

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
1101 14th Street, NW, Suite 400
Washington, DC 20005
(202) 736-2200

v.

MUR No. **7887**

HAMILTON COMPANY
4970 Energy Way
Reno, NV 85902

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Hamilton 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 \$300,000 to Americans For Prosperity Action (ID: C00687103).
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. Americans for Prosperity Action is an independent expenditure-only political action committee (i.e., a "super PAC").¹

¹ Americans for Prosperity Action (AFP Action), Statement of Organization, FEC Form 1 at 5 (amended May 7, 2019), <https://docquery.fec.gov/pdf/625/201905079149636625/201905079149636625.pdf>.

4. In the 2020 election cycle, Americans for Prosperity Action reported over \$47.6 million in independent expenditures supporting or opposing federal candidates for the U.S. Senate and the U.S. House of Representatives across the country.²
5. Hamilton Company is a lab equipment manufacturing company based in Reno, Nevada according to its website.³ According to USAspending.gov, “the official source for spending data for the U.S. Government,”⁴ Hamilton Company, located at 4970 Energy Way, Reno, NV, 89502, is and has been the recipient of numerous federal contracts and grants,⁵ including a number of contracts active throughout the 2020 calendar year, such as a contract with the Department of Health and Human Services for \$1.2 million that began on September 10, 2020 and a contract with the Department of Defense for \$871,233 that began on March 22, 2017.⁶

² See Americans for Prosperity Action, Independent Expenditures, 2019–20, FEC.GOV, <https://www.fec.gov/data/committee/C00687103/?cycle=2020&tab=spending#independent-expenditures> (last visited Mar. 16, 2021).

³ *About Us*, HAMILTON COMPANY, <https://www.hamiltoncompany.com/about-us> (last visited Mar. 16, 2021); *Contact*, HAMILTON COMPANY, <https://www.hamiltoncompany.com/support/global-headquarters-subsiidiaries> (last visited Mar. 16, 2021).

⁴ USAspending.gov, *Mission*, <https://www.usaspending.gov/#/about> (last visited Mar. 16, 2021).

⁵ See Advanced Search for Recipient “Hamilton Company,” USASPENDING.GOV, <https://www.usaspending.gov/search/?hash=18c1cb4b3283e0644a5a58ff3390bbd7> (last visited Mar. 16, 2021).

⁶ USAspending.gov, Contract Summary, Award ID 75N95020P00548, https://www.usaspending.gov/award/CONT_AWD_75N95020P00548_7529_-NONE_-NONE- (last visited Mar. 16, 2021) (showing a \$1,200,000 contract from the U.S. Department of Health and Human Services to Hamilton Company with a period of performance of September 10, 2020 through April 10, 2021); USAspending.gov, Contract Summary, Award ID N6264517C4008, https://www.usaspending.gov/award/CONT_AWD_N6264517C4008_9700_-NONE_-NONE- (last visited Mar. 16, 2021) (showing a \$871,233 contract from the U.S. Department of Defense to Hamilton Company with a period of performance of March 22, 2017 through March 21, 2021).

6. Steven T. Hamilton is the President and Director of Hamilton Company, and has managed the Company since 1974.⁷ 7020 Franktown Road, Washoe Valley, NV, 89704 is Steven Hamilton's address.⁸
7. On November 6, 2020, Americans for Prosperity Action received a \$300,000 contribution from "Hamilton Company General AC," 7020 Franktown Rd., Washoe Valley, NV, 89704, according to the committee's 2020 Year-End Report filed with the Commission.⁹

SUMMARY OF THE LAW

8. "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).
9. 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).
10. Federal law additionally prohibits any person from knowingly soliciting such a contribution from a federal contractor. 52 U.S.C. § 30119(a)(2).

⁷ See Entity Information for Hamilton Company, Nevada Secretary of State Business Entity Search, <https://esos.nv.gov/EntitySearch/OnlineEntitySearch> (last visited Mar. 16, 2021) (showing Steven T. Hamilton listed as the President and Director of Hamilton Company in Nevada State corporate records); *see also* History, HAMILTON COMPANY, <https://www.hamiltoncompany.com/history> (last visited Mar. 16, 2021) (explaining that company management was turned over to Steve Hamilton in 1974, and that he "continues to drive the compan[y] today"); *see also* Americans for Prosperity Action, October 2020 Monthly Report, FEC Form 3X at 9 (filed Oct. 20, 2020), <https://docquery.fec.gov/pdf/131/202010209312987131/202010209312987131.pdf#navpanes=0> (showing a \$500,000 contribution from Steven Hamilton to Americans for Prosperity Action on September 2, 2020 from the address 7020 Franktown Road, Washoe Valley, NV, 89794, with Mr. Hamilton's occupation and employer listed as President and CEO of Hamilton Company).

⁸ Americans for Prosperity Action, October 2020 Monthly Report at 9; *see also* Nevada Republican Party Central Committee, 2018 Report #3, Nevada Secretary of State Contributions and Expenses Report (filed Nov. 2, 2018) <https://www.nvsos.gov/SOSCandidateServices/AnonymousAccess/ViewCCEReport.aspx?syn=u%252bGFbBqGjDZLPAIUrNFqgO%253d%253d> (showing a \$10,000 contribution from Steven Hamilton to the Nevada Republican Party Central Committee on October 5, 2018 from the address 7020 Franktown Road, Washoe Valley, NV, 89704).

⁹ Americans for Prosperity Action, 2020 Post-General Election Report, FEC Form 3X at 22 (amended Jan. 31, 2021), <https://docquery.fec.gov/pdf/707/202101319424073707/202101319424073707.pdf#navpanes=0>.

11. 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).
12. 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 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).
13. 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*¹⁰ and the D.C. Circuit decision in *SpeechNow.org v. FEC*.¹¹ 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 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

¹⁰ 130 S. Ct. 876 (2010).

¹¹ 599 F.3d 686 (D.C. Cir. 2010).

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.), Notification to Campaign Legal Center at 1 (Sep. 25, 2017). 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.

14. 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. 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.

15. 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. HAMILTON COMPANY VIOLATED THE CONTRACTOR CONTRIBUTION BAN

16. 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.
17. According to USAspending.gov, “the official source for spending data for the U.S. Government, Hamilton Company is a federal contractor and was a federal contractor when it made the \$300,000 contribution to Americans for Prosperity Action on November 6, 2020.”¹²
18. Consequently, there is reason to believe that Hamilton Company, as a federal contractor, violated the federal contractor contribution ban by making a “contribution to any political . . .

¹² See *supra* ¶ 5.

committee,” namely Americans for Prosperity Action, during the period its federal contracts were being negotiated and/or performed. 52 U.S.C. § 30119(a)(1).

PRAYER FOR RELIEF

19. Wherefore, the Commission should find reason to believe that Hamilton Company, Inc. violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
20. 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,



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March 17, 2021

VERIFICATION

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

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

B F

Brendan M. Fischer

Sworn to and subscribed before me this 16th day of March 2021.

Natasha C. Johnson

Notary Public



My Commission Expires
January 14, 2024