



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 15 2016

David Krikorian

Cincinnati, OH 45243-2206

RE: MUR 6494
Jeannette H. Schmidt
Schmidt for Congress Committee
Joseph Braun
Phillip Greenburg
Peter Schmidt
Turkish American Legal Defense Fund
Turkish Coalition of America, Inc.
G. Lincoln McCurdy
Bruce Fein
David Saltzman
Donald C. Brey
Sarah D. Morrison
Elizabeth J. Watters

Dear Mr. Kirkorian:

This is in reference to the complaint and supplemental complaint you filed with the Federal Election Commission on August 31, 2011, and June 6, 2012, concerning the above-listed respondents. On January 13, 2015, the Commission found that there was reason to believe that the Turkish Coalition of America, Inc. and G. Lincoln McCurdy, as president, violated 52 U.S.C. § 30118(a), and that Schmidt for Congress Committee and Phillip Greenburg in his official capacity as treasurer, violated 52 U.S.C. §§ 30118(a) and 30104(b), provisions of the Federal Election Campaign Act of 1971, as amended. On June 10, 2016, conciliation agreements signed on behalf of the Turkish Coalition of America, Inc. and G. Lincoln McCurdy; and Schmidt for Congress Committee and Peter Schmidt in his official capacity as treasurer, were accepted by the Commission. The Commission further found no reason to believe Bruce Fein, David Saltzman, Donald C. Brey, Sarah D. Morrison or that Elizabeth J. Watter violated 52 U.S.C. § 30118(a). The Commission further found no reason to believe Jeannette H. Schmidt, Schmidt for Congress Committee and Phillip Greenburg in his official capacity as treasurer, violated 52 U.S.C.

Enclosures
Conciliation Agreements (2)
Factual and Legal Analyses (10)

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).

1 Because the record indicates that TCA provided free legal services to the Committee, the
2 Commission finds reason to believe that the Turkish Coalition of America, Inc. violated
3 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) by making prohibited corporate
4 contributions.

5 **III. FACTS**

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

11 In response, the Committee filed complaints in April and July 2009 with the Ohio
12 Elections Commission (hereinafter "OEC") alleging that Krikorian made false campaign
13 statements during the election in violation of Ohio law.³ In the course of the proceedings,
14 Krikorian deposed TALDF lawyer Bruce Fein, Schmidt, and her chief of staff Barry Bennett.
15 Among other topics, the deponents testified about the circumstances surrounding the TALDF
16 lawyers' representation of Schmidt and the Committee. In October 2009, the OEC found in
17 favor of Schmidt and the Committee, determining that there was clear and convincing evidence
18 that Krikorian had made statements that were false or made with reckless disregard, and publicly
19 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

I. 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. 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.)

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

13 Section 30118(a) (formerly 441b(a)) also prohibits any officer or director of any
14 corporation from consenting to any contribution by the corporation.⁵⁷ TCA President, G.
15 Lincoln McCurdy, consented to provide in-kind legal services to Schmidt and the Committee
16 through TALDF lawyers Bruce Fein, David Saltzman, and local Ohio counsel. McCurdy admits
17 that he controls TCA's budget and approves all payments to TALDF, including legal fees.⁵⁸ The
18 source of those funds is TCA's general treasury.⁵⁹ McCurdy (along with Bruce Fein, David
19 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)).

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.

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

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.³¹ 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.³²

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

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.

Commission proceedings, and future legal work on your behalf in the appellate case.”³³
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.³⁴ Schmidt subsequently sent letters
to the Ethics Committee dated July 19, August 9, and August 11, 2010, seeking approval of a
legal expense fund.³⁵

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.³⁶ 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.³⁷ 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.³⁸ 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

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.*

3. House Ethics Committee Report

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

Having previously confirmed that Schmidt was not a named party to the federal case 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.

