

1 **FEDERAL ELECTION COMMISSION**

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3 **FIRST GENERAL COUNSEL'S REPORT**

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5 **RAD REFERRAL: 21L-48**

6 DATE REFERRED: July 29, 2021

7 NOTIFICATION DATE: July 29, 2021

8 LAST RESPONSE RECEIVED: September 13, 2021

9 ACTIVATION DATE: September 21, 2021

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11 **EXPIRATION OF STATUTE OF LIMITATIONS:**

12 Earliest: June 30, 2025

13 Latest: November 13, 2025

14 **ELECTION CYCLE: 2020**

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16 **SOURCE:**

Internally Generated

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18 **RESPONDENT:**

Burgess 4 Utah and

Paul Kilgore in his official capacity as treasurer

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20  
21 **RELEVANT STATUTES**

22 **AND REGULATIONS:**

52 U.S.C. § 30116(a)(1)(A), (f)

11 C.F.R. § 110.1 (b)

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25 **INTERNAL REPORTS CHECKED:** Disclosure Reports

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27 **FEDERAL AGENCIES CHECKED:** None

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29 **I. INTRODUCTION**

30 The Reports Analysis Division (“RAD”) referred Burgess 4 Utah and Paul Kilgore in his  
31 official capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for  
32 failing to timely refund, redesignate, or reattribute \$92,604.26 in excessive contributions  
33 received for the 2020 general election.<sup>1</sup> The Committee acknowledges the violations but  
34 explains that it made some additional refunds in a timely manner prior to the Referral, which  
35 would decrease the total amount in violation cited in the Referral. It also notes that since the  
36 date of the Referral, it has refunded all of the remaining excessive contributions identified by  
37 RAD, albeit late. The Committee further explains that it has replaced its compliance firm that

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<sup>1</sup> RAD Referral 21L-48 at 1 (Burgess 4 Utah) (Nov. 29, 2021) (“Referral”).

1 handled the Committee's disclosure reports at the time of the violations with a more experienced  
2 vendor who has instituted controls and safeguards to ensure that these errors do not reoccur.<sup>2</sup>

3 As discussed below, we recommend that the Commission open a Matter Under Review  
4 ("MUR"), find reason to believe that the Committee violated 52 U.S.C. § 30116(f) of the Federal  
5 Election Campaign Act of 1971, as amended (the "Act") by knowingly accepting excessive  
6 contributions that it failed to timely refund, reattribute, or redesignate, authorize pre-probable  
7 cause conciliation with the Committee, and approve a proposed conciliation agreement  
8 containing a civil penalty

## 9 **II. FACTUAL BACKGROUND**

10 Burgess Owens was a candidate for Utah's Fourth Congressional District during the  
11 2020 election cycle.<sup>3</sup> He won the general election and is now a candidate for reelection in 2022.<sup>4</sup>  
12 His principal campaign committee is Burgess 4 Utah.<sup>5</sup> The Committee's current treasurer is  
13 Paul Kilgore, and its cash on hand as of September 30, 2021 is \$542,648.94.<sup>6</sup>

14 In 2020, the Committee received \$92,604.26 in contributions from 37 individuals and one  
15 multicandidate committee that appeared to exceed the limits set forth in the Act.<sup>7</sup> The  
16 contributions at issue appeared on the Committee's 2020 July Quarterly, 2020 October  
17 Quarterly, and 2020 30-Day Post General Reports. For each of these reports, RAD sent Requests  
18 for Additional Information ("RFAs") stating the relevant contributions limits, reminding the

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<sup>2</sup> Burgess 4 Utah Resp. at 1-2 (Sept. 13, 2021) ("Resp.").

<sup>3</sup> Burgess Owens, Statement of Candidacy at 1 (Nov. 4, 2019).

<sup>4</sup> Burgess Owens, Statement of Candidacy at 1 (Jan. 21, 2021).

<sup>5</sup> Burgess 4 Utah, Amended Statement of Organization (Jan. 29, 2020).

<sup>6</sup> Burgess 4 Utah, Financial Summary,  
<https://www.fec.gov/data/committee/C00725853/?tab=summary&cycle=2020> (last accessed Nov. 17, 2021).

