

**FEDERAL ELECTION COMMISSION**  
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**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6494  
DATE COMPLAINT FILED: August 31, 2011  
DATES SUPPLEMENTS FILED: January 27;  
June 6 and 27, 2012  
DATE OF NOTIFICATION: September 8, 2011  
LAST RESPONSE RECEIVED: August 13, 2012  
DATE ACTIVATED: January 12, 2012

ELECTION CYCLES: 2008, 2010, 2012  
EXPIRATION OF SOL:  
December 15, 2013 (earliest)  
September 30, 2016 (latest)

**COMPLAINANT:**

David Krikorian

**RESPONDENTS:**

Representative Jeannette H. Schmidt  
Schmidt for Congress Committee and Phillip  
Greenburg in his official capacity as treasurer  
Phillip Greenburg, individually  
Peter Schmidt  
Joseph Braun  
Turkish Coalition of America, Inc.  
G. Lincoln McCurdy  
Turkish American Legal Defense Fund  
Bruce Fein  
David Saltzman  
Donald C. Brey  
Sarah D. Morrison  
Elizabeth J. Watters

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 431(8)(A)(i) and (ii)  
2 U.S.C. § 434(b)  
2 U.S.C. § 439a(b)  
2 U.S.C. § 441b(a)  
11 C.F.R. § 100.54  
11 C.F.R. § 113.1(g)(6)

**INTERNAL REPORTS CHECKED:**

FEC Disclosure Reports

OTHER ENTITIES CHECKED: U.S. House of Representatives Committee  
on Ethics  
Office of Congressional Ethics

## I. INTRODUCTION

Complainant alleges that the Turkish Coalition of America, Inc. ("TCA"), a 501(c)(3) corporation, violated 2 U.S.C. § 441b(a) by making a \$651,000 in-kind corporate contribution to Representative Jeannette Schmidt and her campaign committee, Schmidt for Congress Committee and Phillip Greenburg in his official capacity as treasurer (the "Committee"), by providing free legal services from its legal arm, the Turkish American Legal Defense Fund ("TALDF"), for a series of legal proceedings following an acrimonious 2008 Congressional election between Schmidt and Complainant.<sup>1</sup> The Complaint also alleges that the Committee converted \$7,600 in campaign funds to personal use when it made disbursements for "Legal Services" that were personal to Schmidt.

Each Respondent denies violating the Act in the following four responses: (1) a response by TCA; (2) joint response filed by Schmidt, the Committee, Assistant Treasurer Peter Schmidt, and former Assistant Treasurer Joseph Braun, (the "Schmidt Resp." or "Schmidt Respondents");

<sup>1</sup> In January and June 2012, the complainant, David Krikorian, filed three supplements to the complaint. The first supplement, filed January 17, 2012, included an October 2011 Advisory Opinion Request ("AOR 2011-20") from the Committee. *See* Compl. Amend., Ex. A (Jan. 17, 2012). AOR 2011-20 sought approval to use of campaign funds to pay legal fees and expenses associated with the filing of an *amicus* brief in a lawsuit initiated by Krikorian. In that request, the Committee stated that neither Schmidt nor the Committee was named as a defendant in the federal action and "it is quite clear that [the] legal proceedings directly related to her campaign duties as a Federal officeholder." AOR 2011-20. The Committee subsequently withdrew its AOR. The second supplement, filed June 6, 2012, included a transcript of Schmidt's August 2009 deposition from a proceeding before the Ohio Elections Commission, wherein Schmidt testified that TALDF counsel represented the Committee. *See* Second Compl. Supp., Ex. D (June 6, 2012). The third supplement, filed June 27, 2012, individually named as respondents all counsel who provided legal services to Schmidt and the Committee and alleged that Schmidt and the Committee converted campaign funds to personal use. *See* Third Compl. Supp. (June 27, 2012).

1 (3) a joint response filed by TALDF counsel Bruce Fein and David Saltzman (the "TALDF  
2 Resp."); and (4) and joint response with affidavits filed by local Ohio counsel Donald C. Brey,  
3 Sarah D. Morrison, and Elizabeth J. Watters. Respondents primarily argue that the Committee  
4 was not a party to the four legal proceedings, and that the legal services TALDF provided were  
5 not "in connection with" an election and not "for the purposes of influencing" an election.<sup>2</sup> The  
6 Schmidt Respondents further assert that Schmidt and the Committee did not "knowingly" accept  
7 or receive a corporate contribution and that a report ("House Ethics Report") issued by the U.S.  
8 House of Representatives Committee on Ethics ("House Ethics Committee") supports this  
9 claim.<sup>3</sup>

10 Because the record clearly indicates that TCA provided free legal services to Schmidt and  
11 the Committee, we recommend that the Commission find reason to believe that TCA and its  
12 president, G. Lincoln McCurdy, violated 2 U.S.C. § 441b(a) by making prohibited corporate  
13 contributions and consenting to the contributions, respectively; and that Schmidt and the  
14 Committee violated 2 U.S.C. §§ 441b(a) and 434(b) by knowingly accepting the corporate  
15 contributions and failing to report them, respectively. Further, House Ethics documents plainly  
16 demonstrate that by February 2010, the Schmidt Respondents' violations were knowing and  
17 willful.<sup>4</sup>

18 We also recommend that the Commission find no reason to believe that Bruce Fein,  
19 David Saltzman, Donald Brey, Sarah Morrison, Elizabeth Watters, Phillip Greenburg (in his

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<sup>2</sup> TCA Resp. at 11, 13 (Oct. 3, 2011); Schmidt Resp. at 3-4, 6-7 (Nov. 2, 2011).

<sup>3</sup> Schmidt Resp. at 8. A copy of the Report of the Committee on Ethics can be found in the Commission's Voting Ballot Matters folder for MUR 6494.

<sup>4</sup> Based on the available record, we do not recommend that the Commission make a knowing and willful finding as to TCA and McCurdy. *See infra* at 23.

individual capacity), Joseph Braun, and Peter Schmidt violated the Act. Finally, we recommend that the Commission find no reason to believe that Schmidt or the Committee converted campaign funds to personal use in violation of 2 U.S.C. § 439a.

To resolve the violations in this matter, we recommend that the Commission authorize pre-probable cause conciliation with TCA and McCurdy jointly, the Committee and Schmidt jointly, and approve the two attached conciliation agreements,

## II. FACTS

Krikorian and Schmidt were opponents in the 2008 general election for the House seat in Ohio's Second Congressional District.<sup>5</sup> Days before the election, Krikorian distributed a two-page communication asserting that Schmidt "has taken \$30,000 In Blood Money to Deny the Genocide of Christian Armenians by Muslim Turks" and urging voters to "SAY NO TO JEAN SCHMIDT."<sup>6</sup>

In response, Schmidt and her Committee filed complaints in April and July 2009 with the Ohio Elections Commission (hereinafter "OEC") alleging that Krikorian made false campaign statements during the election in violation of Ohio law.<sup>7</sup> In the course of the proceedings, Krikorian deposed TALDF lawyer Bruce Fein, Schmidt, and her chief of staff Barry Bennett.

