FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 8167
Detroit Int'l Bridge Co., *et al.*	)	
	)	

STATEMENT OF REASONS OF
CHAIRMAN SEAN J. COOKSEY AND
COMMISSIONERS ALLEN J. DICKERSON AND JAMES E. "TREY" TRAINOR, III

INTRODUCTION

In this Matter, the Detroit International Bridge Company, LLC ("Company" or "LLC"), contributed to Never Back Down, an independent expenditure-only committee.[1] Normally, this would pose no legal issues; corporations may give to Super PACs. A complaint was filed, however, on the grounds that the Company is a federal contractor, and federal contractors *are* prohibited from making such contributions.[2] We voted to dismiss that complaint[3] and we write now to explain the reasoning behind that decision.[4]

I. Standard of Review

At the initial stage of enforcement, the Act provides that the Commission must either dismiss a complaint or find reason-to-believe ("RTB"). Dismissal concludes the Commission's administrative review of the complaint, while RTB must always be followed by either an investigation or efforts to conciliate with the respondent.[5]

[1] Colloquially, such groups are often referred to as Super PACs. *See* Fed. Election Comm'n, Form 1 (Statement of Organization).

[2] 52 U.S.C. § 30119(a).

[3] Cert. at 2, MUR 8167 (Detroit Int'l Bridge Co.), July 9, 2024.

[4] *Democratic Cong. Campaign Comm. v. Fed. Election Comm'n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987).

[5] 52 U.S.C. § 30109(a)(1)-(2); Fed. Election Comm'n, Dir. 74.

The Commission will find reason-to-believe where a complaint (1) "fairly invokes its jurisdiction," (2) "is credible, and not merely a bare accusation of wrongdoing," (3) "the response has not sufficiently answered the complaint," and (4) we determine that "enforcement is a judicious use of the Commission's scarce resources."[6] Only where the Commission can answer all four prongs of the analysis in the affirmative will we vote to find RTB.

II. Relevant Law

Our Office of General Counsel ("OGC") "recommend[ed] that the Commission find reason to believe that [the Company] violated 52 U.S.C. § 30119(a) and 11 C.F.R. § 115.2(a) by making a prohibited contribution."[7]

That statute and regulation encompasses the general ban on contributions by federal contractors. To whit: "any person…who 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 or for selling any land or building to the United States or any department or agency thereof, 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" is prohibited from contributing to political committees while negotiating for or operating under such a contract.[8]

Our regulations also provide that "[a] contribution by an LLC [limited liability company] with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service…shall be attributed only to the single member."[9] Furthermore, such "[a]n LLC that makes a contribution…shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed."[10]

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[6] Statement of Reasons of Chairman Cooksey and Comm'rs Dickerson and Trainor at 2, MUR 8110 (Am. Coal. for Conservative Policies), July 29, 2024.

[7] First Gen'l Counsel's Report ("FGCR") at 3, MUR 8167 (Detroit Int'l Bridge Co.), May 23, 2024.

[8] 52 U.S.C. § 30119(a). Our regulations are generally consistent with that statutory text, 11 C.F.R. § 115.1(a), and state that "[i]t shall be an unlawful for a Federal contractor…[so] defined…to make, either directly or indirectly, any contribution…to any political…committee." 11 C.F.R. § 115.2(a).

[9] 11 C.F.R. § 110.1(g)(4).

[10] 11 C.F.R. § 110.1(g)(5).

III. Facts of the Matter

The Detroit International Bridge Company is both an LLC and a government contractor. Specifically, the Company "is a for-profit, private company that owns and operates the Ambassador Bridge in Detroit, Michigan. The Ambassador Bridge is a tolled suspension bridge that spans the Detroit River, connecting Detroit in the United States with Windsor, Ontario in Canada. Matthew T. Moroun is the legal owner of" the Company."[11]

Because the Company owns and operates an international border crossing, the U.S. Customs and Border Patrol ("CBP") "operates a port of entry on the U.S. side of the Ambassador Bridge."[12] As a result, the General Services Administration ("GSA") "leases facilities" from the Company "for CBP's operations."[13] This lease was amended in 2015 "to reflect a change of payee" from the Company to a new entity called DIBC Investments, Inc.[14] The Company, however, still "directly receives" money "from GSA" via "reimbursements for electricity to operate CBP's HVAC outside of normal working hours."[15]

On May 25, 2023, the Company made a $236,800 contribution to a Super PAC, Never Back Down.[16] FEC records show the contribution was attributed in full to Mr. Moroun,[17] "the legal owner of" the LLC.[18] Following the filing of the complaint, Never Back Down refunded the contribution.[19]

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[11] Det. Int'l Bridge Co. Resp. at 1 ("Resp.").

[12] *Id.*

[13] *Id.*

[14] *Id.* at Ex. A.

[15] *Id.* at 3. The amount of these reimbursements is unclear, but OGC notes that they are for the "'actual usage of electricity… based on measurement by a submeter.'" FGCR at 4, n. 15 (quoting Resp. at 3).

[16] *Id.* at 4.

[17] Never Back Down, Inc., 2023 Mid-Year Report at 21 (July 31, 2023).

[18] Resp. at 1.

[19] *Id.* at 2; Ex. C.