<sup>7</sup> See Referral at 1 and Attach. 2.

1 Committee of the requirement to remedy the excessive contributions identified from each  
2 respective report, and requesting that the Committee inform the Commission of any corrective  
3 action in writing and by providing copies of refund checks or reattribution/redesignation letters.<sup>8</sup>  
4 In response to the RFAIs, the Committee filed amendments disclosing late refunds,  
5 redesignations, and reattributions for many but not all of the excessive contributions identified.<sup>9</sup>  
6 Additional refunds were disclosed on the Committee's 2021 April Quarterly Report.<sup>10</sup>

7 According to RAD's records, it took the Committee between 79 and 262 days to refund,  
8 reattribute, or redesignate the excessive contributions.<sup>11</sup> At the time of the referral, \$15,829.41  
9 of the total excessive amount still remained unremedied.<sup>12</sup>

10 In its Response, the Committee acknowledges its failure to timely remedy  
11 most of the contributions cited in the Referral, but explains that it had refunded an additional  
12 \$14,000 in contributions prior to the Referral date.<sup>13</sup> Specifically, it states that it issued three  
13 timely refunds: one was issued 31 days after receipt, another was 33 days after receipt, and the  
14 third was refunded on the same date the excessive contribution was received.<sup>14</sup> However, these

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<sup>8</sup> *Id.* at 2-3; RFAIs for 2020 July Quarterly Rpt., 2020 October Quarterly Rpt., and 2020 Post-General Rpt. (Aug. 10, 2020, Dec. 15, 2020, and Mar. 4, 2021).

<sup>9</sup> Referral at 2-4. The Committee did not file written responses to the RFAIs.

<sup>10</sup> The Referral states that some of the refunds were issued on March 31, 2021. *Id.* at 3 and Attach. 2.

<sup>11</sup> *Id.* at Attach. 2.

Earlier this year, the Committee paid \$3,984 in administrative fines to the Commission for the failure to file 48-hour notices for contributions totaling \$33,800. *See* Reason to Believe Recommendation Memorandum (Apr. 27, 2021) and Status of Payment Rpt., AF 4201(Burgess for Utah).

<sup>12</sup> Referral at Attach. 2.

<sup>13</sup> Resp. at 1-2.

<sup>14</sup> Those refunds were listed as follows in the Committee's Response: Todd Ricketts, \$5,600 on 7/29/20, Refunded 8/29/20 (31 days); Joel Marcus, \$2,800 on 9/25/20, Refunded on 10/27/20 (33 days); and James Porter, \$5,600 on 11/13/20, Refunded on 11/13.20 (0 days). *Id.* at 1.

1 refunds have yet to be disclosed on any amendments or recent reports filed with the  
2 Commission.<sup>15</sup> Additionally, the Committee states that another \$1,829.41 of the total excessive  
3 amounts listed in the Referral was late refunded on August 23, 2021, after the date of the  
4 Referral. The Committee claims that with the yet to be reported refunds, the Committee no  
5 longer has any outstanding excessive contributions that still need to be remedied.<sup>16</sup>

6 The Committee asserts that its failure to timely remedy the excessive contributions was  
7 partly because during the early stages of the campaign it was using the services of a less  
8 experienced firm that was not capable of handling large amounts of fundraising activity, which  
9 resulted in compliance issues.<sup>17</sup> The Committee explains that it replaced that firm with a more  
10 experienced compliance vendor and a new treasurer in December 2020.<sup>18</sup> The Response states  
11 that the new vendor instituted “new processes and safeguards to ensure proper compliance going  
12 forward,” including “compiling lists of “maxed out” donors” and instituting a process to remedy  
13 excessive contributions and file amendments with the Commission.<sup>19</sup> The Committee also  
14 proceeded to refund excessive contributions as its “cashflow permitted.”<sup>20</sup> The Committee asks  
15 the Commission to consider this information as mitigating factors in this matter.<sup>21</sup>

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<sup>15</sup> The Committee filed its most recent amendments with the Commission in March 2021, but those amended reports did not include these refunds. *See* Amended 2020 October Quarterly Rpt. (Mar. 12, 2021) and Amended 2020 Post-General Rpt. (Mar. 15, 2021).

