



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

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

**STATEMENT OF REASONS OF  
COMMISSIONER SEAN J. COOKSEY**

After losing the primary election for the Democratic nomination for the U.S. Senate in Massachusetts in 2020, Representative Joseph Kennedy III discovered a major problem. Ill-informed staff for his campaign committee, Kennedy for Massachusetts (the “Committee”), had misused \$1.5 million in contributions designated for the general election—to which he was not advancing—as part of his primary campaign. That money needed to be refunded, redesignated, or reattributed, but the Committee had spent it.<sup>1</sup>

Realizing the error, the Committee hired outside counsel, conducted an internal investigation, and removed and replaced the treasurer. Then, Kennedy did something exceptional: he contributed over \$1.5 million of his own money to the Committee to cover the spent funds.<sup>2</sup> He had no obligation to do so—candidates are not personally liable for campaign debts or civil penalties.<sup>3</sup> But because of Kennedy’s supererogatory contribution, the Committee was able to timely make all required refunds to its contributors.

Afterward, the Committee made a *sua sponte* submission to the Commission, alerting the agency to its mistake.<sup>4</sup> Although admitting a violation, it argued that the Commission should not take any enforcement action in light of the inadvertent nature of the mistake caused by

<sup>1</sup> First General Counsel’s Report at 2–3 (May 3, 2021), MUR 7927 (Kennedy for Massachusetts).

<sup>2</sup> *Id.* at 3–4.

<sup>3</sup> *See FEC v. Gus Savage for Cong. ’82 Comm.*, 606 F. Supp. 541, 546, 547 (N.D. Ill. 1985) (“It is the fact that candidates for federal offices are completely shielded from liability for their own campaign’s recordkeeping transgressions. . . . It is the treasurer, and not the candidate, who becomes the named defendant in federal court, and subjected to the imposition of penalties ranging from substantial fines to imprisonment.”); *see also* Federal Election Commission, Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005).

<sup>4</sup> First General Counsel’s Report at 1, 4 (May 3, 2021), MUR 7927 (Kennedy for Massachusetts).

misinformed staff, the corrective actions the Committee took, and the fact that all contributors were made whole. But no good deed goes unpunished. Rather than dismissing the matter, the Commission voted 4-2 to find reason to believe the Committee violated the law.<sup>5</sup> It conciliated with the Committee and assessed a \$35,000 fine.<sup>6</sup>

The Commission should have dismissed this matter as an exercise of prosecutorial discretion. Considering the Committee's diligence and forthrightness in identifying and reporting the mistake, as well as the steps taken by Kennedy personally to redress the Committee's error and to reimburse contributors, I concluded the Committee had already faced sufficient consequences. Moreover, I believe a discretionary dismissal would have encouraged other candidates to take similar steps to ameliorate their campaigns' mistakes, rather than abandoning their often-insolvent committees after an electoral loss to the detriment of their contributors.

The reasoned exercise of prosecutorial discretion is essential to the effective and just administration of our campaign-finance laws. Under these circumstances, I believe the most just outcome was to dismiss.

  
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Sean J. Cooksey  
Commissioner

November 15, 2021  
\_\_\_\_\_  
Date

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<sup>5</sup> Certification (Sept. 2, 2021), MUR 7927 (Kennedy for Massachusetts).

<sup>6</sup> Conciliation Agreement (Oct. 20, 2021), MUR 7927 (Kennedy for Massachusetts).