



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 21, 2022

BY EMAIL

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RE: MUR 8074
Kim Klacik for Congress and Bradley Crate
in his official capacity as treasurer

Dear Ms. Reynolds:

On February 25, 2022, the Federal Election Commission notified your client, Kim Klacik for Congress and Bradley Crate in his official capacity as treasurer (the "Committee"), of a complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended. A copy of the Complaint was forwarded to your client at that time.

Upon review of the available information, the Commission, on September 28, 2022, found reason to believe that the Committee violated: 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 103.3(b) and 110.9 by knowingly accepting excessive contributions; 52 U.S.C. § 30102(e)(3)(B) by making an excessive contribution; 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 103.3(b) and 110.9 by knowingly accepting prohibited corporate contributions; and 52 U.S.C. § 30118(a) and 11 C.F.R. § 103.3(b) by knowingly accepting a prohibited contribution from an unregistered organization. The Factual and Legal Analysis which formed a basis for the Commission's finding is enclosed for your information.

Please note that your client has a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations but is a voluntary step in the enforcement process that the Commission is offering to your client as a

¹ See 18 U.S.C. § 1519.

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way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

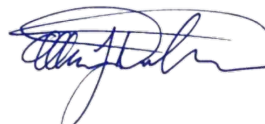
If your client is interested in engaging in pre-probable cause conciliation, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650 or ddillenseger@fec.gov within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days.² Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf.

² 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A).

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In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public. Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.³ We look forward to your response.

On behalf of the Commission,



Allen Dickerson
Chairman

Enclosures
Factual and Legal Analysis

³ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Kim Klacik for Congress and Bradley T. Crate **MUR 8074**
4 in his official capacity as treasurer

5 **I. INTRODUCTION**

6 The Reports Analysis Division (“RAD”) referred Kim Klacik for Congress and Bradley
7 T. Crate in his official capacity as treasurer (the “Committee”) to the Office of General Counsel
8 (“OGC”) for failing to timely remedy excessive and prohibited 2020 general election
9 contributions totaling \$100,259.62, in violation of the Federal Election Campaign Act of 1971,
10 as amended (the “Act”).¹ The Committee responded to the notification of the Referral that its
11 failure to timely refund the excessive contributions was due to “human error” and “a one-time
12 mistake” and that it has subsequently implemented internal compliance measures, including
13 hiring a new compliance firm, to prevent future violations.² In addition, the Committee asserts
14 that it has now refunded the excessive and prohibited contributions identified in the Referral and
15 has requested a refund of an excessive contribution that it made.³ Lastly, the Committee
16 requests that the matter be resolved through the Alternative Dispute Resolution Office
17 (“ADRO”).⁴

18 For the reasons discussed below, the Commission finds reason to believe that the
19 Committee violated: (1) 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 103.3(b), 110.9 by knowingly
20 accepting excessive contributions totaling \$93,500.00; (2) 52 U.S.C. § 30102(e)(3)(B) by making

¹ RAD Referral 22L-08 (Kim Klacik for Congress) (Feb.24, 2022) (“Referral”).¹ Referral Memorandum from Patricia C. Orrock, Chief Compliance Officer, RAD, to Lisa J. Stevenson, Acting General Counsel, OGC at 1 (Feb. 24, 2022).

² Resp. at 1 (Mar. 21, 2022).

³ *Id.*

⁴ *Id.*

1 an excessive contribution of \$3,600.00; (3) 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 103.3(b) and
2 110.9 by knowingly accepting prohibited contributions totaling \$2,659.62 from corporations; and
3 (4) 52 U.S.C. § 30118(a) and 11 C.F.R. § 103.3(b) by knowingly accepting a prohibited \$500
4 contribution from an unregistered organization.

5 **II. FACTUAL BACKGROUND**

6 Kim Klacik for Congress is the principal campaign committee for Kimberly Klacik, a
7 candidate in the 2019-2020 election cycle for Maryland's 7th Congressional District.⁵ The
8 candidate lost the 2020 General Election. The Committee's current treasurer is Bradley T.
9 Crate.⁶

10 The Committee's 2020 October Quarterly Report disclosed excessive contributions from
11 39 individuals totaling \$74,750.00, two prohibited contributions from two apparent corporations
12 (Economy Exterminators and Johnson's Decorating Center, Inc.)⁷ totaling \$2,659.62, and a
13 prohibited contribution from an unregistered organization (Citizens to Elect Steve Schuch)⁸
14 totaling \$500, that were not refunded, reattributed, or redesignated within the permissible
15 timeframes.⁹ The report also disclosed an excessive contribution of \$3,600.00 the Committee

⁵ The Committee was also the subject of Administrative Fine Case # 4220 (Sept. 29, 2021) (\$12,081.00, assessed civil penalty, failure to file 48-Hour Notices for contributions totaling \$111,750.00).