<sup>16</sup> Resp. at 2.

<sup>17</sup> *Id.* at 2-3.

<sup>18</sup> *Id.* at 2; Burgess 4 Utah, Statement of Organization (Dec. 15, 2020).

<sup>19</sup> Resp. at 2-3.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 3

### 1 III. LEGAL ANALYSIS

2 The Act limits the amount an individual may contribute to a candidate's authorized  
3 committee per election,<sup>22</sup> and likewise, the Act prohibits any candidate or committee from  
4 knowingly accepting an excessive contribution.<sup>23</sup> During the 2020 election cycle, the Act and  
5 Commission regulations limited an authorized committee to accepting a total of \$2,800 per  
6 election from any individual and \$5,000 from a multicandidate committee.<sup>24</sup>

7 When a committee receives a contribution that on its face exceeds the limits or which  
8 exceeds the limits when aggregated with other contributions from the same contributor, the  
9 Commission's regulations give the committee 60 days from the date of contribution receipt to  
10 refund, redesignate, or reattribute the excessive amount.<sup>25</sup> A committee treasurer may request a  
11 redesignation or reattribution by the contributor, but must refund the contribution if a  
12 redesignation or reattribution is not obtained within 60 days of the treasurer's receipt of the  
13 contribution.<sup>26</sup>

14 In this matter, the Committee's 2020 July Quarterly, October Quarterly, and 30-Day Post  
15 General Reports reflect excessive contributions from 37 individuals and from one multicandidate  
16 committee totaling \$92,604.26.<sup>27</sup> The Committee does not dispute that it received these  
17 excessive contributions and that it failed to timely refund, reattribute, or redesignate most of

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<sup>22</sup> 52 U.S.C. § 30116(a)(1)(A); *see also* 11 C.F.R. § 110.1(b).

<sup>23</sup> 52 U.S.C. § 30116(f), *see also* 11 C.F.R. § 110.9.

<sup>24</sup> 52 U.S.C. § 30116(a)(1)(A), (2)(A); 11 C.F.R. §§ 110.1(a)–(b), 110.2(b)(1). *See also Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Disclosure Threshold*, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019).

<sup>25</sup> 11 C.F.R. §§ 103.3(b)(3), 110.1(b).

<sup>26</sup> *Id.* §§ 103.3(b)(3), 110.1(b). 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. *Id.* § 110.1(b)(5), 110.1(k)(3).

<sup>27</sup> Referral at Attach. 2.

1 them.<sup>28</sup> According to RAD's records, those excessive contributions were remedied from 79 to  
2 262 days after their receipt, and therefore were not remedied within 60 days of the treasurer's  
3 receipt as required by Commission regulations. Accordingly, we recommend that the  
4 Commission find reason to believe that the Committee violated 52 U.S.C. § 30116(f) by  
5 knowingly accepting excessive contributions that it failed to timely refund, reattribute, or  
6 redesignate.

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<sup>28</sup> Resp. at 1. As noted *supra*, the Committee asserts that some of that amount was refunded timely (\$14,000) and that the amount that remained unremedied (\$1,829.41) was refunded after the Referral date.

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First General Counsel's Report  
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3 **V. RECOMMENDATIONS**

4 1. Find reason to believe that Burgess 4 Utah and Paul Kilgore in his official capacity  
5 as treasurer violated 52 U.S.C. § 30116(f) by accepting excessive contributions that  
6 it failed to timely refund, reattribute, or designate;

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8 2. Enter into pre-probable cause conciliation with Burgess 4 Utah and Paul Kilgore in  
9 his official capacity as treasurer prior to a finding of probable cause to believe;

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11 3. Approve the Factual and Legal Analysis;

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13 4. Approved the attached Conciliation Agreement; and



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5. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Associate General Counsel for Enforcement

December 3, 2021

Date

*Peter G. Blumberg*  
\_\_\_\_\_  
Peter G. Blumberg  
Acting Deputy Associate General Counsel for  
Enforcement

*Mark Shonkwiler*  
\_\_\_\_\_  
Mark Shonkwiler  
Assistant General Counsel

*Ana J. Peña-Wallace*  
\_\_\_\_\_  
Ana J. Peña-Wallace  
Attorney

Attachments:

1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**  
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3 **FACTUAL AND LEGAL ANALYSIS**  
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5 **RESPONDENT:** Burgess 4 Utah and Paul Kilgore **MUR** \_\_\_\_\_  
6 in his official capacity as treasurer  
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8 **I. INTRODUCTION**  
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10 This matter was generated from information ascertained by the Federal Election  
11 Commission (“Commission”) in the normal course of carrying out its supervisory  
12 responsibilities.<sup>1</sup> The Reports Analysis Division (“RAD”) referred Burgess 4 Utah and Paul  
13 Kilgore in his official capacity as treasurer (the “Committee”) to the Office of General Counsel  
14 (“OGC”) for failing to timely refund, redesignate, or reattribute \$92,604.26 in excessive  
15 contributions received for the 2020 general election.<sup>2</sup> The Committee acknowledges the  
16 violations but explains that it made some additional refunds in a timely manner prior to the  
17 Referral, which would decrease the total amount in violation cited in the Referral. It also notes  
18 that since the date of the Referral, it has refunded all of the remaining excessive contributions  
19 identified by RAD, albeit late. The Committee further explains that it has replaced its  
20 compliance firm that handled the Committee’s disclosure reports at the time of the violations  
21 with a more experienced vendor who has instituted controls and safeguards to ensure that these  
22 errors do not reoccur.<sup>3</sup>

23 For the reasons set forth below, the Commission finds reason to believe that the  
24 Committee violated 52 U.S.C. § 30116(f) of the Federal Election Campaign Act of 1971, as  
25 amended (the “Act”) by knowingly accepting excessive contributions that it failed to timely  
26 refund, reattribute, or redesignate.

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<sup>1</sup> See 52 U.S.C. § 30109(a)(2).

<sup>2</sup> RAD Referral 21L-48 at 1 (Burgess 4 Utah) (Nov. 29, 2021) (“Referral”).

<sup>3</sup> Burgess 4 Utah Resp. at 1-2 (Sept. 13, 2021) (“Resp.”).

1     **II.     FACTUAL BACKGROUND**

2             Burgess Owens was a candidate for Utah’s Fourth Congressional District during the  
3     2020 election cycle.<sup>4</sup> He won the general election and is now a candidate for reelection in 2022.<sup>5</sup>  
4     His principal campaign committee is Burgess 4 Utah.<sup>6</sup> The Committee’s current treasurer is  
5     Paul Kilgore, and its cash on hand as of September 30, 2021 is \$542,648.94.<sup>7</sup>

6             In 2020, the Committee received \$92,604.26 in contributions from 37 individuals and one  
7     multicandidate committee that appeared to exceed the limits set forth in the Act.<sup>8</sup> The  
8     contributions at issue appeared on the Committee’s 2020 July Quarterly, 2020 October  
9     Quarterly, and 2020 30-Day Post General Reports. For each of these reports, RAD sent Requests  
10    for Additional Information (“RFAIs”) stating the relevant contributions limits, reminding the  
11    Committee of the requirement to remedy the excessive contributions identified from each  
12    respective report, and requesting that the Committee inform the Commission of any corrective  
13    action in writing and by providing copies of refund checks or reattribution/redesignation letters.<sup>9</sup>  
14    In response to the RFAIs, the Committee filed amendments disclosing late refunds,

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<sup>4</sup> Burgess Owens, Statement of Candidacy at 1 (Nov. 4, 2019).

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<https://www.fec.gov/data/committee/C00725853/?tab=summary&cycle=2020> (last accessed Nov. 17, 2021).

<sup>8</sup> See Referral at 1 and Attach. 2.

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1 redesignations, and reattributions for many but not all of the excessive contributions identified.<sup>10</sup>

2 Additional refunds were disclosed on the Committee's 2021 April Quarterly Report.<sup>11</sup>

3 According to RAD's records, it took the Committee between 79 and 262 days to refund,  
 4 reattribute, or redesignate the excessive contributions.<sup>12</sup> At the time of the referral, \$15,829.41  
 5 of the total excessive amount still remained unremedied.<sup>13</sup>

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 7 most of the contributions cited in the Referral, but explains that it had refunded an additional  
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 11 refunds have yet to be disclosed on any amendments or recent reports filed with the  
 12 Commission.<sup>16</sup> Additionally, the Committee states that another \$1,829.41 of the total excessive  
 13 amounts listed in the Referral was late refunded on August 23, 2021, after the date of the

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<sup>10</sup> Referral at 2-4. The Committee did not file written responses to the RFAs.

