



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JAN 29 2015

Donald C. Brey, Esq.
Taft Stettinius & Hollister LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4213

RE: MUR 6494
Representative Jeannette Schmidt
Schmidt for Congress Committee
Phillip Greenburg in his official capacity as
treasurer

Dear Mr. Brey:

On August 13, 2011, the Federal Election Commission (the "Commission") notified your clients, Representative Jeanette Schmidt, Schmidt for Congress Committee and Phillip Greenburg, as treasurer (the "Committee"), of a complaint alleging that they violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the complaints.

After reviewing the allegations contained in the complaints and information provided by your clients, the Commission found reason to believe on January 13, 2015, that the Committee violated 52 U.S.C. §§ 30118(a) and 30104(b) (formerly 2 U.S.C. §§ 441b(a) and 434(b)), by accepting prohibited corporate contributions and failing to disclose those contributions. In addition, the Commission found no reason to believe that Representative Schmidt and the Committee violated 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have 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. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the 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 it is a voluntary step in the enforcement process that the Commission is offering to your clients as a 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 clients violated the law.

Donald C. Brey, Esq.
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Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Assistant General Counsel William A. Powers, who is assigned to this matter, at (202) 694-1650 or (800) 424-9530, within 7 days of the 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, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), (formerly 2 U.S.C. § 437g(a)), 11 C.F.R. Part 111 (Subpart A). If your clients agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. 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 make a probable cause finding.

Meanwhile, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,



Ann M. Ravel
Chair

Enclosures
Factual and Legal Analysis

cc: Representative Jeanette Schmidt

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Representative Jeannette Schmidt **MUR 6494**
4 Schmidt for Congress Committee and
5 Phillip Greenburg in his official capacity as treasurer
6

7 **I. GENERATION OF MATTER**
8

9 This matter was generated by a complaint filed with the Federal Election Commission
10 (the "Commission"). *See* 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)).

11 **II. INTRODUCTION**

12 Complainant alleges that Representative Jeannette Schmidt and her campaign committee,
13 Schmidt for Congress Committee and Phillip Greenburg in his official capacity as treasurer (the
14 "Committee") violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) when they accepted a
15 \$651,000 in-kind corporate contribution in the form of legal services provided at no charge to the
16 Committee from the Turkish American Legal Defense Fund ("TALDF"), the legal division of the
17 Turkish Coalition of America, Inc. ("TCA"), a 501(c)(3) corporation, for a series of legal
18 proceedings following the 2008 Congressional election between Schmidt and the Complainant.¹
19 Complainant also alleges that the Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C.
20 § 434(b)) when the Committee failed to disclose the receipt of the contributions. Finally,
21 Complainant alleges that the Committee converted \$7,600 in campaign funds to personal use
22 when it made disbursements for "Legal Services" that were personal to Schmidt.

¹ In January and June 2012, the complainant, David Krikorian, filed three supplements to the complaint. The first supplement was filed on January 17, 2012. *See* Compl. Amend., Ex. A (Jan. 17, 2012). 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, alleged that Schmidt and the Committee converted campaign funds to personal use. *See* Third Compl. Supp. (June 27, 2012).

On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 In joint responses filed by Schmidt and the Committee (the "Schmidt Resp." or "Schmidt
2 Respondents"), Respondents primarily argue that the Committee was not a party to the four legal
3 proceedings, and that the legal services TALDF provided were not "in connection with" an
4 election and not "for the purposes of influencing" an election.² The Schmidt Respondents
5 further assert that Schmidt and the Committee did not "knowingly" accept or receive a corporate
6 contribution and that a report ("House Ethics Report") issued by the U.S. House of
7 Representatives Committee on Ethics ("House Ethics Committee") supports this claim.³

8 The record indicates that the Committee knowingly accepted corporate contributions
9 from TCA and failed to disclose them. Accordingly, the Commission finds reason to believe that
10 the Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) and violated
11 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)).

12 Finally, the Commission finds no reason to believe that Schmidt or the Committee
13 converted campaign funds to personal use in violation of 52 U.S.C. § 3011a (formerly 2 U.S.C.
14 § 439a).