<sup>5</sup> Schmidt Resp. at 1-2. Krikorian ran as an Independent. Schmidt, the Republican incumbent, won the election and was re-elected in 2010. On March 6, 2012, she lost the Ohio Second Congressional District Republican Primary and is no longer in office.

<sup>6</sup> *Id.* at 2; Schmidt Resp., Ex. A(1) (upper case in original).

<sup>7</sup> TCA Resp., Ex. 3; Schmidt Resp., Ex. A, B. These complaints listed Jean Schmidt, Schmidt for Congress, and the Committee's address under the complainant caption. The April complaint states: "[w]herefore, *Jean Schmidt for Congress* requests that the Commission conduct a hearing and issue a finding that David Krikorian violated" Ohio law.

1 Among other topics, the deponents testified about the circumstances surrounding the TALDF  
2 lawyers' representation of Schmidt and the Committee. In October 2009, the OEC found in  
3 favor of Schmidt and the Committee, determining that there was clear and convincing evidence  
4 that Krikorian had made statements that were false or made with reckless disregard, and publicly  
5 reprimanded Krikorian.<sup>8</sup>

6 The next month, Krikorian appealed the administrative findings in the Ohio Court of  
7 Common Pleas naming Schmidt as the sole opposing party.<sup>9</sup> Schmidt moved to dismiss the  
8 appeal and the state court granted that motion on February 24, 2010.<sup>10</sup>

9 Meanwhile, Krikorian filed a complaint in Federal court on January 21, 2010<sup>11</sup>  
10 challenging the constitutionality of the OEC itself and seeking to enjoin enforcement of its  
11 ruling.<sup>12</sup> Krikorian did not name Schmidt or the Committee as parties, but on January 29, 2010,  
12 Schmidt filed an *amicus* brief supporting the dismissal of the complaint.<sup>13</sup> The court granted  
13 Defendants' Motions to Dismiss, and Krikorian did not appeal.<sup>14</sup>

14 Finally, on June 8, 2010, Schmidt and her campaign committee filed a defamation claim  
15 in state court against Krikorian and his campaign committee, alleging that Krikorian continued to

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<sup>8</sup> TCA Resp., Ex. 1; Schmidt Resp., Ex. C, 1.

<sup>9</sup> Schmidt Resp., Ex. C, D.

<sup>10</sup> *Id.* at 4; Schmidt Resp. at 6.

<sup>11</sup> Compl. at 6.

<sup>12</sup> TCA Resp. at 6.

<sup>13</sup> TCA Resp. at 6; Schmidt Resp. at 5; *see also* <http://schmidtvkrikorian.com/sites/default/files/Exhibit%20C%20searchable.pdf>.

<sup>14</sup> TCA Resp. at 6; *see also* Compl. Supp., Attach. (Federal district court order dismissing Complainant's challenge to state statute).

1 make defamatory statements against Schmidt and requesting \$6 million in damages.<sup>15</sup> On or  
2 about March 22, 2012, Schmidt voluntarily moved to dismiss the defamation suit and the state  
3 court granted the request six days later.<sup>16</sup>

4 **A. TALDF's Representation of Schmidt and the Committee**

5 The Turkish American Legal Defense Fund (hereinafter "TALDF"), and its local Ohio  
6 counsel Donald Brey, represented Schmidt in the legal proceedings discussed above.<sup>17</sup> TALDF  
7 is a division of TCA, a 501(c)(3) corporation organized to "[p]romote and advance the interests  
8 of the Turkish American community and Turks."<sup>18</sup> TCA created TALDF as a means "to protect  
9 the legal rights of Turkish Americans."<sup>19</sup> TALDF is not a separate entity from TCA — it is a  
10 division of TCA funded from its general budget.<sup>20</sup> TALDF is run by lawyers Bruce Fein and  
11 David Saltzman, who pre-approve new TALDF legal matters with McCurdy, and TCA's vice  
12 president and TCA's chairman.<sup>21</sup> TALDF does not charge its clients for legal services.<sup>22</sup>

<sup>15</sup> TCA Resp., Ex. 4.

<sup>16</sup> See <http://www.chillicothe Gazette.com/article/20120323/NEWS01/203230304/-s-time-move-Schmidt-drops-lawsuit> (last accessed Nov. 18, 2013).

<sup>17</sup> TALDF engaged Brey as local counsel. Sarah D. Morrison and Elizabeth J. Watters were Brey's partners and also performed legal services in conjunction with the defamation suit. See Brey Responses (Aug. 7, 2012). See TCA Resp. at 6, *Id.* at 4; Schmidt Resp. at 6 (demonstrating that Fein, Saltzman, and Brey represented Schmidt during OEC appeal, including filing a motion to dismiss on Schmidt's behalf on January 8, 2010). See also TCA Resp. at 6; Schmidt Resp. at 5; <http://schmidtvkrikorian.com/sites/default/files/Exhibit%20C%20searchable.pdf> (*amicus* brief filed by Brey and Fein on Schmidt's behalf supporting the dismissal of the complaint challenging the constitutionality of the OEC). See also TCA Resp., Ex. 4 (defamation complaint listing Brey as primary counsel and Fein as of counsel).

<sup>18</sup> TCA Resp. at 2; <http://www.tc-america.org/about.htm> (last accessed July 17, 2014).

<sup>19</sup> House Ethics Report at 28, 48.

<sup>20</sup> See *id.* at 54; <http://www.taldf.org/support.html> (last accessed on July 16, 2014); TCA Resp. at 9.

<sup>21</sup> House Ethics Report at 54.

<sup>22</sup> See *id.* at 49; TCA Resp. at 10.

1 Instead, TCA compensates TALDF for its legal work; McCurdy, as president, approves all  
2 payments to TALDF.<sup>23</sup> TCA does not seek reimbursement from TALDF's clients.<sup>24</sup>

3 Schmidt and Barry Bennett, her campaign's chief of staff, had previously met McCurdy  
4 at TCA-sponsored events and TCA PAC's fundraising events during the 2008 election and each  
5 had separate discussions with McCurdy about Krikorian's pre-election "Blood Money"  
6 communication and TALDF's possible legal representation for a lawsuit challenging Krikorian's  
7 statements about Schmidt.<sup>25</sup> McCurdy asked TALDF lawyer Bruce Fein to meet with Schmidt.<sup>26</sup>  
8 Fein, Schmidt, Bennett, and another member of her staff met in late November 2008 and TALDF  
9 agreed to file a complaint with the OEC.<sup>27</sup>

10 TALDF had no written retainer agreement with Schmidt or the Committee.<sup>28</sup> Fein told  
11 Schmidt and Bennett at the outset of the initial OEC proceeding that TALDF would provide its  
12 services at no charge.<sup>29</sup> Although TALDF lawyers regularly communicated with Schmidt and  
13 her staff throughout the legal proceedings,<sup>30</sup> TALDF lawyers billed TCA for services provided to

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<sup>23</sup> House Ethics Report at 49, 54.

<sup>24</sup> TCA Resp. at 5; House Ethics Report at 37.

