



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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JAN 29 2015

RE: MUR 6494
Turkish Coalition of America, Inc.
G. Lincoln McCurdy

Dear Mr. Saltzman:

On September 18, 2011, the Federal Election Commission (the "Commission") notified your clients, the Turkish Coalition of America, Inc. ("TCA"), and the president of TCA, G. Lincoln McCurdy, 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 TCA violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)), by making a prohibited corporate contribution, and G. Lincoln McCurdy as the president of TCA, also violated § 30118(a) by consenting to the making of a prohibited contribution. 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. 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

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Turkish Coalition of America, Inc. **MUR 6494**
4 G. Lincoln McCurdy
5

6 **I. GENERATION OF MATTER**
7

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

10 **II. INTRODUCTION**

11 Complainant alleges that the Turkish Coalition of America, Inc. ("TCA"), a 501(c)(3)
12 corporation, violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) by making a \$651,000
13 in-kind corporate contribution to Representative Jeannette Schmidt and her campaign committee,
14 Schmidt for Congress Committee and Phillip Greenburg in his official capacity as treasurer (the
15 "Committee"), by providing free legal services from its legal arm, the Turkish American Legal
16 Defense Fund ("TALDF"), for a series of legal proceedings following an acrimonious 2008
17 Congressional election between Schmidt and Complainant.¹

18 In its Response, TCA denies violating the Act. Respondents primarily argue that the
19 Committee was not a party to the four legal proceedings, and that the legal services TALDF
20 provided were not "in connection with" an election and not "for the purposes of influencing" an
21 election.²

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).

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.

² TCA Resp. at 11, 13 (Oct. 3, 2011).

Because the record indicates that TCA provided free legal services to the Committee, the Commission finds reason to believe that the Turkish Coalition of America, Inc. violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) by making prohibited corporate contributions.

III. FACTS

Krikorian and Schmidt were opponents in the 2008 general election for the House seat in Ohio's Second Congressional District. 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."

In response, the 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.³ In the course of the proceedings, Krikorian deposed TALDF lawyer Bruce Fein, Schmidt, and her chief of staff Barry Bennett. Among other topics, the deponents testified about the circumstances surrounding the TALDF lawyers' representation of Schmidt and the Committee. In October 2009, the OEC found in favor of Schmidt and the Committee, determining that there was clear and convincing evidence that Krikorian had made statements that were false or made with reckless disregard, and publicly reprimanded Krikorian.⁴

³ TCA Resp., Ex. 3. 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.

⁴ TCA Resp., Ex. 1.

1 The next month, Krikorian appealed the administrative findings in the Ohio Court of
2 Common Pleas naming Schmidt as the sole opposing party. Schmidt moved to dismiss the
3 appeal and the state court granted that motion on February 24, 2010.

4 Meanwhile, Krikorian filed a complaint in Federal court on January 21, 2010⁵
5 challenging the constitutionality of the OEC itself and seeking to enjoin enforcement of its
6 ruling.⁶ Krikorian did not name Schmidt or the Committee as parties, but on January 29, 2010,
7 Schmidt filed an *amicus* brief supporting the dismissal of the complaint.⁷ The court granted
8 Defendants' Motions to Dismiss, and Krikorian did not appeal.⁸

9 Finally, on June 8, 2010, Schmidt and her campaign committee filed a defamation claim
10 in state court against Krikorian and his campaign committee, alleging that Krikorian continued to
11 make defamatory statements against Schmidt and requesting \$6 million in damages.⁹ On or
12 about March 22, 2012, Schmidt voluntarily moved to dismiss the defamation suit and the state
13 court granted the request six days later.¹⁰
14

⁵ Compl. at 6.

⁶ TCA Resp. at 6.

⁷ TCA Resp. at 6.

⁸ TCA Resp. at 6; *see also* Compl. Supp., Attach. (Federal district court order dismissing Complainant's challenge to state statute).

⁹ TCA Resp., Ex. 4.