⁶ Gregory Stewart was the treasurer of record during the relevant period. Kim Klacik for Congress, Original Statement of Organization (Nov. 6, 2019). Bradley T. Crate became treasurer of the Committee on May 7, 2021. Kim Klacik for Congress, Amended Statement of Organization (May 7, 2021).

⁷ Referral, Attach 2.

⁸ *Id.* Citizens to Elect Steve Schuch is a State of Maryland candidate committee (Steve R. Schuh, County Executive, Anne Arundel County, Maryland). [https://campaignfinance.maryland.gov/Public/ShowReview?memberID=2851 &memVersID=105 &cTypeCode=01](https://campaignfinance.maryland.gov/Public/ShowReview?memberID=2851&memVersID=105&cTypeCode=01). Maryland laws allows contributions from individuals, business entities, and labor organizations. MD. CODE ANN. ELEC. LAW §§ 1-101, 13-306, and 13-226 (2013).

⁹ Referral at 2.

1 made to Salling for Congress, another principal campaign committee, that has yet to be
2 remedied.¹⁰

3 The Committee's 2020 30-Day Post-General Report disclosed excessive contributions
4 totaling \$18,700.00 from 15 individuals that were not refunded, reattributed, or redesignated
5 within the permissible timeframe, and a \$50 excessive contribution from a prior reporting period
6 that was untimely refunded.¹¹

7 On April 4, 2021, RAD sent the Committee two Requests for Additional Information
8 ("RFAIs") referencing the excessive and prohibited contributions on the two reports described
9 above.¹² In response, on May 10, 2021, the Committee filed two FEC Form 99s,¹³ indicating
10 that the Committee: 1) would refund all excessive and prohibited contributions and disclose the
11 refunds on the Committee's 2021 July Quarterly Report; 2) had requested a refund of the
12 excessive contribution made to the Salling for Congress Committee; and 3) refunded one
13 contribution from an unregistered organization.¹⁴

14 On July 15, 2021, the Committee filed its 2021 July Quarterly Report disclosing
15 chargebacks and refunds of excessive and prohibited contributions, but which were made outside
16 of the permissible timeframe for the 2020 October Quarterly Report (for 39 individuals, two

¹⁰ *Id.* at 2, Attach 2.

¹¹ *Id.* at 3.

¹² Kim Klacik for Congress, RFAI (Apr. 4, 2021) (referencing Amended 2020 October Quarterly Report); Kim Klacik for Congress, RFAI (Apr. 4, 2021) (referencing Amended 2020 30-Day Post-General Report). The Referral notes that the Committee received a \$50.00 excessive contribution during the 2020 12-Day Pre-General reporting period that was cited in the RFAI sent on the 2020 30-Day Post-General Report, which is included in Attachment 2 of the Referral.

¹³ Kim Klacik for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (May 10, 2021)(referencing the Amended 2020 October Quarterly Report); Kim Klacik for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (May 10, 2021) (referencing the Amended 2020 30-Day Post-General Report).

¹⁴ FEC Form 99 at 2-3 (May 10, 2021).

1 apparent corporations and one unregistered organization, totaling \$77,859.62)¹⁵ and the 2020 30-
2 Day Post-General Report (for 15 individuals totaling \$18,700.00).¹⁶ The excessive and
3 prohibited contributions were refunded between 141 days and 276 days late.¹⁷ Further, on
4 October 15, 2021, the Committee filed its 2021 October Quarterly Report, which disclosed one
5 additional refund to an individual contributor totaling \$50.00 made outside the permissible
6 timeframe.¹⁸

7 In sum, the Referral indicates that all refunds have been made by the Committee, except
8 for the \$3,600 excessive contribution the Committee itself made to Salling for Congress, which
9 has not been remedied. According to RAD, a Committee representative told RAD that he
10 believed a request for refund had been made but the Committee had not heard back. RAD also
11 noted that the recipient committee (Salling for Congress) did not appear to have sufficient funds
12 (cash-on-hand) to repay the Committee.

13 In its Response to the Referral, the Committee admits that it did not timely refund
14 excessive and prohibited contributions.¹⁹ The Committee asserts that the delayed refunds
15 resulted from “human error” and the Committee has since implemented internal compliance
16 measures, including hiring a new compliance firm.²⁰ The Committee further asserts that this was
17 “a one-time mistake,” which does not warrant the use of further Commission resources and

¹⁵ Referral at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 3-4.

¹⁸ *Id.*

¹⁹ Resp. at 1; Kim Klacik for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (May 10, 2021) (referencing the Amended 2020 October Quarterly Report); Kim Klacik for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (May 10, 2021) (referencing the Amended 2020 30-Day Post-General Report).