<sup>25</sup> House Ethics Report at 54-55. Fein Dep. at 56:22-57:1 (Aug. 31, 2009) (Deposition of Bruce Fein) ("Fein Dep.").

<sup>26</sup> House Ethics Report at 49; TCA Resp. at 2, 4-5.

<sup>27</sup> *Id.*

<sup>28</sup> House Ethics Report at 9.

<sup>29</sup> *Id.* at 49.

<sup>30</sup> *Id.* at 50, 60; *see also* TCA Resp. at 10.

1 Schmidt from 2008 through 2011.<sup>31</sup> TCA paid TALDF lawyers the following amounts for legal  
2 fees and expenses: \$3,905 in 2008<sup>32</sup>; \$289,280 in 2009; \$205,401 in 2010; and \$152,658.29 in  
3 2011.<sup>33</sup>

4 **B. Office of Congressional Ethics Investigation and House Ethics Decision**

5 1. Representative Schmidt's Ethics Advisory Opinion  
6

7 On September 10, 2009, during the pendency of Schmidt's complaint with the Ohio  
8 Elections Commission, Bennett informally contacted the House Ethics Committee on Schmidt's  
9 behalf to request guidance on the payment of legal fees in connection with the OEC proceeding,  
10 as well as an intended civil suit against Krikorian. Schmidt formally requested advice from  
11 House Ethics a week later.<sup>34</sup> Schmidt specifically requested that House Ethics consider and  
12 comment on four options for the payment of legal fees including two variations of a contingency  
13 fee arrangement, establishing a legal expense fund, or using campaign funds.<sup>35</sup>

14 On February 26, 2010, the House Ethics Committee issued an advisory opinion offering  
15 two permissible options "both for legal work already completed during the [Ohio] Elections

<sup>31</sup> *Id.* at 75, 107, and 118 (referencing billing records and ledgers submitted to the OCE). Bruce Fein and David Saltzman billed directly to TCA while Donald Brey submitted invoices for his legal services to Bruce Fein. *Id.* at 118.

<sup>32</sup> TALDF's initial invoice for legal services provided to Representative Schmidt is dated January 29, 2008, totaling eight hours at a rate of \$400 per hour. *Id.* at 75. There is no available information to suggest, however, that TALDF provided legal services to Schmidt before the November 2008 general election because the first meeting appears to have occurred in late November 2008. *Id.* at 31-32, 49. We infer that the date of the invoice is in error.

<sup>33</sup> *Id.* at 32-34; see also [http://clerk.house.gov/public\\_disc/financial-search.aspx](http://clerk.house.gov/public_disc/financial-search.aspx). (Representative Schmidt's 2011 House Financial Disclosure Report at 12 (May 15, 2012)).

<sup>34</sup> House Ethics Report at 5.

<sup>35</sup> *Id.* at 312-313.



1 Commission proceedings, and future legal work on your behalf in the appellate case.”<sup>36</sup>  
2 Specifically, the opinion advised Schmidt that she could establish a legal expense fund subject to  
3 approval by House Ethics or she could use campaign funds.<sup>37</sup> Schmidt subsequently sent letters  
4 to the Ethics Committee dated July 19, August 9, and August 11, 2010, seeking approval of a  
5 legal expense fund.<sup>38</sup>

6 2. Office of Congressional Ethics Investigation

7  
8 Krikorian filed a complaint with the Office of Congressional Ethics (hereinafter “OCE”)  
9 in July 2010 alleging, among other things, that Schmidt had violated House gift rules by  
10 accepting and failing to report the receipt of legal services paid for by TCA.<sup>39</sup> In a report dated  
11 April 29, 2011, OCE concluded that TALDF provided legal services to Schmidt from 2008  
12 through 2011, and that TCA paid TALDF lawyers for their representation with the expectation  
13 that the services would be provided to Schmidt free of charge.<sup>40</sup> OCE noted that Schmidt  
14 requested advice months after TALDF’s representation began, and that Schmidt continued to  
15 accept TALDF’s representation after House Ethics advised her that she had accepted an

<sup>36</sup> Addressing the federal court proceedings, House Ethics noted “[y]ou are not a named party to this federal court case and do not anticipate any involvement in that separate litigation.” House Ethics Report at 316.

<sup>37</sup> *Id.* at 319-321. The advisory opinion took notice of several issues: the relationship between TALDF and TCA, TCA’s 501(c)(3) status, Schmidt’s intention not to pursue a civil action to obtain damages, as well as the fact that Schmidt had not entered into a retainer agreement with TALDF.

<sup>38</sup> House Ethics Report at 1.

<sup>39</sup> Compl., Ex. B (Krikorian’s OCE Complaint).

<sup>40</sup> House Ethics Report at 37. The OCE Report questioned whether relevant and material information had been provided to the Committee and also questioned the reliability of statements made by individuals associated with Schmidt to OCE investigators. *Id.* at 35-37. Schmidt’s former-chief of staff, Bennett, testified in August 2009 that he had *not* contacted House Ethics. *Id.* at 288-289. To the contrary, Bennett later told OCE in April 2011 that he had contacted House Ethics in early 2009 for advice on paying TALDF’s legal services. *Id.* at 206.

1 improper gift in its advisory opinion.<sup>41</sup> OCE referred the matter to the House Ethics Committee  
2 in May 2011 due to a "substantial reason to believe that Schmidt: (1) accepted legal services  
3 from TALDF without establishing a legal expense fund; and (2) failed to report the legal services  
4 on her financial disclosure statements for calendar years 2008 and 2009."<sup>42</sup>

5 In response to the OCE referral, Schmidt stated that "[she] never expected anything other  
6 than me, my campaign, or my legal trust to be responsible for paying my legal bills," and that  
7 she "neither sought nor received pro-bono legal services."<sup>43</sup> Schmidt averred that she acted in  
8 good faith and in accordance with the House Ethics Committee's advice that she not accept a bill  
9 for legal services "until a responsible entity that would be liable for payment is formed."<sup>44</sup>

10 Schmidt set forth that House Ethics "was well aware of the relationship between TALDF and the  
11 Turkish Coalition of America (TCA)."<sup>45</sup> And she suggested that the Ethics Committee knew  
12 more "relevant and material" information about the relationship between TCA and TALDF than  
13 she did.<sup>46</sup> Schmidt asserted that she had no relationship with TCA, and that "[n]one of the  
14 discussions regarding payment of legal fees have [*sic*] involved TCA."<sup>47</sup> Schmidt maintained  
15 that she is represented by TALDF and that she intended to pay all legal fees. Schmidt stated,  
16 however, that any potential relationship with TCA was tangential or indirect: "[t]he only

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<sup>41</sup> *Id.* at 25.

<sup>42</sup> *Id.* at 22.

<sup>43</sup> *Id.* at 476-477.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 477.