IV. The Commission Dismissed the Complaint

The complaint fairly invoked the FEC's jurisdiction. As a general rule, federal contractors are prohibited from making political contributions to political committees.[20]

Review of both the complaint and response, however, provided sufficient information to merit dismissal. The complaint itself cites to the FEC's reports noting that the contribution was attributed to Mr. Moroun, the owner of the Company.[21] And the response corroborated this information, explicitly noting that Mr. Moroun "is *the* legal owner of the" Company.[22]

In short, because the contribution was attributed to Mr. Moroun, who does not hold a federal contract, rather than the Company itself, the donation did not fall into the plain meaning of 52 U.S.C. § 30119(a), which prohibits the *person* "who enters into any [federal] contract" from making contributions.[23] Mr. Moroun does not

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[20] As two of us have noted, the prohibition is of "dubious constitutionality" as applied to contractor contributions to Super PACs. Statement of Reasons of Comm'rs Dickerson and Trainor at 5, MUR 8038 (Angel Staffing), July 3, 2023 ("Angel Staffing Statement").

[21] Complaint at 2, ¶ 5. The Commission's LLC reporting regime is clunky, with each contribution reported by the recipient, not the original contributor. The information available to the reporting entity is governed by the Commission's LLC attribution regulation. 11 C.F.R. § 110.1(g). Moreover, attribution information is often provided in a separate free-form memo entry since the Commission's forms have not been adapted to decade-old legal developments permitting LLCs to make contributions to political committees. *See* Fed. Election Comm'n, Form 3X (Report of Receipts and Disbursements). Here the memo entry stated that this was a "partnership attribution," while attributing the contribution solely to Mr. Moroun. A partnership *may* attribute a contribution both to itself and to a single partner, an approach requiring a reallocation of partnership profits per 11 C.F.R. § 110.1(e). But as the contribution was attributed solely to Mr. Moroun, and given the Response's unrebutted representation that he is the sole legal owner of the Company, it appears on this record that the Company is "an LLC with a single natural person member." 11 C.F.R. § 110.1(g)(4).

[22] Resp. at 1 (emphasis added).

[23] Our regulations take note of this distinction. Individuals, sole proprietors, and partnerships are explicitly enumerated in the prohibitory regulations concerning contractor contributions. *See* 11 C.F.R. §§ 115.4-115.5. But LLCs with a single natural person member are not, despite their inclusion in other provisions. And single-member LLCs are not sole proprietorships, a form of business organization with *un*limited liability. Black's Law Dictionary 1427 (8th Ed. 2004) (Sole proprietorship is "[a] business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity").

personally hold the contract, a fact that OGC recognized by rescinding notification of Mr. Moroun as a respondent in this Matter.[24]

There are a number of additional reasons for the Commission not to move forward in this Matter, and the Response suggests that a dismissal pursuant to our prosecutorial discretion is advised.[25]

For instance, even if the record did not suggest that the Company is a single-member LLC, it is not clear whether section 30119(a) applies to the type of transactions that the Company had with the Government. For instance, the law bars "selling any land or building to the United States," but says nothing about the leasing of property, which seems quite dissimilar from providing "personal services" or "furnishing…material, supplies or equipment."[26] A similar question occurs for the provision of electricity. While that is arguably the "furnishing [of] material, supplies, or equipment,"[27] OGC supplies no authority on this point. Nor has there been any exploration of an arrangement where the Government simply reimburses an entity for costs imposed by the Government's own actions.[28]

Similarly, we are uncertain whether the statutory prohibition would reach a contract technically held by one company, but where the payee is another, separate, corporate entity. This is especially concerning because the only constitutional justification for a flat prohibition on contributions is the need to "target… a direct exchange of an official act for money."[29]

These highly technical legal questions are unlikely to arise outside the unusual situation presented here. Moreover, given the "dubious constitutionality" of the prohibition at issue, we believe this case would have been poor ground on which to

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[24] FGCR at 1, n.1.

[25] *See Heckler v. Chaney*, 470 U.S. 821 (1985).

[26] 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2(a).

[27] 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(a)(1)(ii).

[28] A situation that may raise questions concerning the Government's obligations under both the Takings Clause, U.S. Const., amend. V, and the unconstitutional conditions doctrine. *Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, 584 U.S. 325, 342 n.4 (2018) ("The [unconstitutional conditions] doctrine prevents the Government from using conditions to produce a result which it could not command directly") (citation and quotation marks omitted); *see also Koontz v St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

[29] *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 192 (2015).

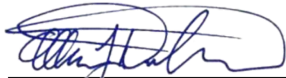
risk judicial invalidation of a portion of FECA.[30] Finally, because the contribution apparently resulted from honest ignorance,[31] was promptly refunded in full upon request, and the contract involved a likely small (and unprofitable) commercial arrangement, we would not have ranked this Matter as a high enforcement priority or a judicious use of the Commission's scarce resources, even without the significant concerns raised above.

In any event, however, we were not required to reach a conclusion on these ancillary points because the contribution was solely attributed to Mr. Maroun, the sole owner of a single-member LLC and a natural person who does not hold a federal contract.

CONCLUSION

For the foregoing reasons, we voted to dismiss the complaint.

Sean J. Cooksey Chairman	August 6, 2024 Date



Allen J. Dickerson Commissioner	August 6, 2024 Date

James E. "Trey" Trainor, III Commissioner	August 6, 2024 Date

[30] Angel Staffing Statement at 5.

[31] Resp. at 2.