¹⁰ *Schmidt v. Krikorian & Krikorian for Congress Campaign Committee*, 2010-CVC-1217, Notice of Dismissal.

A. TALDF's Representation of Schmidt and the Committee

The Turkish American Legal Defense Fund (hereinafter "TALDF"), and its local Ohio counsel represented Schmidt in the legal proceedings discussed above.¹¹ TALDF is a division of TCA, a 501(c)(3) corporation organized to "[p]romote and advance the interests of the Turkish American community and Turks."¹² TCA created TALDF as a means "to protect the legal rights of Turkish Americans."¹³ TALDF is not a separate entity from TCA — it is a division of TCA funded from its general budget.¹⁴ TALDF is run by lawyers Bruce Fein and David Saltzman, who pre-approve new TALDF legal matters with McCurdy, and TCA's vice president and TCA's chairman.¹⁵ TALDF does not charge its clients for legal services.¹⁶ Instead, TCA compensates TALDF for its legal work; McCurdy, as president, approves all payments to TALDF.¹⁷ TCA does not seek reimbursement from TALDF's clients.¹⁸

Schmidt and Barry Bennett, her campaign's chief of staff, had previously met McCurdy at TCA-sponsored events and TCA PAC's fundraising events during the 2008 election and each had separate discussions with McCurdy about Krikorian's pre-election "Blood Money" communication and TALDF's possible legal representation for a lawsuit challenging Krikorian's

¹¹ See TCA Resp. at 6 (*amicus* brief filed 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 local counsel as primary counsel and Fein as of counsel).

¹² TCA Resp. at 2.

¹³ House Ethics Report at 28, 48.

¹⁴ See *id.* at 54; TCA Resp. at 9.

¹⁵ House Ethics Report at 54.

¹⁶ See *id.* at 49; TCA Resp. at 10.

¹⁷ House Ethics Report at 49, 54.

¹⁸ TCA Resp. at 5; House Ethics Report at 37.

1 statements about Schmidt.¹⁹ McCurdy asked TALDF lawyer Bruce Fein to meet with Schmidt.²⁰

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

3 agreed to file a complaint with the OEC.²¹

4 TALDF had no written retainer agreement with Schmidt or the Committee.²² Fein told

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

6 services at no charge.²³ Although TALDF lawyers regularly communicated with Schmidt and

7 her staff throughout the legal proceedings,²⁴ TALDF lawyers billed TCA for services provided to

8 Schmidt from 2008 through 2011.²⁵ TCA paid TALDF lawyers the following amounts for legal

9 fees and expenses: \$3,905 in 2008²⁶; \$289,280 in 2009; \$205,401 in 2010; and \$152,658.29 in

10 2011.²⁷

¹⁹ House Ethics Report at 54-55. Fein Dep. at 56:22-57:1 (Aug. 31, 2009) (Deposition of Bruce Fein) ("Fein Dep.").

²⁰ House Ethics Report at 49; TCA Resp. at 2, 4-5.

²¹ *Id.*

²² House Ethics Report at 9.

²³ *Id.* at 49.

²⁴ *Id.* at 50, 60; *see also* TCA Resp. at 10.

²⁵ *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 local counsel submitted invoices for his legal services to Bruce Fein. *Id.* at 118.

²⁶ 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.

²⁷ *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)).

B. Office of Congressional Ethics Investigation and House Ethics Decision

1. Representative Schmidt's Ethics Advisory Opinion

On September 10, 2009, during the pendency of Schmidt's complaint with the Ohio Elections Commission, Bennett informally contacted the House Ethics Committee on Schmidt's behalf to request guidance on the payment of legal fees in connection with the OEC proceeding, as well as an intended civil suit against Krikorian. Schmidt formally requested advice from House Ethics a week later.²⁸ Schmidt specifically requested that House Ethics consider and comment on four options for the payment of legal fees including two variations of a contingency fee arrangement, establishing a legal expense fund, or using campaign funds.²⁹

On February 26, 2010, the House Ethics Committee issued an advisory opinion offering two permissible options "both for legal work already completed during the [Ohio] Elections Commission proceedings, and future legal work on your behalf in the appellate case."³⁰ Specifically, the opinion advised Schmidt that she could establish a legal expense fund subject to approval by House Ethics or she could use campaign funds.³¹ Schmidt subsequently sent letters to the Ethics Committee dated July 19, August 9, and August 11, 2010, seeking approval of a legal expense fund.³²

²⁸ House Ethics Report at 5.