1 business relationship that I could have had with TCA would have been through its close  
2 affiliation with and support of TALDF.”<sup>48</sup>

3 3. House Ethics Committee Report

4 After considering the OCE referral, the House Ethics Committee determined that  
5 pursuant to House Rule 25, cl. 5(a)(1)(A)(i), Schmidt had received an improper gift from TCA in  
6 the form of its payment of approximately \$500,000 for legal fees to TALDF lawyers for their  
7 representation of Schmidt from 2008 through 2010.<sup>49</sup> In contrast to OCE, which concluded that  
8 TALDF lawyers told Schmidt that they were providing services to her and the Committee at no  
9 cost,<sup>50</sup> the House Ethics Report concluded that Schmidt was not aware that her lawyers did not  
10 intend to bill her for their services; the report also concluded that the TALDF lawyers never  
11 disclosed to Schmidt that they received direct payment from TCA.<sup>51</sup> According to the report,  
12 Schmidt only knew that her lawyers worked for TALDF and that Fein was “senior counsel at  
13 [TALDF].”<sup>52</sup> The House Ethics Committee simultaneously approved the creation of the Jean  
14 Schmidt Legal Expense Fund.<sup>53</sup> House Ethics concluded that Schmidt must repay the TALDF

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 16. Despite the OCE factual finding that TALDF lawyers provided legal services to Representative Schmidt and the Committee in 2011, the House Ethics Report made no determinations regarding legal services provided to Schmidt and the Committee in 2011. We do not know why House Ethics chose to exclude the 2011 legal fees.

<sup>50</sup> *Id.* at 37.

<sup>51</sup> *Id.* at 3.

<sup>52</sup> *Id.* at 18. On October 26, 2011, Citizens for Responsibility and Ethics in Washington filed an OCE complaint against Schmidt alleging that in an effort to undermine OCE’s investigation she lied to OCE investigators and the House Ethics Committee about her receipt of legal services from TALDF that were paid by TCA. See <http://www.citizensforethics.org/legal-filings/entry/crew-files-oce-complaint-against-jean-schmidt> (last accessed on July 24, 2014). We have no information as to the current disposition of this referral.

<sup>53</sup> *Id.* at 2, 15.

1 lawyers' legal fees for the Ohio Elections Commission matters and the state defamation suit and  
2 that she could use legal expense funds to do so.

3 Having previously confirmed that Schmidt was not a named party to the federal case  
4 challenging the constitutionality of the OEC and that she did not anticipate any involvement in  
5 this case,<sup>54</sup> House Ethics did not allow the use of legal expense funds for legal costs related to  
6 the *amicus* brief.<sup>55</sup> Schmidt advised House Ethics in a January 30, 2012, letter that she had  
7 repaid \$42,812 in legal fees and expenses for the *amicus* brief.<sup>56</sup> The letter provides no details as  
8 to whom or how Schmidt repaid this amount.

### 9 III. LEGAL ANALYSIS

#### 10 A. Corporate Contributions

11 The Act prohibits a corporation from making a contribution or expenditure in connection  
12 with a federal election, and no officer or director of any corporation may consent to any  
13 contribution by a corporation.<sup>57</sup> The Act further prohibits any candidate, political committee, or  
14 other person from knowingly accepting or receiving a contribution from a corporation.<sup>58</sup> The  
15 "knowing" acceptance of a contribution requires knowledge of the underlying facts that  
16 constitute the prohibited act, but not knowledge that the act itself — such as acceptance of a

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<sup>54</sup> *Id.* at 316.

<sup>55</sup> *Id.* at 13.

<sup>56</sup> See January 30, 2012, Letter from Representative Schmidt to House Committee on Ethics.

<sup>57</sup> See 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b), (e).

<sup>58</sup> *Id.*

1 corporate contribution — is unlawful.<sup>59</sup>

2 The term "contribution" includes "any gift, subscription, loan, advance, or deposit of  
3 money or anything of value made by any person for the purpose of influencing any election for  
4 Federal office."<sup>60</sup> More specifically, "contribution" also includes the "payment by any person of  
5 compensation for the personal services of another person which are rendered to a political  
6 committee without charge for any purpose."<sup>61</sup>

7 1. TCA Made a Prohibited Corporate Contribution by Providing Free Legal  
8 Services to the Committee through TALDF  
9

10 There is reason to believe that TCA violated section 441b(a) by providing legal services  
11 to Schmidt and the Committee through TALDF. TALDF is a project of TCA and is not a  
12 separate entity.<sup>62</sup> TCA's characterization of its payments for Schmidt's legal fees as  
13 reimbursements to TALDF's lawyers does not change the corporate nature of the in-kind  
14 contributions because TALDF is part of that corporation.<sup>63</sup> Thus, TCA violated 2 U.S.C.  
15 § 441b(a) by making a prohibited in-kind contribution to Schmidt and the Committee.

<sup>59</sup> See *FEC v. Dramesi*, 640 F. Supp. 985, 987 (D.N.J. 1986). *Id.* ("A 'knowing' standard does not require knowledge that one is violating a law, but merely requires an intent to act."); see also *FEC v. California Med. Ass'n*, 502 F. Supp. 196, 203-04 (N.D. Cal. 1980) (party's knowledge of the facts making conduct unlawful constitutes a "knowing acceptance" under the Act.)

<sup>60</sup> 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a); see also 2 U.S.C. § 441b(b)(2) (defining "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section.").

<sup>61</sup> 2 U.S.C. § 431(8)(A)(ii).

<sup>62</sup> House Ethics Report at 48.

<sup>63</sup> TCA is a corporation, and it acknowledges that it paid TALDF lawyers to represent Schmidt and the Committee in the four legal proceedings. TALDF lawyers likened their representation of Schmidt and the Committee as *pro bono* services, and TCA readily admitted that it neither seeks reimbursement nor payments from TALDF clients. TCA Resp. at 2, 9; Ex. 5 at 2.

1 TCA makes three arguments that there is no reason to believe it violated the Act, but  
2 none are persuasive. First, TCA argues that TALDF provided legal services to Schmidt in her  
3 personal capacity and not in her capacity as a "candidate."<sup>64</sup> This argument is at odds with the  
4 record. Schmidt *and* her Committee filed a joint complaint against Krikorian with OEC. The  
5 OCE complaint listed the Committee in its caption and requested relief in the name of "Jean  
6 Schmidt for Congress."<sup>65</sup> These facts indicate that Schmidt *and* the Committee were the  
7 intended beneficiaries of the legal services related to the OEC complaint and subsequent appeal.  
8 Deposition testimony by Bennett, Fein, and Schmidt from the OEC proceedings further  
9 undercuts Respondents' assertions that TALDF's legal services were intended as a personal gift  
10 to Schmidt. Schmidt's campaign chief of staff, Bennett, testified that following the November  
11 2008 election he spoke with TCA's president, McCurdy, about retaining legal counsel on behalf  
12 of Schmidt and the Committee, and McCurdy introduced him to Fein.<sup>66</sup> Bennett also testified  
13 that he and Schmidt were both present at the initial meeting with Bruce Fein and that the events

<sup>64</sup> TCA mistakenly relies on 11 C.F.R. § 113.1(g)(6) and (i) to support its argument. Section 113.1(g)(6) provides that payments by another person other than the candidate or the campaign committee shall be considered a contribution unless the payment would have been made irrespective of the candidacy. A donation to a legal expense trust fund established according to U.S. Senate or House rules is an example of a payment that is considered to exist irrespective of the candidacy, and therefore would not be a contribution. *See* 11 C.F.R. § 113.1(g)(6)(i). The regulation is inapplicable here. TCA's payments to the TALDF lawyers did not exist irrespective of Schmidt's candidacy because Schmidt and the Committee's legal expenses stem from a communication disseminated during the 2008 election cycle. Thus, the legal expenses for the Ohio Elections matter and ensuing matters were "in connection with" an election and did not exist irrespective of Schmidt's status as an officeholder. In fact, as discussed *infra*, the expenses are directly tied to her status as a candidate an officeholder. And section 113.1(g)(6)(i) is factually inapplicable because TCA never made a donation to an approved legal expense fund. Instead, TCA made prohibited in-kind contributions in the form of direct payments to the TALDF lawyers for the legal services they provided to Schmidt and the Committee.