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

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

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.

converted to personal use because they are related to the state defamation matter.⁶⁸ 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.⁶⁹

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 52 U.S.C. § 30113 (formerly 2 U.S.C § 439a) to the personal use of the candidate or any other person.⁷⁰ 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.⁷¹ Under the personal use rules, the Commission will analyze expenses for legal fees on a case-by-case basis using the general definition of personal use.⁷²

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

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Phillip Greenburg **MUR 6494**

4
5 **I. GENERATION OF MATTER**

6
7 This matter was generated by a Complaint filed with the Federal Election Commission
8 (the "Commission"). *See* 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)).¹

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 Complainant alleges that Phillip Greenburg, Treasurer to Representative Jeannette
11 Schmidt's principal campaign committee, the Schmidt for Congress Committee (the
12 "Committee"), violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) in his personal
13 capacity when the Committee failed to disclose to the Commission payments by the Turkish
14 Coalition of America through the Turkish American Legal Defense Fund ("TALDF") for legal
15 services provided to Representative Schmidt and the Committee. A joint response filed by
16 Greenburg, among others, argues that the Committee was not a party to the four legal
17 proceedings, and that the legal services that TALDF provided were not "in connection with" an
18 election and not "for the purposes of influencing" an election.²

19 All political committees are required to file reports of their receipts and disbursements.³
20 These reports must itemize all contributions received from contributors that aggregate in excess
21 of \$200 per election cycle.⁴ Any in-kind contribution must also be reported as an expenditure on

¹ 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 Greenburg Resp. at 3-4, 6-7 (Nov. 2, 2011).

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

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

⁷ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Joseph Braun

MUR 6494

4
5
6 **I. GENERATION OF MATTER**

7
8 **GENERATION OF MATTER**

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

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 Complainant alleges that Joseph Braun, former Assistant Treasurer to Representative
14 Jeannette Schmidt's principal campaign committee, the Schmidt for Congress Committee (the
15 "Committee"), violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) in his personal
16 capacity when the Committee failed to disclose to the Commission payments by the Turkish
17 Coalition of America through the Turkish American Legal Defense Fund ("TALDF") for legal
18 services provided to Representative Schmidt and the Committee. A joint response filed by
19 Braun, among others argues that the Committee was not a party to the four legal proceedings,
20 and that the legal services that TALDF provided were not "in connection with" an election and
21 not "for the purposes of influencing" an election.²

22 All political committees are required to file reports of their receipts and disbursements.³
23 These reports must itemize all contributions received from contributors that aggregate in excess

¹ 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 Braun Resp. at 3-4, 6-7 (Nov. 2, 2011).

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

1 of \$200 per election cycle.⁴ Any in-kind contribution must also be reported as an expenditure on
2 the same report.⁵

3 Among its allegations, the Complaint alleges that Braun, the Committee's former
4 Assistant Treasurer, violated the Act in his personal capacity because the Committee's reports
5 did not include the receipt of the prohibited in-kind contributions.⁶ There is no information to
6 suggest that Braun, in his personal capacity, violated the Act.⁷

7 Accordingly, the Commission finds no reason to believe that these individuals violated
8 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

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

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

⁶ Compl. at 15-16.

⁷ *See* Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005).

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Peter Schmidt **MUR 6494**

4
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)).¹

10 **II. FACTUAL AND LEGAL ANALYSIS**

11 Complainant alleges, among other things, that Peter Schmidt Assistant Treasurer to
12 Representative Jeannette Schmidt's principal campaign committee, the Schmidt for Congress
13 Committee (the "Committee"), violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b))
14 when the Committee failed to disclose to the Federal Election Commission payments by the
15 Turkish Coalition of America through the Turkish American Legal Defense Fund for legal
16 services provided to Representative Schmidt and the Committee. A joint Response filed by Peter
17 Schmidt, among others argues that the Committee was not a party to the four legal proceedings,
18 and that the legal services TALDF provided were not "in connection with" an election and not
19 "for the purposes of influencing" an election.²

20 All political committees are required to file reports of their receipts and disbursements.³
21 These reports must itemize all contributions received from contributors that aggregate in excess

¹ 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 Schmidt Resp. at 3-4, 6-7 (Nov. 2, 2011).