²⁹ *Id.* at 312-313.

³⁰ 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.

³¹ *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.

³² House Ethics Report at 1.

2. Office of Congressional Ethics Investigation

Krikorian filed a complaint with the Office of Congressional Ethics (hereinafter "OCE") in July 2010 alleging, among other things, that Schmidt had violated House gift rules by accepting and failing to report the receipt of legal services paid for by TCA.³³ In a report dated April 29, 2011, OCE concluded that TALDF provided legal services to Schmidt from 2008 through 2011, and that TCA paid TALDF lawyers for their representation with the expectation that the services would be provided to Schmidt free of charge.³⁴ OCE noted that Schmidt requested advice months after TALDF's representation began, and that Schmidt continued to accept TALDF's representation after House Ethics advised her that she had accepted an improper gift in its advisory opinion.³⁵ OCE referred the matter to the House Ethics Committee in May 2011 due to a "substantial reason to believe that Schmidt: (1) accepted legal services from TALDF without establishing a legal expense fund; and (2) failed to report the legal services on her financial disclosure statements for calendar years 2008 and 2009."³⁶

In response to the OCE referral, Schmidt stated that "[she] never expected anything other than me, my campaign, or my legal trust to be responsible for paying my legal bills," and that she "neither sought nor received pro-bono legal services."³⁷ Schmidt averred that she acted in good faith and in accordance with the House Ethics Committee's advice that she not accept a bill

³³ Compl., Ex. B (Krikorian's OCE Complaint).

³⁴ House Ethics Report at 37.

³⁵ *Id.* at 25.

³⁶ *Id.* at 22.

³⁷ *Id.* at 476-477.

1 for legal services “until a responsible entity that would be liable for payment is formed.”³⁸
2 Schmidt wrote that House Ethics “was well aware of the relationship between TALDF and the
3 Turkish Coalition of America (TCA).”³⁹ And she suggested that the Ethics Committee knew
4 more “relevant and material” information about the relationship between TCA and TALDF than
5 she did.⁴⁰ Schmidt asserted that she had no relationship with TCA, and that “[n]one of the
6 discussions regarding payment of legal fees have [*sic*] involved TCA.”⁴¹ Schmidt maintained
7 that she is represented by TALDF and that she intended to pay all legal fees. Schmidt stated,
8 however, that any potential relationship with TCA was tangential or indirect: “[t]he only
9 business relationship that I could have had with TCA would have been through its close
10 affiliation with and support of TALDF.”⁴²

11 3. House Ethics Committee Report

12 After considering the OCE referral, the House Ethics Committee determined that
13 pursuant to House Rule 25, cl. 5(a)(1)(A)(i), Schmidt had received an improper gift from TCA in
14 the form of its payment of approximately \$500,000 for legal fees to TALDF lawyers for their
15 representation of Schmidt from 2008 through 2010.⁴³ In contrast to OCE, which concluded that
16 TALDF lawyers told Schmidt that they were providing services to her and the Committee at no

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 477.

⁴² *Id.*

⁴³ *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.

1 cost,⁴⁴ the House Ethics Report concluded that Schmidt was not aware that her lawyers did not
2 intend to bill her for their services; the report also concluded that the TALDF lawyers never
3 disclosed to Schmidt that they received direct payment from TCA.⁴⁵ According to the report,
4 Schmidt only knew that her lawyers worked for TALDF and that Fein was "senior counsel at
5 [TALDF]."⁴⁶ The House Ethics Committee simultaneously approved the creation of the Jean
6 Schmidt Legal Expense Fund.⁴⁷ House Ethics concluded that Schmidt must repay the TALDF
7 lawyers' legal fees for the Ohio Elections Commission matters and the state defamation suit and
8 that she could use legal expense funds to do so.