<sup>65</sup> Schmidt Resp., Ex. B.

<sup>66</sup> *See* Compl., Ex. D (Aug. 31, 2009) (Deposition of Barry Bennett) ("Bennett Dep.") Bennett Dep. at 49:9-50:18. *See also* Fein Dep. at 57:20-58:4 (Aug. 31, 2009) (Deposition of Bruce Fein) ("Fein Dep.") (corroborating that McCurdy asked him, as TALDF's representative, to meet with Schmidt about providing legal representation).

1 which led to the Ohio Election complaint, "happened in the course of the campaign."<sup>67</sup> Further,  
2 Schmidt testified that "[t]he campaign had retained [Brey and Fein]" and when asked if Brey and  
3 Fein "work for the campaign?" she answered "[y]es."<sup>68</sup> Fein, during his testimony, asserted an  
4 attorney-client privilege with Bennett stating, "we have made it clear all along we represent both  
5 Mrs. Schmidt and the campaign committee."<sup>69</sup> Based on this record, it is clear that TALDF  
6 represented Schmidt in her official capacity as a candidate and the Committee, and not only  
7 Schmidt in her personal capacity.

8 Second, TCA asserts that its payments for Schmidt's legal fees did not violate the Act  
9 because TALDF did not provide legal services for the "purpose of influencing any election" or  
10 "in connection with" an election.<sup>70</sup> TCA relies on the fact that TALDF's representation of  
11 Schmidt began *after* the 2008 general election.<sup>71</sup> Nonetheless, the issue is not when the litigation  
12 ensued but rather that Schmidt and the Committee accepted an in-kind contribution from the

<sup>67</sup> Bennett Dep. at 48:21-22; 50:5-12.

<sup>68</sup> Second Compl. Supp., Ex. D (Aug. 24, 2009) Schmidt Dep. at 113:14-19. The Schmidt Respondents, however, now claim that Schmidt "mistakenly — testified to her belief that her campaign had retained the attorneys who represented her in the Ohio Elections Commission." Schmidt Second Resp. at 3 (July 13, 2012). Although the Schmidt Respondents now assert that Schmidt testified in error, they made no such assertions during her deposition testimony, *see* Schmidt Dep., and later made no efforts to clarify this testimony despite the fact that Schmidt did not waive the right to read and sign the deposition transcript, and TALDF lawyers Fein and Brey appeared on her behalf. *See* Schmidt Dep. at 7, 189, and 191.

Indeed, in AOR 2011-20, the Committee stated that the legal proceedings were related to Schmidt's campaign or duties as a Federal officeholder, and thus sought the Commission's approval of the use of campaign funds to pay legal fees and expenses for the Federal *amicus* brief. Comp. Amend., Ex. A. We would note at the time of this AOR, House Ethics had already issued its rulings which determined that Schmidt had accepted an improper gift and ordered her immediate repayment of the funds paid by TCA to TALDF lawyers for this representation. As such, the Schmidt Respondents present no compelling reason to suggest that Schmidt's testimony, taken under oath, during the Ohio Election Commission proceedings was mistaken or inaccurate.

<sup>69</sup> Fein Dep. at 59:19-60:6. Compl., Ex. C at 56:22-57:1.

<sup>70</sup> TCA Resp. at 12.

<sup>71</sup> *See* TCA Resp. at 17; Schmidt Resp. at 6. (emphasis added).

1 TALDF lawyers in the form of legal services.<sup>72</sup> And in any event, the OEC complaints sought to  
2 redress Krikorian's conduct *during* the 2008 election and continued during her candidacy for the  
3 2010 election.<sup>73</sup>

4 Finally, TCA argues that its situation is analogous to Advisory Op. 2003-15 (Majette)  
5 ("AO 2003-15"), where the Commission advised Majette that donations to a legal expense fund  
6 established for the purpose of defending a lawsuit challenging a state's open primary election  
7 system were not "in connection with an election" and thus need not comply with the  
8 prohibitions, limitations and reporting requirements of the Act. AO 2003-15 is simply  
9 inapposite.<sup>74</sup> Unlike AO 2003-15, the conduct here that led to the legal proceedings was directly  
10 related to pre-election statements that Krikorian made about Schmidt in order to influence the  
11 election. Krikorian's communications were directly aimed at electing or defeating Schmidt  
12 whereas in Majette the Commission determined that the legal expenses were not "in connection  
13 with a Federal election," because they related to whether or not an individual was included on a

<sup>72</sup> See also Advisory Op. 2006-22 (Wallace for Congress) (Commission determined that an incorporated law firm providing free legal services to a federal candidate's principal campaign committee while the law firm paid personnel to provide the legal service would result in the making and receipt of a prohibited corporate contribution).

<sup>73</sup> See TCA Resp., Ex. 3; Schmidt Resp., Ex. B (emphasis added).

<sup>74</sup> In AO 2003-15, Rep. Majette won the Democratic primary in Georgia's 4th Congressional District defeating the incumbent. Supporters of the incumbent challenged the State's open primary election system and sought to enjoin State officials from conducting the general election. Opponents also sought a special primary and general election to unseat Majette. Plaintiffs initially named Majette as a defendant but following her election amended their complaint to exclude her. The Commission reasoned that the requestor's scenario was similar to previous matters in which the Commission approved a legal expense fund because the underlying situation concerned expenses challenging the legality of a Federal election ballot. The Commission determined that such an expense was not "in connection" with a Federal election, and funds received and spent for these litigation expenses were neither contributions or expenditures. See Advisory Op. 1996-39 (Heintz for Congress) (Commission approved legal expense fund for Federal candidate for litigation costs related to state ballot.).



1 federal ballot, not the election itself. Thus, the legal expenses in the four proceedings addressed  
2 in this Report were "in connection with a Federal election."<sup>75</sup>

3 Accordingly, there is reason to believe that TCA violated 2 U.S.C. § 441b(a) by making a  
4 prohibited in-kind corporate contribution to Representative Jean Schmidt and the Schmidt for  
5 Congress Committee.