15 **III. FACTS**

16 Krikorian and Schmidt were opponents in the 2008 general election for the House seat in
17 Ohio's Second Congressional District.⁴ Days before the election, Krikorian distributed a two-
18 page communication asserting that Schmidt "has taken \$30,000 In Blood Money to Deny the

² Schmidt Resp. at 3-4, 6-7 (Nov. 2, 2011).

³ Schmidt Resp. at 8.

⁴ 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.

1 Genocide of Christian Armenians by Muslim Turks” and urging voters to “SAY NO TO JEAN
2 SCHMIDT.”⁵

3 In response, Schmidt and her Committee filed complaints in April and July 2009 with the
4 Ohio Elections Commission (hereinafter “OEC”) alleging that Krikorian made false campaign
5 statements during the election in violation of Ohio law.⁶ In the course of the proceedings,

6 Krikorian deposed TALDF lawyer Bruce Fein, Schmidt, and her chief of staff Barry Bennett.

7 Among other topics, the deponents testified about the circumstances surrounding the TALDF
8 lawyers’ representation of Schmidt and the Committee. In October 2009, the OEC found in
9 favor of Schmidt and the Committee, determining that there was clear and convincing evidence
10 that Krikorian had made statements that were false or made with reckless disregard, and publicly
11 reprimanded Krikorian.⁷

12 The next month, Krikorian appealed the administrative findings in the Ohio Court of
13 Common Pleas naming Schmidt as the sole opposing party.⁸ Schmidt moved to dismiss the
14 appeal and the state court granted that motion on February 24, 2010.⁹

15 Meanwhile, Krikorian filed a complaint in Federal court on January 21, 2010¹⁰
16 challenging the constitutionality of the OEC itself and seeking to enjoin enforcement of its

⁵ *Id.* at 2; Schmidt Resp., Ex. A(1) (upper case in original).

⁶ 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.

⁷ Schmidt Resp., Ex. C, 1.

⁸ Schmidt Resp., Ex. C, D.

⁹ *Id.* at 4; Schmidt Resp. at 6.

¹⁰ Compl. at 6.

1 ruling. Krikorian did not name Schmidt or the Committee as parties, but on January 29, 2010,
2 Schmidt filed an *amicus* brief supporting the dismissal of the complaint.¹¹ The court granted
3 Defendants' Motions to Dismiss, and Krikorian did not appeal.¹²

4 Finally, on June 8, 2010, Schmidt filed a defamation claim in state court against
5 Krikorian and his campaign committee, alleging that Krikorian continued to make defamatory
6 statements against Schmidt and requesting \$6 million in damages. On or about March 22, 2012,
7 Schmidt voluntarily moved to dismiss the defamation suit and the state court granted the request
8 six days later.¹³

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

10 The Turkish American Legal Defense Fund (hereinafter "TALDF"), and its local Ohio
11 counsel Donald Brey, represented Schmidt in the legal proceedings discussed above.¹⁴ TALDF
12 is a division of TCA, a 501(c)(3) corporation organized to "[p]romote and advance the interests
13 of the Turkish American community and Turks."¹⁵ TCA created TALDF as a means "to protect
14 the legal rights of Turkish Americans."¹⁶ TALDF is not a separate entity from TCA — it is a
15 division of TCA funded from its general budget.¹⁷ TALDF is run by outside counsel Bruce Fein
16 and David Saltzman, who pre-approve new TALDF legal matters with McCurdy, and TCA's

¹¹ Schmidt Resp. at 5.

¹² Compl. Supp., Attach. (Federal district court order dismissing Complainant's challenge to state statute).

¹³ *Schmidt v. Krikorian & Krikorian for Congress Campaign Committee*, 2010-CVC-1217, Notice of Dismissal.

¹⁴ TALDF engaged Brey as local counsel.

¹⁵ See <http://www.tc-america.org/about.htm> (last accessed July 17, 2014).

¹⁶ House Ethics Report at 28, 48.

¹⁷ See *id.* at 54; <http://www.taldf.org/support.html> (last accessed on July 16, 2014).