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

1 of \$200 per election cycle.⁴ Any in-kind contribution must also be reported as an expenditure on
2 the same report.⁵

3 Among its allegations, the Complaint alleges that Peter Schmidt (the current Assistant
4 Treasurer) violated the Act in his personal capacity because the Committee's reports did not
5 include the receipt of the prohibited in-kind contributions.⁶ There is no information to suggest
6 Peter Schmidt, in his individual capacity, violated the Act.⁷

7 Accordingly, the Commission finds no reason to believe that these individuals violated
8 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

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

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

⁶ Compl. at 15-16.

⁷ *See* Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Donald C. Brey

MUR: 6494

4
5 **I. GENERATION OF MATTER**

6
7 This matter was generated by a complaint filed with the Federal Election Commission
8 (the "Commission") by David Krikorian. *See* 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C.
9 § 437g(a)(1)).¹

10 **II. FACTUAL AND LEGAL ANALYSIS**

11 Complainant alleges that Donald C. Brey ("Respondent"), local counsel associated with
12 the Turkish American Legal Defense Fund ("TALDF"), the legal division of the Turkish
13 Coalition of America, Inc. ("TCA"), a 501(c)(3) corporation, made prohibited in-kind
14 contributions to Representative Jeannette Schmidt and her campaign committee, Schmidt for
15 Congress Committee and Phillip Greenburg in his official capacity as treasurer (the
16 "Committee"), when he provided free legal services to Schmidt and the Committee in four legal
17 proceedings that were paid for by TCA.²

18 Respondent denies any violation of the Act. According to the available record, TALDF
19 lawyers initially retained Brey as local Ohio counsel at the onset of the legal proceedings. As the
20 proceedings continued, Brey enlisted other attorneys to provide additional legal representation.
21 Brey was not involved in the initial meetings among TCA, TALDF, Schmidt and the Committee.
22 As noted in the affidavit Response, Brey denies any involvement in "the arrangement or

¹ 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 In January and June 2012, the Complainant, David Krikorian, filed three supplements to the Complaint. The third supplement, filed June 27, 2012, individually named Donald C. Brey as Respondent because he provided legal services to Schmidt and the Committee. *See* Third Compl. Supp. (June 27, 2012).

1 understanding between Jean Schmidt and TALDF or TCA.”³ Based on the available record,
2 there is no information to contradict this assertion.

3 The Act prohibits a corporation from making a contribution or expenditure in connection
4 with a federal election, and no officer or director of any corporation may consent to any
5 contribution by a corporation.⁴ The Act further prohibits any candidate, political committee, or
6 other person from knowingly accepting or receiving a contribution from a corporation.⁵ The
7 “knowing” acceptance of a contribution requires knowledge of the underlying facts that
8 constitute the prohibited act, but not knowledge that the act itself — such as acceptance of a
9 corporate contribution — is unlawful.⁶

10 The term “contribution” includes “any gift, subscription, loan, advance, or deposit of
11 money or anything of value made by any person for the purpose of influencing any election for
12 Federal office.”⁷ More specifically, “contribution” also includes the “payment by any person of
13 compensation for the personal services of another person which are rendered to a political
14 committee without charge for any purpose.”⁸

³ See Brey Response to Third Compl. Supp. at 2 (Aug. 7, 2012) (Affidavit Resp. of Donald Brey).

⁴ See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (e).

⁵ *Id.*

⁶ See *FEC v. Damesi*, 640 F. Supp. 985, 987 (D.N.J. 1986) (“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.)

⁷ 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.”).

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

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Bruce Fein

MUR 6494

I. GENERATION OF MATTER

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

II. FACTUAL AND LEGAL ANALYSIS

Complainant alleges that the Turkish Coalition of America, Inc. ("TCA"), a 501(c)(3) corporation, violated 52 U.S.C. § 30118(a) (formerly 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 David Krikorian, the Complainant.

Fein denies violating the Act and asserts in his Response that the legal services provided by TALDF were not for the purpose of influencing an election because he was retained after the 2008 election, the services were not rendered to a political committee, and not contingent on whether Schmidt would seek future office.²

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

¹ 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 Fein Resp. at 2 (Aug. 1, 2012).