6 2. The President of TCA is Liable for Consenting to TCA's Corporate  
7 Contribution  
8

9 Section 441b(a) also prohibits any officer or director of any corporation from consenting  
10 to any contribution by the corporation.<sup>76</sup> TCA president, G. Lincoln McCurdy, consented to  
11 provide in-kind legal services to Schmidt and the Committee through TALDF lawyers Bruce  
12 Fein, David Saltzman, and local Ohio counsel. McCurdy admits that he controls TCA's budget  
13 and approves all payments to TALDF, including legal fees.<sup>77</sup> The source of those funds is  
14 TCA's general treasury.<sup>78</sup> McCurdy (along with Bruce Fein, David Saltzman, and TCA's vice-  
15 president and chairman) pre-approved TALDF legal matters.<sup>79</sup> Accordingly, we recommend that  
16 the Commission find reason to believe that McCurdy violated section 441b(a) by consenting to  
17 make a prohibited contribution in the form of legal services provided to Schmidt and the  
18 Committee.<sup>80</sup>

<sup>75</sup> 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 2 U.S.C. § 441b(b)(2).

<sup>76</sup> *See also* 11 C.F.R. § 114.2(e).

<sup>77</sup> House Ethics Report at 49, 54.

<sup>78</sup> *Id.* at 54.

<sup>79</sup> *Id.*

<sup>80</sup> *See* MUR 6326 (Am. Ass'n of Physician Specialist PAC) (Corporate officer who authorized the transfer of general treasury funds to separate segregated fund violated section 441b(a)).

1 The Complainant also alleges that TALDF lawyers Bruce Fein, David Saltzman, and  
2 local counsel Donald Brey, Sarah D. Morrison and Elizabeth J. Watters violated the Act. The  
3 lawyers individually deny any violations of the Act, and none of the lawyers were officers or  
4 directors of TCA. Therefore, we recommend that the Commission find no reason to believe that  
5 each of these Respondents violated section 441b(a).

6 3. Schmidt and the Committee Accepted a Prohibited In-Kind Contribution

7 Complainant alleges that Schmidt and the Committee accepted in excess of \$650,000 in  
8 prohibited in-kind contributions. Here, the same facts that support the conclusion that TCA  
9 made a corporate contribution through TALDF to Schmidt and the Committee also support the  
10 corresponding conclusion that the Schmidt Respondents accepted a corporate contribution.  
11 Section 441b(a) of the Act requires an individual to "knowingly" accept or receive the prohibited  
12 contribution.

13 Here, the record is clear. It was Schmidt's idea to file a complaint with the Ohio  
14 Elections Commission after the 2008 general election.<sup>81</sup> The April 2009 OEC complaint lists  
15 Jean Schmidt and Schmidt for Congress as complainants; it was signed by Schmidt, and  
16 requested relief on behalf of Schmidt and the Committee.<sup>82</sup> TALDF lawyer Fein testified that he  
17 prepared the complaint on behalf of Schmidt and Bennett, as the Committee's representative.  
18 And, both Schmidt and her then-chief of staff Bennett attended the December 2008 meeting with  
19 Fein when the parties agreed to TALDF's representation, and during which Fein told both

<sup>81</sup> House Ethics Report at 210; Bennett Dep. at 49:9-11.

<sup>82</sup> See TCA Resp., Ex. 3; Schmidt Resp., Ex. A, B.

1 Schmidt and Bennett that TALDF's legal services were free.<sup>83</sup> The record evidence and TCA's  
2 Response also reflect regular status updates between TALDF lawyers and Schmidt and her staff  
3 during the preparation of the OEC matter and the additional legal proceedings.<sup>84</sup> And the very  
4 name of the Turkish American Legal Defense Fund put Schmidt on notice that she was receiving  
5 legal representation from an entity with an existence separate and apart from her lawyers in their  
6 individual capacities. These circumstances establish that Schmidt knew that an outside party  
7 provided and paid for the legal fees and costs of the attorneys that represented her and the  
8 Committee.<sup>85</sup>

9 To rebut the knowing element of 2 U.S.C. § 441b(a), the Schmidt Respondents appear to  
10 rely on the House Ethics Committee's factual conclusion that Schmidt did not know that TCA  
11 directly paid for the services provided by TALDF lawyers.<sup>86</sup> Whether Schmidt knew of the  
12 specific manner in which TCA funded TALDF, however, is not dispositive of whether Schmidt

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<sup>83</sup> Fein Dep. at 56:22-57:1; 58:11-59:10; 59:15-60:6.

<sup>84</sup> House Ethics Report at 50; 60; *see also* TCA Resp. at 10.

<sup>85</sup> Schmidt contends that she never received a bill for TALDF's legal services and because of this could not discern the relationship between TCA and TALDF. TCA's response supports Schmidt's assertion that she never received any legal bills. However, TCA's response also states that throughout its representation, the Schmidt Respondents never questioned how TALDF lawyers were paid for their services, and that the TALDF lawyers never received a request for legal bills for payment. TCA Resp. at 10. Because TCA never intended to charge the Schmidt Respondents, it did not find the lack inquiry of questionable. *Id.*

<sup>86</sup> We note that the House Ethics Committee did not dismiss the allegations and determined that Representative Schmidt had accepted an impermissible gift from TCA by its paying TALDF lawyers for the legal services they provided to Schmidt and the Committee. We also note that OCE and the House Ethics Committee appear to have relied on a record missing a crucial aspect of the facts before the Commission. Neither report mentions or appears to rely on Schmidt's deposition testimony taken during the Ohio Elections Commission's proceedings. Our analysis includes an examination of the only sworn testimony of Schmidt taken in all legal proceedings related to this matter.

1 knew that TALDF was part of TCA. Any contention by Schmidt that she did not know that TCA  
2 and TALDF were connected lacks credibility. Schmidt originally approached McCurdy to  
3 inquire whether TALDF could assist her in filing a complaint with the OEC. And at any rate,  
4 Schmidt and the Committee accepted the TALDF lawyers' representation in not one but four  
5 separate proceedings over a number of years. The Schmidt Respondents had the same  
6 responsibility to determine the legality of the contributions it received just as any committee  
7 must undergo a reasonable effort to ascertain the legality of a contribution when questions arise  
8 as to whether the source is permissible.<sup>87</sup>

9 The Schmidt Respondents also maintain that because Schmidt never received a bill from  
10 TALDF, they did not know that TCA paid the legal fees for the TALDF lawyers. Despite the  
11 argument that Schmidt was unaware of the corporate status of TCA and its financial support of  
12 TALDF, Schmidt and the Committee were aware that they were in receipt of considerable  
13 TALDF legal services at costs that clearly exceeded the applicable contribution limit. The most  
14 reasonable explanation why neither Schmidt nor the Committee staff inquired as to the cost or  
15 source of court and legal fees is that they never expected to pay for them because they believed  
16 TCA was paying. As mentioned above, Schmidt initially sought help from McCurdy. McCurdy  
17 told Fein about Schmidt's interest in filing a complaint with the OEC and directed Fein to meet  
18 with Schmidt and Bennett. Any claim by Schmidt that her meeting with Fein, the senior counsel  
19 of TALDF, was unrelated to discussions that she or Bennett had with McCurdy, the president of  
20 the TCA, is inconsistent with the record and implausible. This supports finding that Schmidt

<sup>87</sup> See, e.g. 11 C.F.R. § 103.3(b) (treasurer shall use best efforts to determine the legality of suspected impermissible contributions).