1 vice president and TCA's chairman.¹⁸ TALDF does not charge its clients for legal services.¹⁹

2 Instead, TCA compensates TALDF for its legal work; McCurdy, as president, approves all

3 payments to TALDF.²⁰ TCA does not seek reimbursement from TALDF's clients.²¹

4 Schmidt and Barry Bennett, her campaign's chief of staff, had previously met McCurdy

5 at TCA-sponsored events and TCA PAC's fundraising events during the 2008 election and each

6 had separate discussions with McCurdy about Krikorian's pre-election "Blood-Money"

7 communication and TALDF's possible legal representation for a lawsuit challenging Krikorian's

8 statements about Schmidt.²² McCurdy asked TALDF lawyer Bruce Fein to meet with Schmidt.²³

9 Fein, Schmidt, Bennett, and another member of her staff met in late November 2008 and TALDF

10 agreed to file a complaint with the OEC.²⁴

11 TALDF had no written retainer agreement with Schmidt or the Committee.²⁵ Fein told

12 Schmidt and Bennett at the outset of the initial OEC proceeding that TALDF would provide its

13 services at no charge.²⁶ Although TALDF lawyers regularly communicated with Schmidt and

14 her staff throughout the legal proceedings,²⁷ TALDF lawyers billed TCA for services provided to

¹⁸ House Ethics Report at 54.

¹⁹ *See id.* at 49.

²⁰ House Ethics Report at 49, 54.

²¹ House Ethics Report at 37.

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

²³ House Ethics Report at 49.

²⁴ *Id.*

²⁵ House Ethics Report at 9.

²⁶ *Id.* at 49.

²⁷ *Id.* at 50, 60.

1 Schmidt from 2008 through 2011.²⁸ TCA paid TALDF lawyers the following amounts for legal
2 fees and expenses: \$3,905 in 2008²⁹; \$289,280 in 2009; \$205,401 in 2010; and \$152,658.29 in
3 2011.³⁰

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.³¹ 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.³²

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

²⁸ *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.

²⁹ 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. The Commission infers that the date of the invoice is in error.

³⁰ *Id.* at 32-34; see also http://clerk.house.gov/public_disc/financial-search.aspx. (Representative Schmidt's 2011 House Financial Disclosure Report at 12 (May 15, 2012)).

³¹ House Ethics Report at 5.

³² *Id.* at 312-313.

1 Commission proceedings, and future legal work on your behalf in the appellate case.”³³
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.³⁴ 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.³⁵

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.³⁶ 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.³⁷ 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
16 improper gift in its advisory opinion.³⁸ OCE referred the matter to the House Ethics Committee
17 in May 2011 due to a “substantial reason to believe that Schmidt: (1) accepted legal services

³³ 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.

³⁴ *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.

³⁵ House Ethics Report at 1.

³⁶ Compl., Ex. B (Krikorian’s OCE Complaint).

³⁷ House Ethics Report at 37.

³⁸ *Id.* at 25.

1 from TALDF without establishing a legal expense fund; and (2) failed to report the legal services
2 on her financial disclosure statements for calendar years 2008 and 2009.”³⁹

3 In response to the OCE referral, Schmidt stated that “[she] never expected anything other
4 than me, my campaign, or my legal trust to be responsible for paying my legal bills,” and that
5 she “neither sought nor received pro-bono legal services.”⁴⁰ Schmidt averred that she acted in
6 good faith and in accordance with the House Ethics Committee’s advice that she not accept a bill
7 for legal services “until a responsible entity that would be liable for payment is formed.”⁴¹

8 Schmidt wrote that House Ethics “was well aware of the relationship between TALDF and the
9 Turkish Coalition of America (TCA).”⁴² And she suggested that the Ethics Committee knew
10 more “relevant and material” information about the relationship between TCA and TALDF than
11 she did.⁴³ Schmidt asserted that she had no relationship with TCA, and that “[n]one of the
12 discussions regarding payment of legal fees have [sic] involved TCA.”⁴⁴ Schmidt maintained
13 that she is represented by TALDF and that she intended to pay all legal fees. Schmidt stated,
14 however, that any potential relationship with TCA was tangential or indirect: “[t]he only
15 business relationship that I could have had with TCA would have been through its close
16 affiliation with and support of TALDF.”⁴⁵

³⁹ *Id.* at 22.

⁴⁰ *Id.* at 476-477.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 477.

