

**BEFORE THE FEDERAL ELECTION  
COMMISSION**

MARIO NICOLAIS  
7830 W. Alameda Ave.  
Suite 103-301  
Lakewood, CO 80226  
[REDACTED]

v.

MUR No. **8080**

PERICLE COMMUNICATIONS COMPANY  
7222 Commerce Center Drive, Suite 180  
P.O. Box 50378  
Colorado Springs, CO 80949  
719.548.1040

**COMPLAINT**

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Pericle Communications Company has violated FECA's prohibition on federal contractors making contributions to political committees while negotiating or performing federal contracts, 52 U.S.C. § 30119(a)(1), by contributing \$25,000 to For Colorado's Future (ID: C00815506).
2. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] [t]he Commission *shall* make an investigation of such alleged violation " 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

**FACTS**

3. For Colorado's Future is an independent expenditure-only political action committee (*i.e.*, a "super PAC").<sup>1</sup>

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<sup>1</sup> For Colorado's Future, Statement of Organization, FEC Form 1 at 1 (filed May 18, 2022), <https://www.fec.gov/data/committee/C00815506/?tab=about-committee>

4. As of June 30, 2022, the last day for which complete data is available, For Colorado's Future has reported a total of \$80,000 in donations, and spending of \$338,000 in independent expenditures supporting Colorado Congressional District 7 candidate Erik Aadland and attacking his opponent.<sup>2</sup>
5. Pericle Communications Company is a wireless engineering services company based in Colorado Springs, Colorado.<sup>3</sup> According to USAspending.gov, "the official open data source of federal spending information,"<sup>4</sup> Pericle Communications Company, located at 7222 Commerce Center Drive, Suite 180, Colorado Springs, CO, 80919-3618, is the recipient of a one-year \$1.2 million contract for a P25 Radio Test System for the CTL at the National Institute of Standards and Technology ("NIST") with the Department of Commerce.<sup>5</sup>
6. On June 24, 2022, For Colorado's Future received a \$25,000 contribution from "Pericle Communications Company," P.O. Box 50378, Colorado Springs, CO 80949, according to the committee's 2022 July Quarterly

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<sup>2</sup> See For Colorado's Future, Independent Expenditures (Regular filings and 24- and 48-Hour Reports), 2022, FEC.GOV, <https://www.fec.gov/data/committee/C00815506/?tab=filings#notices> (last visited Oct. 11, 2022).

<sup>3</sup> *Company Overview*, PERICLE COMMUNICATIONS COMPANY, <https://www.pericle.com/company/> (last visited Oct. 11, 2022).

<sup>4</sup> USAspending.gov, <https://www.usaspending.gov/> (last visited Oct. 11, 2022).

<sup>5</sup> USAspending.gov, Purchase Order, PIID 1333ND21PNB670447, [https://www.usaspending.gov/award/CONT\\_AWD\\_1333ND21PNB670447\\_1341\\_-NONE--NONE-](https://www.usaspending.gov/award/CONT_AWD_1333ND21PNB670447_1341_-NONE--NONE-) (last visited Oct. 11, 2022) (showing a one-year contract with the Department of Commerce with a start date of September 21, 2021, an end date of August 31, 2022, and a current total value of \$1.2 million, and showing the recipient as Pericle Communications Company, 7222 Commerce Center Drive, Suite 180, Colorado Springs, CO 80919-3618).

Report filed with the Commission.<sup>6</sup>

#### SUMMARY OF THE LAW

7. “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.” 52 U.S.C. § 30101(8)(A)(i).
8. Federal law prohibits a federal contractor from making any “contribution to any political party, committee, or candidate for public office” at any time between the commencement of negotiations for a federal contract and the completion of performance or termination of negotiations for the contract. 52 U.S.C. § 30119(a)(1).
9. Federal law additionally prohibits any person from knowingly soliciting such a contribution from a federal contractor. 52 U.S.C. § 30119(a)(2).
10. The contractor contribution ban applies to any person “who enters into any contract with the United States or any department or agency thereof” for “the rendition of personal services” or for “furnishing any material, supplies, or equipment,” or for “selling any land or building,” if “payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress.” 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(a).
11. The ban applies from when a request for proposals is sent out (or when contractual negotiations commence) until the completion of performance of the contract or the termination of negotiations. 52

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<sup>6</sup> For Colorado’s Future, 2022 July Quarterly Report, FEC Form 3X (filed July 13, 2022), <https://docquery.fec.gov/cgi-bin/forms/C00815506/1610129/>.

U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

12. The Commission relies on federal government contract and acquisitions law to determine whether a person is performing or negotiating a federal contract, and is thus considered a federal contractor under FECA and Commission regulations. *See* Advisory Opinion 2008–11 (Brown) at 2–4 (Oct. 14, 2008).
13. Under federal government contract and acquisitions law, a federal supply schedule is a contract, and an individual or company holding or negotiating such a contract is a federal contractor. *See* Federal Acquisition Regulation Part 38 (describing “Federal Supply Schedule Contracting”); *see also* 48 C.F.R. § 38.101 (a)-(b) (describing acquisitions under the Federal Supply Schedule program as “contracts”).<sup>7</sup>
14. Since 2011, the Commission has made clear that the government contractor prohibition applies to contributions to independent expenditure-only political committees (*i.e.*, “super PACs”) following the U.S. Supreme Court’s decision in *Citizens United v. FEC*<sup>8</sup> and the D.C. Circuit decision in *SpeechNow.org v. FEC*.<sup>9</sup> *See, e.g.*, Advisory Opinion 2011-11 (Colbert) at 4-5, 10 (June 30, 2011); *see also* Press Release, FEC, FEC statement on Carey v. FEC reporting guidance for political committees that maintain a non-contribution account, n.1 (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>. In MUR 6403, the Commission emphasized that a contractor making a contribution to a political committee to fund independent expenditures is not itself making an

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<sup>7</sup> *See also supra* n.6.