1 knowingly accepted a corporate contribution from TCA through TALDF, a project of TCA.<sup>88</sup>

2 A candidate who receives a contribution is considered to have received the contribution  
3 as an agent of her authorized committee.<sup>89</sup> Therefore, because Schmidt knowingly accepted a  
4 contribution from TCA, so too did the Committee. Accordingly, we recommend that the  
5 Commission find reason to believe that Schmidt and Schmidt for Congress Committee and  
6 Phillip Greenburg in his official capacity as treasurer violated 2 U.S.C. § 441b(a).<sup>90</sup>

7 4. Schmidt and the Committee Knowingly and Willfully Violated the Act  
8 When they Accepted Free Legal Services after February 16, 2010

9 A violation of the Act is knowing and willful if the "acts were committed with full  
10 knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>91</sup> This  
11 standard does not require knowledge of the specific statute or regulation the respondent allegedly  
12 violated.<sup>92</sup> Instead, it is sufficient to demonstrate that a respondent "acted voluntarily and was

<sup>88</sup> Even assuming Schmidt's asserted lack of knowledge about TALDF's and TCA's interconnectedness and corporate status was consistent with the record — and it is not — the Schmidt Respondents' acceptance of the TALDF lawyers' legal services would also be an excessive in-kind contribution. *See* 2 U.S.C. § 441a(a). As evidenced by the legal bills collected in the OCE investigation, TALDF's legal services far exceeded the applicable individual contribution limits for 2009, 2010, 2011, and most likely 2012. And in any event, the Schmidt Respondents were given actual notice of TCA and TALDF's relationship and corporate status in House Ethics' February 2010 letter to Schmidt. *See* House Ethics at 316, discussed *infra*.

<sup>89</sup> 2 U.S.C. § 432(e)(2).

<sup>90</sup> The House Ethics Committee simultaneously approved the creation of the Jean Schmidt Legal Expense for the payment of legal fees for the Ohio Elections Commission, its appeal, and the state defamation suit. The Schmidt Respondents' Response is silent on the legal expense fund and the status of their repayment of legal fees although publicly available information provides that the fund has received a single donation in the amount of \$5,000. The House Ethics Committee's approval of, and Representative Schmidt's subsequent creation of the fund, does not negate a violation of 441b(a) in this matter because Schmidt and the Committee already received the contributions. A legal expense fund, as contemplated by the Commission regulations at 11 C.F.R. § 113.1(g)(6)(i), is designed to obtain funds not subject to the Act's contribution or expenditure limits in anticipation of litigation.

<sup>91</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>92</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

1 aware that his conduct was unlawful."<sup>93</sup> This may be shown by circumstantial evidence from  
2 which the respondents' unlawful intent reasonably may be inferred.<sup>94</sup>

3 At least as of February 2010 onward, the Schmidt Respondents' acceptance of prohibited  
4 in-kind contributions from TCA was a knowing and willful violation of the Act. In response to  
5 Schmidt's request for guidance on paying for previously completed and anticipated legal  
6 services, House Ethics cautioned Schmidt in February 2010 about TCA's 501(c)(3) status and its  
7 employment of a registered federal lobbyist, and it told her that "TALDF is a project of TCA."<sup>95</sup>  
8 Further, House Ethics outlined two permissible ways for Schmidt to pay her legal fees, but  
9 neither option allowed for the mere acceptance of TALDF's services. Instead, Schmidt was  
10 made aware that her receipt of and payment for these services must be permissible under FECA  
11 and was instructed to consult with the FEC to determine a permissible way to pay the legal  
12 fees.<sup>96</sup> These cautions clearly put Schmidt on notice that her continued acceptance of legal  
13 services was in connection with an election, and provided by a corporation. Still, even after the  
14 House Ethics Committee issued its report, the Schmidt Respondents continued to accept free

<sup>93</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 1:11-CR-161 (M.D.N.C. May 18, 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. June 2, 2008), *United States v. Alford*, No. 05-69 (N.D. Fla. October 7, 2005)).

<sup>94</sup> *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>95</sup> House Ethics Report at 316.

<sup>96</sup> *Id.* at 319-21 ("If you have not already done so, you should consult with the FEC to determine whether either course of conduct is permissible under the applicable law and regulations.").

1 legal services from TALDF and filed a defamation lawsuit against the Complainant seeking  
2 more than \$6 million in damages.<sup>97</sup>

3 The underlying facts that support a finding that the Schmidt Respondents knowingly and  
4 willfully accepted prohibited contributions also negate a knowing and willful finding against  
5 TCA. TALDF lawyers never concealed their relationship with TCA from Schmidt or the fact  
6 that TCA's president directed TALDF lawyer Fein to speak to the Schmidt Respondents about  
7 legal representation without charge. As addressed in TCA's Response, TALDF lawyers relied  
8 upon assurances made by the Schmidt Respondents in March 2009 that the House Ethics  
9 Committee had approved the TALDF lawyers' representation of Schmidt, and Fein testified to  
10 that effect during the OEC proceedings.<sup>98</sup> Thus, the TCA Respondents appear to lack the  
11 requisite intent for a knowing and willful violation.

12 Based on the continued acceptance of legal services from TCA, following plain notice  
13 from House Ethics of the applicable legal prohibition, we recommend that the Commission find  
14 reason to believe that Representative Jeannette H. Schmidt and the Schmidt for Congress  
15 Committee and Philip Greenburg in his official capacity as treasurer, knowingly and willfully  
16 violated 2 U.S.C. § 441b(a).

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<sup>97</sup> In addition, the Committee sought the Commission's approval to use campaign funds to pay legal expenses associated with an *amicus* brief submitted on behalf of Representative Schmidt. The Committee filed AOR 2011-20 after House Ethics rendered its determination in August 2011 that Schmidt had accepted improper gifts from TCA, and its ruling that Schmidt immediately repay TCA. Yet AOR 2011-20 says nothing about the House Ethics ruling, or the fact that TCA, a corporation, had paid for this representation. *See* AOR 2011-20.

<sup>98</sup> TCA Resp. at 10; Fein Dep. at 56:22-57:1; 58:11-59:10; 59:15-60:6.

**B. Personal Use Allegations**

The Third Complaint Supplement includes an allegation that Schmidt and the Committee converted campaign funds to personal use when the Committee made two disbursements totaling \$7,651.78 to the law firm Chester, Wilcox & Saxbe for "legal fees."<sup>99</sup> Complainant asserts that the Committee made disbursements on November 24, 2011, and January 2, 2012, that were converted to personal use because they are related to the state defamation matter.<sup>100</sup> The Schmidt Respondents acknowledge disbursing campaign funds to Chester, Wilcox & Saxbe to pay legal fees, but assert that the legal fees were incurred for representation before the Commission in the present matter.<sup>101</sup>

Under the Act and Commission regulations, a candidate and the candidate's committee have wide discretion in making expenditures to influence the candidate's election, but may not convert a contribution or donation described in 2 U.S.C § 439a to the personal use of the candidate or any other person.<sup>102</sup> Commission regulations provide guidance about what would be considered personal use of campaign funds. Personal use is defined as the use of campaign funds "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the individual's status as a candidate or federal officeholder."<sup>103</sup> Under the personal use rules,

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<sup>99</sup> The Committee disclosed these payments in its 2011 Year End and 2012 Pre-Primary Reports.