⁴⁵ *Id.*

1 3. House Ethics Committee Report

2 After considering the OCE referral, the House Ethics Committee determined that
3 pursuant to House Rule 25, cl. 5(a)(1)(A)(i), Schmidt had received an improper gift from TCA in
4 the form of its payment of approximately \$500,000 for legal fees to TALDF lawyers for their
5 representation of Schmidt from 2008 through 2010.⁴⁶ In contrast to OCE, which concluded that
6 TALDF lawyers told Schmidt that they were providing services to her and the Committee at no
7 cost,⁴⁷ the House Ethics Report concluded that Schmidt was not aware that her lawyers did not
8 intend to bill her for their services; the report also concluded that the TALDF lawyers never
9 disclosed to Schmidt that they received direct payment from TCA.⁴⁸ According to the report,
10 Schmidt only knew that her lawyers worked for TALDF and that Fein was "senior counsel at
11 [TALDF]."⁴⁹ The House Ethics Committee simultaneously approved the creation of the Jean
12 Schmidt Legal Expense Fund.⁵⁰ House Ethics concluded that Schmidt must repay the TALDF
13 lawyers' legal fees for the Ohio Elections Commission matters and the state defamation suit and
14 that she could use legal expense funds to do so.

15 Having previously confirmed that Schmidt was not a named party to the federal case
16 challenging the constitutionality of the OEC and that she did not anticipate any involvement in

⁴⁶ *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. The Commission does not know why House Ethics chose to exclude the 2011 legal fees.

⁴⁷ *Id.* at 37.

⁴⁸ *Id.* at 3.

⁴⁹ *Id.* at 18.

⁵⁰ *Id.* at 2, 15.

1 this case,⁵¹ House Ethics did not allow the use of legal expense funds for legal costs related to
2 the *amicus* brief.⁵² Schmidt advised House Ethics in a January 30, 2012, letter that she had
3 repaid \$42,812 in legal fees and expenses for the *amicus* brief.⁵³ The letter provides no details as
4 to whom or how Schmidt repaid this amount.

5 IV. LEGAL ANALYSIS

6 A. Corporate Contributions

7 The Act prohibits a corporation from making a contribution or expenditure in connection
8 with a federal election, and no officer or director of any corporation may consent to any
9 contribution by a corporation.⁵⁴ The Act further prohibits any candidate, political committee, or
10 other person from knowingly accepting or receiving a contribution from a corporation.⁵⁵ The
11 “knowing” acceptance of a contribution requires knowledge of the underlying facts that
12 constitute the prohibited act, but not knowledge that the act itself — such as acceptance of a
13 corporate contribution — is unlawful.⁵⁶

14 The term “contribution” includes “any gift, subscription, loan, advance, or deposit of
15 money or anything of value made by any person for the purpose of influencing any election for

⁵¹ *Id.* at 316.

⁵² *Id.* at 13.

⁵³ See January 30, 2012, Letter from Representative Schmidt to House Committee on Ethics.

⁵⁴ See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (e).

⁵⁵ *Id.*

⁵⁶ See *FEC v. Damesi*, 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.)

1 Federal office.”⁵⁷ More specifically, “contribution” also includes the “payment by any person of
2 compensation for the personal services of another person which are rendered to a political
3 committee without charge for any purpose.”⁵⁸

4 Complainant alleges that Schmidt and the Committee accepted in excess of \$650,000 in
5 prohibited in-kind contributions. Schmidt decided to file a complaint with the Ohio Elections
6 Commission after the 2008 general election.⁵⁹ Both Schmidt and her then-chief of staff Bennett
7 attended the December 2008 meeting with Fein when the parties agreed to TALDF’s
8 representation, and during which Fein told both Schmidt and Bennett that TALDF’s legal
9 services were free.⁶⁰ The record evidence reflects regular status updates between TALDF
10 lawyers and Schmidt and her staff during the preparation of the OEC matter and the additional
11 legal proceedings. Schmidt and the Committee filed a joint complaint against Krikorian with
12 OEC and the April 2009 OEC complaint was signed by Schmidt, and requested relief on behalf
13 of Schmidt and the Committee.⁶¹ These facts indicate that Schmidt and the Committee were the
14 intended beneficiaries of the legal services related to the OEC complaint and subsequent appeal.
15 Deposition testimony by Bennett, Fein, and Schmidt from the OEC proceedings further supports
16 Complainant’s assertion that the Committee, by Schmidt, accepted a prohibited contribution.

⁵⁷ 52 U.S.C. § 30101(8)(A)(ii) (formerly 2 U.S.C. § 431(8)(A)(i)); 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (formerly 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.”).

