

1 **FEDERAL ELECTION COMMISSION**

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3 **FIRST GENERAL COUNSEL'S REPORT**

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5 RAD REFERRAL: 17L-39  
6 DATE REFERRED: Oct. 10, 2017  
7 DATE OF NOTIFICATION: Oct. 11, 2017  
8 LAST RESPONSE RECEIVED: Nov. 5, 2017  
9 DATE ACTIVATED: Jan. 4, 2018

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11 EXPIRATION OF SOL: July 15, 2020 (earliest)  
12 Aug. 28, 2021 (latest)  
13 ELECTION CYCLE: 2016

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15 **SOURCE:** Internally Generated

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17 **RESPONDENTS:** Wright 2016 and Charlette Mimiasie  
18 in her official capacity as treasurer

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20 **RELEVANT STATUTES**  
21 **AND REGULATIONS:** 52 U.S.C. § 30116(a), (f)  
22 52 U.S.C. § 30118(a)  
23 11 C.F.R. § 102.9(e)  
24 11 C.F.R. § 110.1(b)

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26 **INTERNAL REPORTS CHECKED:** Disclosure Reports

27  
28 **FEDERAL AGENCIES CHECKED:** None

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30 **I. INTRODUCTION**

31 The Reports Analysis Division ("RAD") referred Wright 2016 and Charlette Mimiasie in  
32 her official capacity as treasurer ("Committee") to the Office of General Counsel ("OGC") for  
33 failing to timely refund, reattribute, or redesignate \$9,250 in excessive and prohibited 2016  
34 primary election contributions and failing to timely refund \$117,450 in 2016 general election  
35 contributions after the candidate's loss in the primary election.<sup>1</sup> For the reasons discussed  
36 below, we recommend that the Commission open a MUR, find reason to believe that the

<sup>1</sup> RAD referred this matter to OGC in accordance with 2015-2016 RAD Review and Referral Procedures (Standard 5). See RAD Referral 17L-39 (Wright 2016) (Oct. 10, 2017) ("Referral"), incorporated herein by reference.

1 Committee violated 52 U.S.C. §§ 30116(f) and 30118(a), authorize pre-probable cause  
2 conciliation with the Committee, and approve the attached proposed conciliation agreement.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Background**

5 The Committee is the principal campaign committee for Keith Wright, an unsuccessful  
6 candidate in the June 28, 2016, Democratic Primary in New York's 13th Congressional District.<sup>2</sup>  
7 The Committee received its last contribution on June 28, 2016.<sup>3</sup>

8 1. Excessive and Prohibited 2016 Primary Contributions

9 As detailed in the Referral, the Committee received \$9,250 in excessive or prohibited  
10 contributions.<sup>4</sup> On July 28, 2015, RAD sent a Request for Additional Information ("RFAI") to  
11 the Committee referencing its receipt of prohibited contributions disclosed on the 2015 July  
12 Quarterly Report and requested that the Committee refund those contributions.<sup>5</sup> In response, on  
13 October 15, 2015, the Committee filed an Amended 2015 July Quarterly Report, which included  
14 notations that the funds were either refunded or consisted of federally permissible funds.<sup>6</sup> On the  
15 same day, the Committee filed its 2015 October Quarterly Report disclosing refunds of certain  
16 prohibited contributions, but \$1,000 was untimely refunded and \$500 was not refunded.<sup>7</sup>

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<sup>2</sup> See Statement of Candidacy, Keith L.T. Wright (June 15, 2015); Amended Statement of Organization, Wright 2016 (Jan. 12, 2017).

<sup>3</sup> Referral at Attach. 3.

<sup>4</sup> *Id.* at 1-2, Attach. 2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, Attach. 2.

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1 Subsequently, on September 20, 2016, RAD sent the Committee an RFAI referencing,  
2 *inter alia*, the 2016 July Quarterly Report, which disclosed the receipt of \$7,750 in excessive or  
3 prohibited contributions.<sup>8</sup> The Committee did not respond to the RFAI and has not refunded,  
4 redesignated, or reattributed the contributions.<sup>9</sup>

## 2. Failure to Refund 2016 General Election Contributions

5 During the 2016 election cycle, the Committee received \$117,450 in contributions  
6 designated for the 2016 general election.<sup>10</sup> After Wright lost the primary election, RAD's  
7 September 20, 2016, RFAI requested that the Committee refund or redesignate the general  
8 election contributions.<sup>11</sup> Ultimately, the Committee untimely refunded \$21,050 in general  
9 election contributions, as disclosed in its 2016 Year-End and 2017 July Quarterly Reports.<sup>12</sup> In  
10 response to later RAD inquiries, the treasurer stated that the Committee did not have sufficient  
11 funds to refund all the general election contributions.<sup>13</sup>

### B. Legal Analysis

12 During the 2016 election cycle, an authorized committee was permitted to accept a total  
13 of \$2,700 per election from any individual and \$5,000 from a multicandidate committee.<sup>14</sup> A  
14 primary election and a general election are each considered a separate "election," and the  
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<sup>8</sup> *Id.*

<sup>9</sup> Referral, Attach. 2.

<sup>10</sup> Referral at 3-4, Attach. 3.

<sup>11</sup> *Id.* at 4; *see also* RFAI at 5 (Sept. 20, 2016).

<sup>12</sup> Referral at 5.

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

<sup>14</sup> 52 U.S.C. § 30116(a)(1)(A), (a)(2)(A); 11 C.F.R. §§110.1(a)-(b), 110.2(b)(1).

