

**FEDERAL ELECTION COMMISSION**

October 20, 2021

Neil Reiff, Esq.  
Sandler Reiff  
1090 Vermont Avenue, N.W.  
Suite 750  
Washington, D.C. 20005

[reiff@sandlerreiff.com](mailto:reiff@sandlerreiff.com)

RE: MUR 7927  
Kennedy for Massachusetts

Dear Mr. Reiff:

On October 18, 2021, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 52 U.S.C. § 30116(f), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 52 U.S.C. § 30109(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1548.

Sincerely,

A handwritten signature in blue ink that reads "Elena Paoli".

Elena Paoli  
Attorney

Enclosure  
Conciliation Agreement

# BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 7927
	)	
Kennedy for Massachusetts and	)	
Keith D. Lowey in his official capacity	)	
as treasurer	)	

## CONCILIATION AGREEMENT

This matter was initiated by a *sua sponte* submission made to the Federal Election Commission ("Commission") by Kennedy for Massachusetts and Keith D. Lowey in his official capacity as treasurer ("Committee" or "Respondent"). The Commission found reason to believe that Respondent violated 52 U.S.C. § 30116(f) by accepting excessive contributions.

NOW, THEREFORE, the Commission and Respondent, 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 Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered under 52 U.S.C.

§ 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

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

1. Kennedy for Massachusetts is a political committee within the meaning of 52 U.S.C. § 30101(4), and is the authorized principal campaign committee for the 2020 Senate campaign of Joseph P. Kennedy III.

2. Keith D. Lowey is the treasurer of Kennedy for Massachusetts. Mr. Lowey was not the Committee's treasurer at the time of the events described herein.

3. In 2020, Kennedy, a Member of the House of Representatives for 8 years, was a candidate for the United States Senate in the Democratic primary election.

4. Starting in early August 2020, the Committee began to use general election funds to pay expenses during the primary. The Committee states that the campaign manager, a staffer, and its former treasurer and compliance manager believed that general election funds could be used in the pre-primary period, even if Kennedy lost the primary, if contributors received refunds or forgave the refund obligation later.

5. As of September 1, 2020, the date of the primary election, Respondent had received \$1,662,000 in general election contributions, for which it kept separate records, and it had spent all of its primary election contributions, plus \$1,502,000 of its general election contributions.

6. Kennedy lost the Democratic primary election to incumbent Senator Edward Markey.

7. At a campaign staff meeting two days after the candidate's primary loss, campaign staff discussed the need to raise money to make refunds to the general election contributors; it was at this point that the Committee's fundraising director first learned that the Committee had spent general election funds. The fundraising director raised concerns about the Committee's use of general election funds for primary expenses. The campaign then sought advice from outside counsel and began an investigation.

8. On September 14, 2020, Kennedy loaned the Committee \$60,000. On September 16, he loaned the Committee another \$190,000 and contributed \$5,000. On

September 28, Kennedy contributed \$1,500,000 to the Committee. On September 30, 2020, the Committee issued refund checks to every general election contributor, and also paid staff salaries and some primary election debt. As a result of the Kennedy loans and contributions, the Committee refunds were made within the 60 days required by 11 C.F.R. § 110.1(b)(3)(i). The Committee disclosed those refunds in its 2020 October Quarterly Report.

9. The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that no person may make a contribution to a candidate for federal office, or his authorized political committees, in excess of \$2,800 per election. 52 U.S.C. § 30116(a)(1)(A). The Act also makes it unlawful for candidates and political committees to knowingly accept an excessive contribution. 52 U.S.C. § 30116(f).

10. The Commission’s regulations permit a candidate’s authorized committee to receive contributions for the general election prior to the primary election provided the committee employs an acceptable accounting method to distinguish between primary and general election contributions. 11 C.F.R. § 102.9(e)(1). The committee’s records must demonstrate that prior to the primary election, the committee’s recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. 11 C.F.R. § 102.9(e)(2).

11. Commission regulations further provide that if a candidate’s authorized committee raises general election funds prior to the primary election, but the candidate does not become a candidate in the general election, the committee must: (1) refund the contributions designated for the general election; (2) redesignate such contributions in accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with 11 C.F.R. § 110.1(k)(3). 11 C.F.R. § 102.9(e)(3). The committee must do so within 60 days of



the date the committee has actual notice of the need to redesignate, reattribute, or refund the contributions, such as the date the candidate loses the primary or withdraws from the campaign.

11 C.F.R. § 110.1(b)(3)(i).

12. The Commission has noted that “[t]hese regulations are designed to ensure that candidates . . . do not use general election contributions for the primary election.” Advisory Opinion 1992-15 (Russo) at 1. As the Commission has explained, “where a general election is held, but the candidate does not participate in that election, no separate contribution limit for that general election is available to contributors.”<sup>1</sup> Spending general election contributions during the primary election when the contributor has made the maximum primary election contribution and the contribution cannot be redesignated or reattributed, results in the Committee accepting an excessive contribution. Advisory Opinion 2007-03 (Obama for America) at 3.

13. When the Committee spent general election funds for the primary election, all of those funds represented excessive contributions by primary election contributors and the acceptance of excessive contributions by the Committee. The Committee was not able to redesignate or reattribute any of the \$1.5 million.

14. Respondent accepted \$1,502,000 in excessive contributions in violation of 52 U.S.C. § 30116(f).

V. Respondent will take the following actions:

1. Respondent will pay a civil penalty in the amount of Thirty-Five Thousand Dollars (\$35,000) to the Federal Election Commission pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent will cease and desist from violating 52 U.S.C. § 30116(f).

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<sup>1</sup> Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760, 761 (Jan. 9, 1987) (internal citations omitted).

VI. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(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. Respondent shall have no more than thirty (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 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:

Lisa J. Stevenson  
Acting General Counsel

BY: Charles Kitcher  
Charles Kitcher  
Associate General Counsel  
for Enforcement

10/20/21  
Date

FOR THE RESPONDENT:

Neil Reiff  
(Name) Neil Reiff  
(Position) Counsel

9/30/21  
Date