1 contribution by a corporation.³ The Act further prohibits any candidate, political committee, or
2 other person from knowingly accepting or receiving a contribution from a corporation.⁴ The
3 "knowing" acceptance of a contribution requires knowledge of the underlying facts that
4 constitute the prohibited act, but not knowledge that the act itself — such as acceptance of a
5 corporate contribution — is unlawful.⁵

6 The term "contribution" includes "any gift, subscription, loan, advance, or deposit of
7 money or anything of value made by any person for the purpose of influencing any election for
8 Federal office."⁶ More specifically, "contribution" also includes the "payment by any person of
9 compensation for the personal services of another person which are rendered to a political
10 committee without charge for any purpose."⁷

11 Section 30118(a) (formerly 441b(a)) of the Act also prohibits any officer or director of
12 any corporation from consenting to any contribution by the corporation.⁸ Fein was not an officer
13 or a director of TCA and the Commission finds no reason to believe that he violated section
14 30118(a) (formerly 441b(a)) of the Act.

³ See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (c).

⁴ 11 C.F.R. § 114.2(b), (c).

⁵ See *FEC v. Dromesi*, 640 F. Supp. 985, 987 (D.N.J. 1986) ("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.)

⁶ 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.").

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

⁸ See also 11 C.F.R. § 114.2(e).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** David Saltzman

MUR 6494

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5 **I. GENERATION OF MATTER**

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

9 **II. FACTUAL AND LEGAL ANALYSIS**

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

17 Saltzman denies violating the Act and asserts in his Response that the legal services
18 provided by TALDF were not for the purpose of influencing an election because he was retained
19 after the 2008 election, the services were not rendered to a political committee, and not
20 contingent on whether Schmidt would seek future office.²

21 The Act prohibits a corporation from making a contribution or expenditure in connection
22 with a federal election, and no officer or director of any corporation may consent to any

¹ 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 Saltzman Resp. at 2 (Aug. 1, 2012).

1 contribution by a corporation.³ The Act further prohibits any candidate, political committee, or
2 other person from knowingly accepting or receiving a contribution from a corporation.⁴ The
3 "knowing" acceptance of a contribution requires knowledge of the underlying facts that
4 constitute the prohibited act, but not knowledge that the act itself — such as acceptance of a
5 corporate contribution — is unlawful.⁵

6 The term "contribution" includes "any gift, subscription, loan, advance, or deposit of
7 money or anything of value made by any person for the purpose of influencing any election for
8 Federal office."⁶ More specifically, "contribution" also includes the "payment by any person of
9 compensation for the personal services of another person which are rendered to a political
10 committee without charge for any purpose."⁷

11 Section 30118(a) (formerly 441b(a)) of the Act also prohibits any officer or director of
12 any corporation from consenting to any contribution by the corporation.⁸ Saltzman was not an
13 officer or director of TCA, and the Commission finds no reason to believe that he violated
14 section 30118(a) (formerly 441b(a)) of the Act.

³ See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (e).

⁴ 11 C.F.R. § 114.2(b), (e).

⁵ See *FEC v. Dramesi*, 640 F. Supp. 985, 987 (D.N.J. 1986) ("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.)

⁶ 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.").

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

⁸ See also 11 C.F.R. § 114.2(c).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Sarah D. Morrison

MUR: 6494

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7 **I. GENERATION OF MATTER**

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9 This matter was generated by a Complaint filed with the Federal Election Commission
10 (the "Commission") by David Krikorian. *See* 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C.
11 § 437g(a)(1)).¹

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 Complainant alleges that Sarah D. Morrison ("Respondent"), local counsel associated
14 with the Turkish American Legal Defense Fund ("TALDF"), the legal division of the Turkish
15 Coalition of America, Inc. ("TCA"), a 501(c)(3) corporation, made prohibited in-kind
16 contributions to Representative Jeannette Schmidt and her campaign committee, Schmidt for
17 Congress Committee and Phillip Greenburg in his official capacity as treasurer (the
18 "Committee"), when she provided free legal services to Schmidt and the Committee in four legal
19 proceedings that were paid for by TCA.²