<sup>100</sup> See Third Compl. Supp. at 11-12.

<sup>101</sup> See Third Schmidt Resp. at 2 (Aug. 7, 2012).

<sup>102</sup> 2 U.S.C § 439a(b)(1); 11 C.F.R. § 113.1(g).

<sup>103</sup> See 2 U.S.C. § 439a(b)(2).



1 the Commission will analyze expenses for legal fees on a case-by-case basis using the general  
2 definition of personal use.<sup>104</sup>

3 The Schmidt Respondents explained that the legal fees were for representation for the  
4 instant matter before the Commission and we have no reason to doubt this assertion. Legal  
5 expenses relating directly to the candidate's campaign activities or status as a federal  
6 officeholder may be paid for with campaign funds.<sup>105</sup> As such, the Committee's disbursements  
7 of campaign funds for legal fees related to the instant proceedings are a permissible use of  
8 campaign funds.<sup>106</sup> Accordingly, we recommend that the Commission find no reason to believe  
9 that Representative Jeannette Schmidt and the Schmidt Committee for Congress and Phillip  
10 Greenburg in his official capacity as treasurer violated 2 U.S.C. § 439a(b).

11 **C. Reporting**

12 All political committees are required to file reports of their receipts and disbursements.<sup>107</sup>  
13 These reports must itemize all contributions received from contributors that aggregate in excess  
14 of \$200 per election cycle.<sup>108</sup> Any in-kind contribution must also be reported as an expenditure  
15 on the same report.<sup>109</sup>

16 The Committee does not address its reporting obligation in its response. Following  
17 OCE's investigation, Schmidt, however, told House Ethics that "[she] never expected anything

<sup>104</sup> 11 C.F.R. § 113.1(g)(1)(ii)(A).

<sup>105</sup> See Advisory Op. 2009-10 (Visclosky).

<sup>106</sup> *Id.*

<sup>107</sup> 2 U.S.C. § 434(a).

<sup>108</sup> *Id.* § 434(b); 11 C.F.R. § 104.3(a)(4).

<sup>109</sup> 11 C.F.R. §§ 104.3(b), 104.13(a)(2).

1 other than me, my campaign, or my legal trust to be responsible for paying my legal bills."<sup>110</sup>  
2 Schmidt argues that she held off payments for TALDF's legal services, acting under the House  
3 Committee's advice "to not accept a bill until a responsible entity that would be liable for  
4 payment is formed,"<sup>111</sup> until House Ethics approved the means of payment. Schmidt asserts that  
5 she always intended to pay for TALDF's legal services and "[she] neither sought nor received  
6 pro-bono legal services."<sup>112</sup> Schmidt, as the agent of her authorized committee, accepted the in-  
7 kind contributions. Thus, even if one were to credit Schmidt's statement, the Committee should  
8 have disclosed the amount of outstanding debts and obligations in its reports, but it did not.<sup>113</sup>

9 The Committee did not disclose its receipt of \$651,000 in in-kind contributions made by  
10 TCA. And despite the House Ethics Committee's August 2011 ruling determining that Schmidt  
11 had accepted an impermissible gift, the Committee failed to amend its reports to disclose to this  
12 Commission its receipt of the contributions. We, therefore, recommend that the Commission  
13 find reason to believe that the Schmidt for Congress Committee violated 2 U.S.C. § 434(b).

14 The Complaint also alleges that Greenburg (the Committee's treasurer), Braun (a former  
15 assistant treasurer), and Peter Schmidt (the current assistant treasurer) violated the Act in their  
16 personal capacities because the Committee's reports did not include the receipt of the prohibited

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<sup>110</sup> House Ethics Report at 476.

<sup>111</sup> *Id.* at 476-477.

<sup>112</sup> *Id.* at 477.

<sup>113</sup> See 2 U.S.C. § 434(b)(8). Debts and obligations must be continuously reported until they are extinguished. 11 C.F.R. § 104.11(a). If a committee does not know the exact amount of a debt or obligation — which arguably could have been the case — the Committee's disclosure report should state that the amount reported is an estimate. 11 C.F.R. § 104.11(b). Because neither the receipts nor outstanding debt or obligations were disclosed in *any* report filed by the Committee, the Committee still would have violated section 434(b).

1 in-kind contributions.<sup>114</sup> There is no information to suggest that Greenburg, Braun, or Peter  
2 Schmidt, in their individual capacities, violated the Act, and we recommend that the Commission  
3 find no reason to believe that these individuals violated 2 U.S.C. § 434(b).

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114 Compl. at 15-16.

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**V. RECOMMENDATIONS**

1. Find reason to believe that the Turkish Coalition of America, Inc. and the Turkish American Legal Defense Fund and Lincoln McCurdy, as president of the Turkish Coalition of America, Inc., violated 2 U.S.C. § 441b(a).
2. Find no reason to believe that Bruce Fein, David Saltzman, Donald Brey, Sarah D. Morrison or that Elizabeth J. Watters violated 2 U.S.C. § 441b(a).
3. Find reason to believe that Jeannette H. Schmidt knowingly and willfully violated 2 U.S.C. § 441b(a).
4. Find reason to believe that Schmidt for Congress Committee and Phillip Greenburg in his official capacity as treasurer knowingly and willfully violated 2 U.S.C. § 441b(a).
5. Find reason to believe that Schmidt for Congress Committee and Phillip Greenburg in his official capacity as treasurer violated 2 U.S.C. § 434(b).
6. Find no reason to believe that Jeanette H. Schmidt, Schmidt for Congress Committee, and Phillip Greenburg in his official capacity as treasurer violated 2 U.S.C. § 439a(b).
7. Find no reason to believe that Phillip Greenburg in his personal capacity violated 2 U.S.C. § 434(b).
8. Find no reason to believe Peter Schmidt violated 2 U.S.C. § 434(b).
9. Find no reason to believe that Joseph Braun violated 2 U.S.C. § 434(b).
10. Approve the attached Factual and Legal Analyses.
11. Enter into pre-probable cause conciliation with the Turkish Coalition of America and G. Lincoln McCurdy, as president of the Turkish Coalition of America, prior to a finding of probable cause to believe and approve the attached conciliation agreement.
12. Enter into pre-probable cause conciliation with Jeanette H. Schmidt and Schmidt for Congress Committee and Phillip Greenburg in his official capacity as

1 treasurer, prior to a finding of probable cause to believe and approve the attached  
2 conciliation agreement.

3 13. Approve the appropriate letters.

4 Daniel A. Petalas  
5 Associate General Counsel  
6  
7

8 7-31-14  
9 Date

BY:

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