

BEFORE THE FEDERAL ELECTION COMMISSION

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

v.

MUR No. _____

DTE ENERGY COMPANY
One Energy Plaza
Detroit, MI 48226

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that DTE Energy 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 \$15,000 to American Working Families (ID: C00511915).
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. American Working Families is an independent expenditure-only political action committee (*i.e.*, a “super PAC”).¹ The “Donate” page of American Working Families’ website contains a disclaimer requiring a donor to affirm that “I am not a federal contractor.”²

¹ American Working Families, Statement of Organization, FEC Form 1 at 1 (filed Feb. 6, 2012), <https://docquery.fec.gov/pdf/823/12030734823/12030734823.pdf>.

² *Donate*, ACTBLUE, <https://secure.actblue.com/donate/american-working-families-1> (last visited Oct. 26, 2020).

4. So far in the 2020 election cycle, American Working Families has reported over \$1 million in independent expenditures supporting Representative Richard Neal and attacking his opponent in the Democratic primary for Massachusetts' 1st Congressional District.³
5. According to its website, DTE Energy Company is a public diversified energy company based in Detroit.⁴ According to USAspending.gov, “the official source for spending data for the U.S. Government,”⁵ DTE Energy Company, located at One Energy PLZ, Detroit, MI 48226, is the recipient of a ten-year indefinite delivery/requirements contract,⁶ and held several contract awards that were active on August 25, 2020,⁷ including a \$2,500,000 contract with the Department of Veterans Affairs beginning on October 1, 2019 and a \$231,000 contract with the Department of Defense beginning on January 13, 2020.⁸

³ See American Working Families, Independent Expenditures (24- and 48-Hour Reports), 2019-20, FEC.GOV, https://www.fec.gov/data/independent-expenditures/?two_year_transaction_period=2020&data_type=processed&committee_id=C00511915&cycle=2020&is_notice=true&most_recent=true (last visited Oct. 26, 2020).

⁴ *About DTE*, DTE ENERGY COMPANY, <https://www.newlook.dteenergy.com/wps/wcm/connect/dte-web/home/about-dte/common/about-dte/about-dte> (last visited Oct. 26, 2020).

⁵ USAspending.gov, *Mission*, <https://www.usaspending.gov/#/about> (last visited Oct. 26, 2020).

⁶ USAspending.gov, Indefinite Delivery Vehicle Summary, PIID 47PA0418D0032, https://www.usaspending.gov/award/CONT_IDV_47PA0418D0032_4740 (last visited Oct. 26, 2020) (showing an open indefinite delivery/requirements contract with the General Services Administration with a start date of July 2, 2018, an end date of July 3, 2028, 20 associated child award orders, and a current total value of \$8,300,000, and showing the recipient as DTE Energy Company, One Energy PLZ, Detroit, MI 48226). Under government contract law, an indefinite delivery requirement contract is a form of a federal contract. 48 C.F.R. § 16.503. According to the USAspending.gov glossary, indefinite delivery requirement contracts are “contracts for the fulfillment of all purchase requirements of supplies or services for designated government activities during a specified contract period, with deliveries to be scheduled by placing orders with the contractor.” *Indefinite Delivery/ Requirements Contract*, USA SPENDING.GOV, <https://www.usaspending.gov/?glossary=indefinite-delivery-requirements-contract> (last visited Oct. 26, 2020).

⁷ See Advanced Search for Recipient “DTE Energy Company,” USAspending.gov, <https://www.usaspending.gov/search/32155f70688035d2340c2989fe38df87> (last visited Oct. 26, 2020); see also, e.g., USAspending.gov, Contract Summary, Award ID 15B41720FVP420006, https://www.usaspending.gov/award/CONT_AWD_15B41720FVP420006_1540_47PA0418D0032_4740 (last visited Oct. 26, 2020) (showing a \$148,500 contract from the Department of Justice to DTE Energy Company with a performance period of October 1, 2019 to September 30, 2020); USAspending.gov, Contract Summary, Award ID W911XK20F0018, https://www.usaspending.gov/award/CONT_AWD_W911XK20F0018_9700_47PA0418D0032_4740 (last visited Oct. 26, 2020) (showing a \$86,000 contract from the Department of Defense to DTE Energy Company with a performance period of February 13, 2020 through March 31, 2021).

⁸ USAspending.gov, Contract Summary, Award ID 36C25020F0007, https://www.usaspending.gov/award/CONT_AWD_36C25020F0007_3600_47PA0418D0032_4740 (last visited Oct. 26, 2020) (showing a \$2,500,000 contract from the Department of Veterans Affairs to DTE Energy Company

6. On August 27, 2020, American Working Families received a \$15,000 contribution from “DTE Energy Company,” One Energy Plaza, Detroit, MI 48226, according to the committee’s 2020 October Quarterly Report filed with the Commission.⁹

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).

with a performance period of October 1, 2019 to September 30, 2020); USAspending.gov, Contract Summary, Award ID W911XK20P0006, https://www.usaspending.gov/award/CONT_AWD_W911XK20P0006_9700_-NONE_-NONE- (last visited Oct. 26, 2020) (showing a \$231,000 contract from the Department of Defense to DTE Energy with a performance period of January 13, 2020 to January 31, 2021).

⁹ American Working Families, 2020 October Quarterly Report, FEC Form 3X at 7 (filed Oct. 15, 2020), <https://docquery.fec.gov/pdf/054/202010159294562054/202010159294562054.pdf>.

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 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, an indefinite delivery requirements contract, as a subtype of the indefinite delivery contract category, 48 C.F.R. § 16.501-2 (a), is a federal contract, and a person holding or negotiating such a contract is a federal contractor, *see* 48 C.F.R. § 16.503 (describing an indefinite delivery requirements contract as a “contract” under federal law).¹⁰
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*¹¹ and the D.C. Circuit decision in *SpeechNow.org v. FEC*.¹² *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

¹⁰ *See also supra* n.6.

¹¹ 130 S. Ct. 876 (2010).

¹² 599 F.3d 686 (D.C. Cir. 2010).

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.), 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.

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. DTE ENERGY 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,” DTE Energy Company is a federal contractor and was a federal contractor when it made the \$15,000 contribution to American Working Families on August 27, 2020.¹³
20. Consequently, there is reason to believe that DTE Energy Company, as a federal contractor, violated the federal contractor contribution ban by making a “contribution to any political . . . committee,” namely American Working Families, 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 DTE Energy 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,



Campaign Legal Center, by
Brendan M. Fischer
1101 14th Street, NW, Suite 400
Washington, DC 20005
(202) 736-2200

Brendan M. Fischer
Campaign Legal Center
1101 14th Street, NW, Suite 400

¹³ See *supra* ¶¶5-6.

Washington, DC 20005
Counsel to the Campaign Legal Center

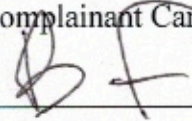
October 28, 2020

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



Brendan M. Fischer

Sworn to and subscribed before me this 27 day of October 2020.



Notary Public