20 Respondent denies any violation of the Act. According to the available record, TALDF
21 lawyers initially retained Donald Brey as local Ohio counsel at the onset of the legal
22 proceedings. As the proceedings continued, Brey enlisted Morrison and Watters to provide
23 additional legal representation. Morrison was not involved in the initial meetings among TCA,

¹ 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 In January and June 2012, the Complainant, David Krikorian, filed three supplements to the Complaint. The third supplement, filed June 27, 2012, individually named Sarah D. Morrison as Respondent because she provided legal services to Schmidt and the Committee. *See* Third Compl. Supp. (June 27, 2012).

1 TALDF, Schmidt and the Committee. As noted in the affidavit Response, Morrison did not
2 know who paid for the legal fees related to the representation of Schmidt or the Committee and
3 did not receive any direct payments from TCA or TALDF.³ Based on the available record, there
4 is no information to contradict this assertion.

5 The Act prohibits a corporation from making a contribution or expenditure in connection
6 with a federal election, and no officer or director of any corporation may consent to any
7 contribution by a corporation.⁴ The Act further prohibits any candidate, political committee, or
8 other person from knowingly accepting or receiving a contribution from a corporation.⁵ The
9 "knowing" acceptance of a contribution requires knowledge of the underlying facts that
10 constitute the prohibited act, but not knowledge that the act itself — such as acceptance of a
11 corporate contribution — is unlawful.⁶

12 The term "contribution" includes "any gift, subscription, loan, advance, or deposit of
13 money or anything of value made by any person for the purpose of influencing any election for
14 Federal office."⁷ More specifically, "contribution" also includes the "payment by any person of

³ See Response to Third Compl. Supp. ¶¶ 4, 5 (Aug. 6, 2012) (Affidavit Resp. of Sarah D. Morrison).

⁴ See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (c).

⁵ *Id.*

⁶ See *FEC v. Damesi*, 640 F. Supp. 985, 987 (D.N.J. 1986) ("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.)

⁷ 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.").

1 compensation for the personal services of another person which are rendered to a political
2 committee without charge for any purpose."⁸

3 The available record reflects that the Respondents were neither officers nor directors of
4 TCA. Therefore, they had no authority under the Act to direct or consent to TCA making a
5 prohibited contribution to Schmidt and the Committee. Accordingly, the Commission finds no
6 reason to believe that Sarah D. Morrison violated the Act.

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

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:**

Elizabeth J. Watters

MUR: 6494

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6 **I. GENERATION OF MATTER**

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

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 Complainant alleges that Elizabeth J. Watters ("Respondent"), local counsel associated
13 with the Turkish American Legal Defense Fund ("TALDF), the legal division of the Turkish
14 Coalition of America, Inc. ("TCA"), a 501(c)(3) corporation, made prohibited in-kind
15 contributions to Representative Jeannette Schmidt and her campaign committee, Schmidt for
16 Congress Committee and Phillip Greenburg in his official capacity as treasurer (the
17 "Committee"), when she provided free legal services to Schmidt and the Committee in four legal
18 proceedings that were paid for by TCA.²

19 Respondent denies any violation of the Act. According to the available record, TALDF
20 lawyers initially retained Brey as local Ohio counsel at the onset of the legal proceedings. As the
21 proceedings continued, Brey enlisted Morrison and Watters to provide additional legal
22 representation. Watters was not involved in the initial meetings among TCA, TALDF, Schmidt
23 and the Committee. As noted in the affidavit Response, Watters did not know who paid for the

¹ 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 In January and June 2012, the Complainant, David Krikorian, filed three supplements to the Complaint. The third supplement, filed June 27, 2012, individually named Elizabeth J. Watters as respondent because she provided legal services to Schmidt and the Committee. *See* Third Compl. Supp. (June 27, 2012).

1 legal fees related to the representation of Schmidt or the Committee and did not receive any
2 direct payments from TCA or TALDF.³ Based on the available record, there is no information to
3 contradict this assertion.