9 Having previously confirmed that Schmidt was not a named party to the federal case
10 challenging the constitutionality of the OEC and that she did not anticipate any involvement in
11 this case,⁴⁸ House Ethics did not allow the use of legal expense funds for legal costs related to
12 the *amicus* brief.⁴⁹ Schmidt advised House Ethics in a January 30, 2012, letter that she had
13 repaid \$42,812 in legal fees and expenses for the *amicus* brief.⁵⁰ The letter provides no details as
14 to whom or how Schmidt repaid this amount.

15

⁴⁴ *Id.* at 37.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* at 18.

⁴⁷ *Id.* at 2, 15.

⁴⁸ *Id.* at 316.

⁴⁹ *Id.* at 13.

⁵⁰ See January 30, 2012, Letter from Representative Schmidt to House Committee on Ethics.

IV. LEGAL ANALYSIS

The Act prohibits a corporation from making a contribution or expenditure in connection with a federal election, and no officer or director of any corporation may consent to any contribution by a corporation.⁵¹ The Act further prohibits any candidate, political committee, or other person from knowingly accepting or receiving a contribution from a corporation.⁵² The "knowing" acceptance of a contribution requires knowledge of the underlying facts that constitute the prohibited act, but not knowledge that the act itself — such as acceptance of a corporate contribution — is unlawful.⁵³

The term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."⁵⁴ More specifically, "contribution" also includes the "payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose."⁵⁵

A. TCA Made a Prohibited Corporate Contribution by Providing Free Legal Services to the Committee through TALDF

There is reason to believe that TCA violated section 30118(a) (formerly 441b(a)) by

⁵¹ See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (e).

⁵² *Id.*

⁵³ 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.)

⁵⁴ 52 U.S.C. § 30101(8)(A)(i) (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.").

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

1 providing legal services to the Committee. TCA is a corporation, and it acknowledges that it
2 paid outside counsel to represent Schmidt and the Committee in the four legal proceedings.
3 TCA's characterization of its payments for Schmidt's legal fees as reimbursements to TALDF's
4 lawyers does not change the corporate nature of the in-kind contributions because TALDF is part
5 of that corporation.⁵⁶

6 Accordingly, the Commission finds reason to believe that the Turkish Coalition of
7 American, Inc. violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) by making a
8 prohibited in-kind corporate contribution to Representative Jean Schmidt and the Schmidt for
9 Congress Committee.

10 **B. The President of TCA is Liable for Consenting to TCA's Corporate**
11 **Contribution**

12 Section 30118(a) (formerly 441b(a)) also prohibits any officer or director of any
13 corporation from consenting to any contribution by the corporation.⁵⁷ TCA President, G.
14 Lincoln McCurdy, consented to provide in-kind legal services to Schmidt and the Committee
15 through TALDF lawyers Bruce Fein, David Saltzman, and local Ohio counsel. McCurdy admits
16 that he controls TCA's budget and approves all payments to TALDF, including legal fees.⁵⁸ The
17 source of those funds is TCA's general treasury.⁵⁹ McCurdy (along with Bruce Fein, David
18 Saltzman, and TCA's vice-president and chairman) pre-approved TALDF legal matters.⁶⁰

⁵⁶ House Ethics Report at 48. 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.

⁵⁷ See also 11 C.F.R. § 114.2(e).

⁵⁸ House Ethics Report at 49, 54.

⁵⁹ House Ethics Report at 54.

⁶⁰ *Id.*

- 1 Accordingly, the Commission finds reason to believe that McCurdy violated section 30118(a)
- 2 (formerly 441b(a)) by consenting to make a prohibited contribution in the form of legal services
- 3 provided to Schmidt and the Committee.⁶¹

⁶¹ 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)).