⁵⁸ 52 U.S.C. § 30101(8)(A)(ii) (formerly 2 U.S.C. § 431(8)(A)(ii)).

⁵⁹ House Ethics Report at 210; Bennett Dep. at 49:9-11.

⁶⁰ Fein Dep. at 56:22-57:1; 58:11-59:10; 59:15-60:6.

⁶¹ *See* Schmidt Resp., Ex. A, B.

1 Schmidt's campaign chief of staff, Bennett, testified that following the November 2008
2 election he spoke with TCA's president, McCurdy, about retaining legal counsel on behalf of
3 Schmidt and the Committee, and McCurdy introduced him to Fein. Bennett also testified that he
4 and Schmidt were both present at the initial meeting with Bruce Fein and that the events which
5 led to the Ohio Election complaint, "happened in the course of the campaign."⁶² Further,
6 Schmidt testified that "[t]he campaign had retained [Brey and Fein]" and when asked if Brey and
7 Fein "work for the campaign?" she answered "[y]es."⁶³ And Fein, during his testimony, asserted
8 an attorney-client privilege with Bennett stating, "we have made it clear all along we represent
9 both Mrs. Schmidt and the campaign committee."⁶⁴ Based on the record here, TALDF
10 represented Schmidt in her official capacity as a candidate and the Committee.

11 To rebut the knowing element of 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)), the
12 Schmidt Respondents appear to rely on the House Ethics Committee's factual conclusion that
13 Schmidt did not know that TCA directly paid for the services provided by TALDF lawyers.⁶⁵

14 The Schmidt Respondents also maintain that because Schmidt never received a bill from

⁶² Bennett Dep. at 48:21-22; 50:5-12.

⁶³ 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.

⁶⁴ Fein Dep. at 59:19-60:6. Compl., Ex. C at 56:22-57:1.

⁶⁵ The Commission notes 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. The Commission also notes 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 proceedings. This analysis includes an examination of the only sworn testimony of Schmidt taken in all legal proceedings related to this matter.

1 TALDF, they did not know that TCA paid the legal fees for the TALDF lawyers. Despite the
2 argument that Schmidt was unaware of the corporate status of TCA and its financial support of
3 TALDF, Schmidt and the Committee were aware that they were in receipt of considerable
4 TALDF legal services at costs that exceeded the applicable contribution limit. As mentioned
5 above, Schmidt initially sought help from McCurdy. McCurdy told Fein about Schmidt's
6 interest in filing a complaint with the OEC and directed Fein to meet with Schmidt and Bennett.
7 Any claim by Schmidt that her meeting with Fein, the senior counsel of TALDF, was unrelated
8 to discussions that she or Bennett had with McCurdy, the president of the TCA, is inconsistent
9 with the record. This supports finding that Schmidt knowingly accepted a corporate contribution
10 from TCA through TALDF, a project of TCA.⁶⁶

11 Accordingly, the Commission finds reason to believe that Schmidt for Congress
12 Committee and Phillip Greenburg in his official capacity as treasurer violated 52 U.S.C.
13 § 30118(a) (formerly 2 U.S.C. § 441b(a)).

14 **B. Personal Use Allegations**

15 The Third Complaint Supplement includes an allegation that Schmidt and the Committee
16 converted campaign funds to personal use when the Committee made two disbursements totaling
17 \$7,651.78 to the law firm Chester, Wilcox & Saxbe for "legal fees."⁶⁷ Complainant asserts that
18 the Committee made disbursements on November 24, 2011, and January 2, 2012, that were

⁶⁶ Even assuming Schmidt's asserted lack of knowledge about TALDF's and TCA's interconnectedness and corporate status was consistent with the record, the Schmidt Respondents' acceptance of the TALDF lawyers' legal services would also be an excessive in-kind contribution. See 52 U.S.C. § 30116(a) (formerly 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*.

⁶⁷ The Committee disclosed these payments in its 2011 Year End and 2012 Pre-Primary Reports.

