 7588 (Lori Trahan, *et al.*).

²⁴ See, e.g., Factual & Legal Analysis at 8–9 (July 5, 2016), MUR 6941 (NRA-PVF, *et al.*) (dismissing under prosecutorial discretion violations stemming from the deposit of contributions in the wrong bank account); Factual & Legal Analysis at 1–2 (Jan. 25, 2018), MUR 7278 (McClintock for Congress) (dismissing allegations under *Heckler* for incorrectly describing the purpose of certain disbursements given the technical nature of the alleged violations).

²⁵ See, e.g., Factual & Legal Analysis at 8 (Nov. 10, 2011), MUR 6403 (Artic Slope Regional Corp. *et al.*).

²⁶ Response of Angel Staffing and Shannon Ralston, Ralston Aff. ¶ 4, MUR 8038 (Angel Staffing, *et al.*).

²⁷ *Id.* at ¶ 5.

²⁸ *Id.* at ¶ 6.


²⁹ In MUR 3191 (Christmas Farm Inn, Inc.), for example, a candidate had cashed checks from a corporate account into his personal checking account, and then wrote personal checks to contribute to his campaign committee.

actions have been inconsistent with respect to the enforcement of reporting requirements and straw-donor prohibitions with respect to closely held corporations, creating more doubt about how the Commission views legal status of transferred funds.³⁰ These precedents create a risk of arbitrary and capricious enforcement by the Commission that weigh against enforcement in this matter.

Additionally, as Commissioners have noted elsewhere, there is significant legal uncertainty associated with the legal rules applied in this case. Questions about the federal-contractor prohibition as applied to independent expenditure-only political committees,³¹ as well as legal limitations on closely held corporations,³² are subject to heightened litigation risk and associated costs to the Commission. The Commission exercises discretionary prudence, and conserves its limited resources, in avoiding those litigation risks.

IV. Conclusion

For the reasons set forth above, I rejected OGC's recommendations and voted to dismiss the technical violations in the exercise of prosecutorial discretion under *Heckler v. Chaney*.³³


 Sean J. Cooksey
 Vice Chairman

July 3, 2023
 Date

The Commission nonetheless concluded that the facts constituted a prohibited corporate contribution. *See Factual & Legal Analysis* at 3–4 (Oct. 7, 1991), MUR 3191 (Christmas Farm Inn, Inc.).

³⁰ *See* Statement of Reasons of Commissioner Sean J. Cooksey (Oct. 27, 2022), MUR 7903 (Tomfoolery, LLC, *et al.*).

³¹ Statement of Reasons of Vice Chair Dickerson and Commissioners Cooksey and Trainor at 6 Oct. 13, 2021), MUR 7180 (GEO Corrections Holdings, Inc.). *See also* *Wagner v. FEC*, 901 F. Supp. 2d 101, 107 (D.D.C. 2012), *vacated*, 717 F.3d 1007 (D.C. Cir. 2013).

³² *See United States v. Emmons*, 8 F.4th 454, 465–69 (6th 2021), *cert. denied*, 142 S. Ct. 2676 (2022) (seeking Supreme Court review of whether the federal ban on corporate contributions is unconstitutional as applied to intrafamilial contributions from a closely held, family-run corporation).

³³ Certification (May 31, 2023), MUR 8038 (Angel Staffing, *et al.*).