<sup>8</sup> 558 U.S. 310 (2010).

<sup>9</sup> 599 F.3d 686 (D.C. Cir. 2010).

expenditure; therefore, a contribution to such a committee falls “squarely within the statute’s prohibitions.” MUR 6403 (Alaskans Standing Together), Notification with Factual and Legal Analysis to Ahtna, Inc. and NANA Regional Corporation, Inc. at 5, 9 (Nov. 10, 2011). In 2017, the Commission found reason to believe that federal contractor Suffolk Construction Company, Inc. had violated 52 U.S.C. § 30119(a)(1) by contributing \$200,000 to Priorities USA Action, a super PAC supporting then-presidential candidate Hillary Clinton. *See* MUR 7099 (Suffolk Construction Company, Inc.). The Commission emphasized that there is no *de minimis* exception to section 30119(a)(1), finding that even if a contributor’s federal contract work is only a “small fraction” of its overall business, this “does not negate the company’s status as a federal contractor.” MUR 7099, Factual and Legal Analysis at 4-5.

15. In 2019, the Commission found reason to believe that federal contractor Ring Power Corporation violated 52 U.S.C. § 30119(a)(1) when it contributed \$50,000 to the super PAC New Republican PAC while holding active federal contracts. MUR 7451 (Ring Power Corporation), Notification to Campaign Legal Center at 1 (June 19, 2019). The Commission found reason to believe, and entered into pre-probable cause conciliation, even though the super PAC ultimately refunded the illegal contribution. MUR 7451, Conciliation Agreement at 2-3 (June 4, 2019). In recommending a reason-to-believe finding, the Commission’s Office of General Counsel emphasized that Ring Power Corporation’s assertion that the active contract constituted only a small proportion of the company’s overall revenue “does not negate the company’s status as a federal contractor under the Act, or obviate the violation.” MUR 7451, First General Counsel’s Report at 6 (Apr. 8, 2019). “Similarly,” OGC

proceeded, “Ring Power's remedial measures—obtaining a refund and other steps taken to ensure it would no longer make prohibited contributions—do not excuse the violation.” *Id.* Pursuant to the conciliation agreement, Ring Power Corporation agreed to pay the Commission a \$9,500 penalty. MUR 7451, Conciliation Agreement at 2-3.

16. Similarly, in 2020, the Commission found reason to believe that Alpha Marine Services violated 52 U.S.C. § 30119(a)(1) by contributing \$100,000 to the super PAC Congressional Leadership Fund while holding active federal contracts, notwithstanding the fact that Alpha Marine sought and obtained a refund upon learning of the complaint. MUR 7458 (Alpha Marine Services), Notification to Campaign Legal Center at 1 (July 22, 2020); MUR 7458, Conciliation Agreement at 3-4. Alpha Marine Services agreed to pay the Commission a \$17,000 penalty. MUR 7458, Conciliation Agreement at 4.
17. The federal contractor ban was upheld unanimously by the *en banc* D.C. Circuit in *Wagner v. Fed. Election Comm’n*, 793 F.3d 1 (D.C. Cir. 2015) (*en banc*). The *en banc* court stressed that “the record offers every reason to believe that, if the dam barring contributions were broken, more money in exchange for contracts would flow through the same channels already on display.” *Id.* at 18.

## CAUSE OF ACTION

### I. PERICLE COMMUNICATIONS COMPANY VIOLATED THE CONTRACTOR CONTRIBUTION BAN

18. Federal law and Commission regulations prohibit a federal contractor from making any contribution to any political committee during the period in

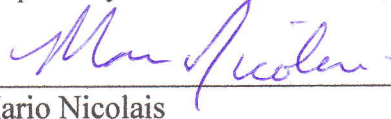
which a federal contract is being negotiated or performed. 52 U.S.C. § 30119(a)(1); 11 C.F.R. Part 115.

19. According to USAspending.gov, “the official source for spending data for the U.S. Government,” Pericle Communications Company is a federal contractor and was a federal contractor when it made the \$25,000 contribution to For Colorado’s Future on June 24, 2022.<sup>13</sup>
20. Consequently, there is reason to believe that Pericle Communications Company as a federal contractor, violated the federal contractor contribution ban by making a “contribution to any political ... committee,” namely For Colorado’s Future, during the period its federal contracts were being negotiated and/or performed. 52 U.S.C. § 30119(a)(1).

#### **PRAYER FOR RELIEF**

21. Wherefore, the Commission should find reason to believe that Pericle Communications Company violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
22. The Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted October 12, 2022,



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Mario Nicolais  
7830 W. Alameda Ave.  
Suite 103-301  
Lakewood, CO 80226



Complainant's Address:

Mario Nicolais  
7830 W. Alameda Ave.  
Suite 103-301  
Lakewood, CO 80226



VERIFICATION

The complainant listed below hereby verifies that the statements made in the attached Complaint are, upon their information and belief, true.

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Jefferson )

Mario Nicolais, of lawful age, being first duly sworn upon oath, alleges and states that he has read the above and foregoing Complaint, and that the statement and averments made are true and correct.

Mario Nicolais  
Signature

Print Name: Mario Nicolais

Acknowledged before me this 14 day of October, 2022.

My commission expires: June 9, 2025.

JANICE MARIE RANEY JR.  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20214022466  
MY COMMISSION EXPIRES JUNE 9, 2025

Janice Raney  
Notary Public

[SEAL]