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1 individual contribution limits are applied separately with respect to each election.<sup>15</sup> Candidates  
2 and their political committees are prohibited from knowingly accepting excessive contributions  
3 and contributions made with corporate or labor union treasury funds.<sup>16</sup>

4 The Commission's regulations permit a candidate or his or her authorized committee to  
5 receive contributions for the general election prior to the primary election.<sup>17</sup> If, however, the  
6 candidate does not become a candidate in the general election, the committee must: (1) refund  
7 the contributions designated for the general election; (2) redesignate such contributions in  
8 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in  
9 accordance with 11 C.F.R. § 110.1(k)(3).<sup>18</sup> The committee must do so within 60 days of the date  
10 that the committee has actual notice of the need to refund, redesignate or reattribute the  
11 contributions, such as the date the candidate loses the primary or withdraws from the  
12 campaign.<sup>19</sup>

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<sup>15</sup> 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2.

<sup>16</sup> 52 U.S.C. §§ 30116(f), 30118(a).

<sup>17</sup> See 11 C.F.R. § 102.9(e)(l). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

<sup>18</sup> See 11 C.F.R. § 102.9(e)(3). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 (“[n]onetheless, the Commission concludes that for losing primary candidates like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignation within 60 days of the primary election date would be permissible.”); Advisory Op. 2007-03 (Obama for America) at 3 (“If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA’s contribution limits.”).

<sup>19</sup> Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo). The Commission’s regulations include procedures for reattributing or redesignating a contribution. See generally 11 C.F.R. § 110.1(b), (k). For example, a joint contribution may be attributed equally to each person on the negotiable instrument, and a portion of a joint contribution may be reattributed to another person on the negotiable instrument to avoid being excessive. 11 C.F.R. § 110.1(k)(2), (3). Similarly, a contribution may be designated to a particular election, but it may be redesignated to another election to avoid being excessive. 11 C.F.R. § 110.1(b)(2), (3), (5). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. 11 C.F.R. §§ 110.1(b)(5), 110.1(k)(3).

1           In this matter, the Committee accepted \$9,250 in excessive or prohibited contributions,  
2 and failed to refund, or untimely refunded, \$117,450 in general election contributions after  
3 Wright lost the primary election. The Committee does not dispute its failure to make the  
4 appropriate refunds.<sup>20</sup>

5           Based on the foregoing, we recommend that the Commission find reason to believe that  
6 Wright 2016 and Charlette Mimiasie in her official capacity as treasurer violated 52 U.S.C.  
7 §§ 30116(f) and 30118(a).

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**IV. RECOMMENDATIONS**

1. Open a MUR.
2. Find reason to believe that Wright 2016 and Charlette Mimiase her official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30118(a).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Wright 2016 and Charlette Mimiase in her official capacity as treasurer, prior to a finding of probable cause to believe.

- 1           5.     Approve the attached Conciliation Agreement.
- 2
- 3           6.     Approve the appropriate letter.
- 4
- 5

6                                   Lisa J. Stevenson  
7                                   Acting General Counsel

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9                                   Kathleen M. Guith  
10                                  Associate General Counsel for Enforcement

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12                                  3.28.18  
13                                  \_\_\_\_\_  
14                                  Date

15                                  BY: Stephen Gura  
16                                  Stephen A. Gura  
17                                  Deputy Associate General Counsel for Enforcement

18                                  Mark Allen  
19                                  Mark Allen  
20                                  Assistant General Counsel

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22  
23                                  Christine C. Gallagher  
24                                  Christine C. Gallagher  
25                                  Attorney

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27    Attachments:  
28        1. Factual and Legal Analysis  
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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Wright 2016 and Charlette Mimiasie MUR \_\_\_\_  
4 in her official capacity as treasurer  
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7 **I. INTRODUCTION**  
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9 This matter was generated based on information ascertained by the Federal Election  
10 Commission (“Commission”) in the normal course of carrying out its supervisory  
11 responsibilities, *see* 52 U.S.C. § 30109(a)(2). The Commission’s Reports Analysis Division  
12 (“RAD”) referred Wright 2016 and Charlette Mimiasie in her official capacity as treasurer  
13 (“Committee”) to the Office of General Counsel for failing to timely refund, redesignate, or  
14 reattribute \$9,250 in excessive and prohibited 2016 primary election contributions and failing to  
15 timely refund \$117,450 in 2016 general election contributions after the candidate’s loss in the  
16 primary election.<sup>1</sup> For the reasons set forth below, the Commission finds reason to believe that  
17 the Committee violated 52 U.S.C. §§ 30116(f) and 30118(a).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Background**

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21 candidate in the June 28, 2016, Democratic Primary in New York’s 13th Congressional District.<sup>2</sup>  
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<sup>1</sup> RAD Referral 17L-39 (Wright 2016) (Oct. 10, 2017) (“Referral”), incorporated herein by reference.

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1           1. Excessive and Prohibited 2016 Primary Contributions

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3 accordance with 11 C.F.R. § 110.1(k)(3).<sup>18</sup> The committee must do so within 60 days of the date  
4 that the committee has actual notice of the need to redesignate, reattribute, or refund the  
5 contributions, such as the date the candidate loses the primary or withdraws from the  
6 campaign.<sup>19</sup>

7 In this matter, the Committee accepted \$9,250 in excessive or prohibited contributions,  
8 and failed to refund, or untimely refunded, \$117,450 in general election contributions after  
9 Wright lost the primary election. The Committee does not dispute its failure to make the  
10 appropriate refunds.<sup>20</sup>

11 Therefore, there is reason to believe that Wright 2016 and Charlette Mimiase in her  
12 official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30118(a).

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<sup>18</sup> See 11 C.F.R. § 102.9(e)(3). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 (“[n]onetheless, the Commission concludes that for losing primary candidates like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignation within 60 days of the primary election date would be permissible.”); Advisory Op. 2007-03 (Obama for America) at 3 (“If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA’s contribution limits.”).

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<sup>20</sup> Resp. at 1 (Nov. 5, 2017).