4 The Act prohibits a corporation from making a contribution or expenditure in connection
5 with a federal election, and no officer or director of any corporation may consent to any
6 contribution by a corporation.⁴ The Act further prohibits any candidate, political committee, or
7 other person from knowingly accepting or receiving a contribution from a corporation.⁵ The
8 “knowing” acceptance of a contribution requires knowledge of the underlying facts that
9 constitute the prohibited act, but not knowledge that the act itself — such as acceptance of a
10 corporate contribution — is unlawful.⁶

11 The term “contribution” includes “any gift, subscription, loan, advance, or deposit of
12 money or anything of value made by any person for the purpose of influencing any election for
13 Federal office.”⁷ More specifically, “contribution” also includes the “payment by any person of
14 compensation for the personal services of another person which are rendered to a political
15 committee without charge for any purpose.”⁸

³ See Response to Third Compl. Supp. ¶¶ 5, 6 (Aug. 6, 2012) (Affidavit Resp. of Elizabeth J. Watters).

⁴ See 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (e).

⁵ *Id.*

⁶ See *FEC v. Dames*, 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.)

⁷ 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.”).

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

1. The available record reflects that the Respondent was neither an officer nor a director of
- 2 TCA. Therefore, she had no authority under the Act to direct or consent to TCA making a
- 3 prohibited contribution to Schmidt and the Committee. Accordingly, the Commission finds no
- 4 reason to believe that Elizabeth J. Watters violated the Act.

100-411001-1001

RECEIVED
FEDERAL ELECTION
COMMISSION
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

2016 MAR -7 AM 9:15

MUR 6494

Turkish Coalition of America, Inc.,

G. Lincoln McCurdy

OFFICE OF GENERAL
COUNSEL

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized Complaint made by David Krikorian ("Krikorian") to the Federal Election Commission (the "Commission"). The Commission found reason to believe that the Turkish Coalition of America, Inc. ("TCA") and its President, G. Lincoln McCurdy (collectively "Respondents"), violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) of the Federal Election Campaign Act of 1971, as amended, (the "Act") by making prohibited in-kind contributions to Representative Jeannette H. Schmidt and the Schmidt for Congress Committee and Phillip Greenburg in his official capacity as treasurer (the "Committee").

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, and having agreed to settle, compromise, and resolve this matter without the expense of further proceedings, hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i) (formerly 2 U.S.C. § 437g(a)(4)(A)(i)).
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. TCA is a Massachusetts corporation organized under section 501(c)(3) of the Internal Revenue Code. TCA is a corporation within the meaning of 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). G. Lincoln McCurdy ("McCurdy") is the president of TCA.

2. The Turkish American Legal Fund ("TALDF") is a division of TCA. TALDF is run by lawyers Bruce Fein and David Saltzman. Fein, Saltzman, McCurdy, and TCA's vice president and chairman pre-approve all new TALDF legal matters.

3. TCA funds TALDF from its general budget. TALDF does not charge its clients for legal services. Lawyers who work for TALDF submit invoices to TCA for the legal work TALDF performs and TCA pays the lawyers directly for that work.

4. David Krikorian and Jeannette 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."

5. Schmidt and her congressional chief of staff, Barry Bennett, each discussed the communication with McCurdy. As a result of his discussions with Schmidt and Bennett, McCurdy requested that TALDF's lead counsel, Bruce Fein, meet with Schmidt and Bennett to discuss filing a complaint against Krikorian with the Ohio Elections Commission.

6. TALDF ultimately represented Schmidt and/or the Committee in four legal proceedings starting in 2008 and continuing through 2011, including the initial complaint before the Ohio Elections Commission, Krikorian's appeal of the Ohio Elections Commission's ruling, a federal suit challenging the constitutionality of the Ohio Elections Commission, and Schmidt's state defamation suit against Krikorian.

7. TCA paid the TALDF lawyers directly for the legal services and expenses incurred on behalf of Schmidt and/or the Committee. TCA paid the TALDF lawyers \$3,905 in 2008; \$289,280 in 2009; \$205,401 in 2010; and \$152,658.29 in 2011. McCurdy, as the president of TCA, approved all payments to the TALDF lawyers for the legal representation of Schmidt and/or the Committee.