²⁰ Resp. at 1.

1 requests that the matter be sent to ADRO.²¹ Finally, the Response states that the Committee has
2 now made all refunds of the excessive contributions.²²

3 **III. LEGAL ANALYSIS**

4 During the 2020 election cycle, an authorized committee could not accept more than
5 \$2,800 per election from individuals and an authorized committee may not contribute more than
6 \$2,000 per election to another authorized committee.²³ Further, the Act provides that no political
7 committee shall knowingly accept any contribution that exceeds contribution limits.²⁴
8 Contributions which either exceed the contribution limit on their face or in the aggregate may be
9 deposited or returned to the contributor.²⁵ If the excessive contribution is accepted, the treasurer
10 may request redesignation or reattribution of the contribution.²⁶ If a redesignation or
11 reattribution is not obtained, the treasurer must refund the contribution to the contributor within
12 60 days of receipt.²⁷

13 In addition, candidates and their authorized committees are prohibited from knowingly
14 accepting contributions that are not subject to the prohibitions of the Act,²⁸ including
15 contributions from corporations.²⁹ If the treasurer cannot determine whether a contribution

²¹ *Id.*

²² *Id.*

²³ 52 U.S.C. §§ 30102(e)(3)(B), 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.9, 110.1(a)-(b).

²⁴ 52 U.S.C. § 30116(f); *see also* 11 C.F.R. § 110.9 (“No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 11 CFR part 110.”).

²⁵ 11 C.F.R. § 103.3(b)(3).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See* 52 U.S.C. § 30118(a).

²⁹ *Id.*

1 complies with the source prohibitions of the Act, the treasurer must refund the contribution to the
2 contributor within 30 days of receiving the contribution.³⁰

3 Further, an unregistered organization cannot make a contribution to a political committee
4 unless such organization demonstrates that the underlying funds are subject to the limitations and
5 prohibitions of the Act.³¹ The treasurer of a political committee is responsible for ensuring that
6 all contributions received comply with those limitations and prohibitions.³²

7 As an authorized campaign committee, the Committee was limited to accepting \$2,800
8 per election from individuals, contributing \$2,000 to another authorized committee, and was
9 prohibited from accepting any corporate contributions or contributions from an unregistered
10 organization that does not demonstrate that the underlying funds are subject to the limitations
11 and prohibitions of the Act. The Committee, however, received \$96,659.62 in excessive and
12 prohibited contributions disclosed in the 2020 October Quarterly and 2020 30-Day Post-General
13 Reports.³³ The excessive contributions totaling \$93,500.00,³⁴ which were deposited into the
14 Committee's account, were refunded between 141 days and 276 days late, well beyond the 60-
15 day refund period set out in the regulations.³⁵ Similarly, the prohibited contributions, totaling

³⁰ 11 C.F.R. § 103.3(b)

³¹ See *id.* § 102.5(b)(1) (providing that an unregistered organization must show that it has “received sufficient funds subject to the limitations and prohibitions of the Act to make [a] . . . contribution”); see also 52 U.S.C. §§ 30116(f), 30118(a).

³² 11 C.F.R. § 103.3(b); Factual & Legal Analysis at 4-5, MUR 7872 (South Dakota Democratic Party) (finding reason to believe that a state party committee violated 11 C.F.R. § 103.3(b) by accepting contributions from unregistered organizations without ascertaining whether the underlying funds complied with the limitations and prohibitions of the Act).

³³ Referral at 1.

³⁴ *Id.*, Attach 2.

³⁵ 11 C.F.R. § 103.3(b)(3); Referral, Attach. 2.

1 \$3,159.62, which were deposited, were refunded between 260 and 284 days late,³⁶ well outside
2 the 30-day period set forth in the regulation.³⁷ Further, the Committee has made an excessive
3 contribution of \$3,600 to Salling for Congress, which the Committee has yet to remedy. Given
4 the wide range of late refunds, the Committee's receipt of excessive and prohibited contributions
5 does not appear to be a "one-time mistake" as asserted in the response.³⁸

6 Accordingly, the Commission finds reason to believe that the Committee violated: (1)
7 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 103.3(b)(3), and 110.9 by knowingly accepting excessive
8 contributions totaling \$93,500.00; (2) 52 U.S.C. § 30102(e)(3)(B) by making an excessive
9 contribution of \$3,600.00; (3) 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 103.3(b) and 110.9 by
10 knowingly accepting prohibited contributions totaling \$2,659.62 from corporations; and (4)
11 52 U.S.C. § 30118(a) and 11 C.F.R. § 103.3(b) by knowingly accepting a prohibited \$500
12 contribution from an unregistered organization.

³⁶ Referral, Attach 2.

³⁷ 11 C.F.R. § 103.3(b)(1).

³⁸ Resp. at 1.