1 converted to personal use because they are related to the state defamation matter.⁶⁸ The Schmidt
2 Respondents acknowledge disbursing campaign funds to Chester, Wilcox & Saxbe to pay legal
3 fees, but assert that the legal fees were incurred for representation before the Commission in the
4 present matter.⁶⁹

5 Under the Act and Commission regulations, a candidate and the candidate's committee
6 have wide discretion in making expenditures to influence the candidate's election, but may not
7 convert a contribution or donation described in 52 U.S.C. § 30113 (formerly 2 U.S.C § 439a) to
8 the personal use of the candidate or any other person.⁷⁰ Commission regulations provide
9 guidance about what would be considered personal use of campaign funds. Personal use is
10 defined as the use of campaign funds "to fulfill any commitment, obligation, or expense of a
11 person that would exist irrespective of" the individual's status as a candidate or federal
12 officeholder.⁷¹ Under the personal use rules, the Commission will analyze expenses for legal
13 fees on a case-by-case basis using the general definition of personal use.⁷²

14 The Schmidt Respondents explained that the legal fees were for representation for the
15 instant matter before the Commission and the Commission has no reason to doubt this assertion.
16 Legal expenses relating directly to the candidate's campaign activities or status as a federal
17 officeholder may be paid for with campaign funds.⁷³ As such, the Committee's disbursements of
18 campaign funds for legal fees related to the instant proceedings are a permissible use of

⁶⁸ See Third Compl. Supp. at 11-12.

⁶⁹ See Third Schmidt Resp. at 2 (Aug. 7, 2012).

⁷⁰ 52 U.S.C. 30113(b)(1) (formerly 2 U.S.C § 439a(b)(1)); 11 C.F.R. § 113.1(g).

⁷¹ See 52 U.S.C. § 30113(b)(2) (formerly 2 U.S.C. § 439a(b)(2)).

⁷² 11 C.F.R. § 113.1(g)(1)(ii)(A).

⁷³ See 52 U.S.C. § 30113(a)(1)-(2) (formerly 2 U.S.C. § 439a(a)(1)-(2)).

1 campaign funds.⁷⁴ Accordingly, the Commission finds no reason to believe that Representative
2 Jeannette Schmidt and the Schmidt Committee for Congress and Phillip Greenburg in his official
3 capacity as treasurer violated 52 U.S.C. § 30113(b) (formerly 2 U.S.C. § 439a(b)).

4 **C. Reporting**

5 All political committees are required to file reports of their receipts and disbursements.⁷⁵
6 These reports must itemize all contributions received from contributors that aggregate in excess
7 of \$200 per election cycle.⁷⁶ Any in-kind contribution must also be reported as an expenditure
8 on the same report.⁷⁷

9 The Committee does not address its reporting obligation in its response. Following
10 OCE's investigation, Schmidt, however, told House Ethics that "[she] never expected anything
11 other than me, my campaign, or my legal trust to be responsible for paying my legal bills."⁷⁸
12 Schmidt argues that she held off payments for TALDF's legal services, acting under the House
13 Committee's advice "to not accept a bill until a responsible entity that would be liable for
14 payment is formed,"⁷⁹ until House Ethics approved the means of payment. Schmidt asserts that
15 she always intended to pay for TALDF's legal services and "[she] neither sought nor received
16 pro-bono legal services."⁸⁰ Schmidt, as the agent of her authorized committee, accepted the in-

⁷⁴ *Id.*

⁷⁵ 52 U.S.C. § 30104(a) (formerly 2 U.S.C. § 434(a)).

⁷⁶ *Id.* § 30104(b) (formerly 434(b)); 11 C.F.R. § 104.3(a)(4).

⁷⁷ 11 C.F.R. §§ 104.3(b), 104.13(a)(2).

⁷⁸ House Ethics Report at 476.

⁷⁹ *Id.* at 476-477.

⁸⁰ *Id.* at 477.

1 kind contributions. Thus, even if one were to credit Schmidt's statement, the Committee should
2 have disclosed the amount of outstanding debts and obligations in its reports, but it did not.⁸¹

3 The Committee did not disclose its receipt of \$651,000 in in-kind contributions made by
4 TCA. And despite the House Ethics Committee's August 2011 ruling determining that Schmidt
5 had accepted an impermissible gift, the Committee failed to amend its reports to disclose to this
6 Commission its receipt of the contributions. Therefore, the Commission finds reason to believe
7 that the Schmidt for Congress Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C.
8 § 434(b)).

⁸¹ See 52 U.S.C. § 30104(b)(8) (formerly 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 30104(b) (formerly 434(b)).