8. Neither Schmidt nor the Committee paid for these legal services at the time they were provided. However, on August 5, 2011, Schmidt paid \$42,812 for her representation as an *amicus curiae* in the federal suit challenging the constitutionality of the Ohio Elections Commission.

9. Respondents contend that the only legal services provided by TCA/TALDF attorneys that were provided within five years of this conciliation agreement were those related to the defamation lawsuit initiated in Ohio by then-Rep. Jeannette Schmidt against David Krikorian and Krikorian for Congress Committee. The suit was filed on June 8, 2010, after David Krikorian had been defeated in his primary campaign to oppose Rep. Schmidt. The defamation complaint sought damages for various statements made by Krikorian over the course of 2009 (for example, an August 27, 2009 interview statement that "Schmidt is bought and paid for by the Turkish lobby ..." and a September 2009 statement that "the current representative of Ohio's second congressional district, is a paid puppet of the Turkish government in their denial campaign to suppress the truth about the Armenian genocide"). According to the complaint, the statements "adversely affected the Plaintiff's professional credibility, speaking, writing, interview, media, and fundraising opportunities, causing Plaintiff Schmidt psychological trauma and suffering and monetary losses." Respondents further contend, for the purposes of reaching a conciliation agreement, that the value of the legal

services provided by Respondent TCA for this defamation litigation within five years of this agreement, is estimated at \$250,000.

10. The Act prohibits corporations from making any contribution in connection with a Federal election. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)).

11. The Act also prohibits any officer or director of a corporation from consenting to the making of corporate contributions. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)).

12. 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." 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)); 11 C.F.R. § 100.52(a). A "contribution" also includes the "payment by any person of compensation for the personal services of another person which is rendered to a political committee without charge for any purpose." 52 U.S.C. § 30101(8)(A)(ii) (formerly 2 U.S.C. § 431(8)(A)(ii)).

13. Respondents contend that they had a good faith misunderstanding, based in part on communications from Rep. Schmidt's staff, that the provision of TALDF legal services was permissible under applicable ethics rules and the Act.

V. Solely to resolve this matter and avoid time-consuming and expensive litigation, with no admission as to the merit of the Commission's initial

legal conclusions or as to any other claim in any other proceeding, Respondents agree:

1) not to contest the Commission's initial finding that there is reason to believe Respondents made corporate in-kind contributions in violation of 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a));

2) not to undertake materially indistinguishable legal support functions without getting prior approval from the FEC and any ethics office with appropriate jurisdiction;

3) not to violate 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) in the future;

4) to pay a civil penalty of Twenty-Five Thousand Dollars (\$25,000) pursuant to 52 U.S.C. § 30109(a)(5)(A) (formerly 2 U.S.C. § 437g(a)(5)(A)).

VI. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1)) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.


VII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

VIII. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either

FOR THE COMMISSION:

2/23/16
Date

BY: 
Name: Scott E. Thomas
Position: Counsel of Record

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION

2015 MAR -1 PM 1:01

OFFICE OF GENERAL
COUNSEL
MURKIN 94

In the Matter of)

Schmidt for Congress Committee and)
Peter Schmidt¹ in his official capacity as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized Complaint made by David Krikorian ("Krikorian") to the Federal Election Commission (the "Commission"). The Commission found reason to believe that the Schmidt for Congress Committee and Phillip Greenburg in his official capacity as treasurer (the "Committee" or "Respondents") violated 52 U.S.C. §§ 30104(b) and 30118(a) (formerly 2 U.S.C. §§ 434(b) and 441b(a)) of the Federal Election Campaign Act of 1971, as amended (the "Act") by accepting prohibited in-kind contributions from the Turkish Coalition of America, Inc. ("TCA") in the form of free legal services.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i) (formerly 2 U.S.C. § 437g(a)(4)(A)(i)).
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

¹ The Committee's former treasurer, Phillip Greenburg, has been replaced by Peter Schmidt who is the official capacity treasurer Respondent for purposes of this Conciliation Agreement. The Commission made no findings as to the treasurers in their individual capacities in this matter.

- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts and law in this matter are as follows:

FACTS

1. David Krikorian and Jeannette 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."

2. The Turkish Coalition of America, Inc. ("TCA") is a Massachusetts corporation within the meaning of 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). The Turkish American Legal Defense Fund ("TALDF") is a division of TCA that is funded through TCA's general budget.

3. In November 2008, TALDF agreed to file a complaint with the Ohio Elections Commission on behalf of Jeannette Schmidt and the Committee regarding the two-page communication issued by Krikorian.

4. TALDF ultimately represented Jeannette Schmidt and/or the Committee in four legal proceedings starting in 2008 and continuing through 2011, including the initial complaint filed with the Ohio Elections Commission, Krikorian's appeal of the Ohio Elections Commission's ruling, a federal suit challenging the constitutionality of the Ohio Elections Commission, and the state defamation suit against Krikorian. Respondents agreed to the TALDF lawyers' ongoing representation and continued to accept the legal services without charge.

5. TCA paid the TALDF lawyers the following amounts for legal fees and expenses on behalf of Schmidt and/or the Committee: \$3,905 in 2008; \$289,280 in 2009;

LAW

9. A candidate who receives a contribution is considered to have received the contribution as an agent of her authorized committee. 52 U.S.C. § 30102(e)(2) (formerly 2 U.S.C. § 432(e)(2)).

10. The Act requires that political committees file reports of their receipts and disbursements. 52 U.S.C. § 30104(a) (formerly 2 U.S.C. § 434(a)). These reports must itemize all contributions received from contributors that aggregate in excess of \$200 per election cycle. 52 U.S.C. § 30104(b) (formerly section 434(b)); 11 C.F.R. § 104.3(a)(4). Any in-kind contribution must also be reported as an expenditure on the same report. 11 C.F.R. §§ 104.3(b), 104.13(a)(2).

V. Solely for the purpose of settling this matter expeditiously and to avoid the expense of litigation, the Respondents, without admitting liability with respect to any other proceeding, will not contest the Commission's findings that:

1. The Committee violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) by accepting prohibited in-kind corporate contributions in the form of legal services provided to it without charge from TALDF lawyers and paid for by the Turkish Coalition of America, Inc.;

2. The Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) by failing to disclose the receipt of in-kind contributions from TCA.

VI. 1. Respondents will cease and desist from violating 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)).

2. In ordinary circumstances, the Commission would seek a substantially higher civil penalty based on the violations outlined in this agreement as well as the mitigating circumstances. However, the Commission is taking into account the fact that the Committee plans to terminate, has very little cash, and has a limited ability to raise any additional funds. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Two

Thousand Five Hundred Dollars (\$2,500) pursuant to 52 U.S.C. § 30109(a)(5)(A) (formerly 2 U.S.C. § 437g(a)(5)(A)).

3. Respondent will amend its reports to reflect the in-kind contributions from TCA by filing a Miscellaneous Document (Form 99) with the Commission, referencing the 2008-2012 election cycles. This Miscellaneous Document will state that the Committee is amending its 2008-2012 election cycle filings to disclose in-kind contributions omitted from its reports, and itemize the omitted transactions. The Miscellaneous Document will list the date and amount of each in-kind contribution received from TCA starting in November 2008, identify the name and address of TCA as the contributor, and describe the nature of the in-kind services provided (e.g., "legal fees"). The Miscellaneous Document will also list as an in-kind contribution the amount of legal fees repaid by Jeannette Schmidt to TCA for legal services related to the *amicus* brief she filed on January 29, 2010, in the federal suit identified in this agreement, itemizing the transactions by date.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

6-14-16
Date

BY: Kathleen M. Guith
Kathleen M. Guith
Acting Associate General Counsel
for Enforcement

FOR THE RESPONDENTS:

2-22-16
Date

BY: Donald C. Brey
Donald C. Brey
Counsel for Respondent