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<sup>16</sup> The Committee filed its most recent amendments with the Commission in March 2021, but those amended reports did not include these refunds. *See* Amended 2020 October Quarterly Rpt. (Mar. 12, 2021) and Amended 2020 Post-General Rpt. (Mar. 15, 2021).

1 Referral. The Committee claims that with the yet to be reported refunds, the Committee no  
 2 longer has any outstanding excessive contributions that still need to be remedied.<sup>17</sup>

3 The Committee asserts that its failure to timely remedy the excessive contributions was  
 4 partly because during the early stages of the campaign it was using the services of a less  
 5 experienced firm that was not capable of handling large amounts of fundraising activity, which  
 6 resulted in compliance issues.<sup>18</sup> The Committee explains that it replaced that firm with a more  
 7 experienced compliance vendor and a new treasurer in December 2020.<sup>19</sup> The Response states  
 8 that the new vendor instituted “new processes and safeguards to ensure proper compliance going  
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 10 excessive contributions and file amendments with the Commission.<sup>20</sup> The Committee also  
 11 proceeded to refund excessive contributions as its “cashflow permitted.”<sup>21</sup> The Committee asks  
 12 the Commission to consider this information as mitigating factors in this matter.<sup>22</sup>

### 13 III. LEGAL ANALYSIS

14 The Act limits the amount an individual may contribute to a candidate’s authorized  
 15 committee per election,<sup>23</sup> and likewise, the Act prohibits any candidate or committee from  
 16 knowingly accepting an excessive contribution.<sup>24</sup> During the 2020 election cycle, the Act and

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<sup>17</sup> Resp. at 2.

<sup>18</sup> *Id.* at 2-3.

<sup>19</sup> *Id.* at 2; Burgess 4 Utah, Statement of Organization (Dec. 15, 2020).

<sup>20</sup> Resp. at 2-3.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.* at 3

<sup>23</sup> 52 U.S.C. § 30116(a)(1)(A); *see also* 11 C.F.R. § 110.1(b).

<sup>24</sup> 52 U.S.C. § 30116(f), *see also* 11 C.F.R. § 110.9.

1 Commission regulations limited an authorized committee to accepting a total of \$2,800 per  
 2 election from any individual and \$5,000 from a multicandidate committee.<sup>25</sup>

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 7 redesignation or reattribution by the contributor, but must refund the contribution if a  
 8 redesignation or reattribution is not obtained within 60 days of the treasurer's receipt of the  
 9 contribution.<sup>27</sup>

10 In this matter, the Committee's 2020 July Quarterly, October Quarterly, and 30-Day Post  
 11 General Reports reflect excessive contributions from 37 individuals and from one multicandidate  
 12 committee totaling \$92,604.<sup>28</sup> The Committee does not dispute that it received these  
 13 excessive contributions and that it failed to timely refund, reattribute, or redesignate most of  
 14 them.<sup>29</sup> According to RAD's records, those excessive contributions were remedied from 79 to  
 15 262 days after their receipt, and therefore were not remedied within 60 days of the treasurer's  
 16 receipt as required by Commission regulations. Accordingly, the Commission finds reason to

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<sup>25</sup> 52 U.S.C. § 30116(a)(1)(A), (2)(A); 11 C.F.R. §§ 110.1(a)–(b), 110.2(b)(1). *See also Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Disclosure Threshold*, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019).

<sup>26</sup> 11 C.F.R. §§ 103.3(b)(3), 110.1(b).

<sup>27</sup> *Id.* §§ 103.3(b)(3), 110.1(b). 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. *Id.* § 110.1(b)(5), 110.1(k)(3).

<sup>28</sup> Referral at Attach. 2.

<sup>29</sup> Resp. at 1. As noted *supra*, the Committee asserts that some of that amount was refunded timely (\$14,000) and that the amount that remained unremedied (\$1,829.41) was refunded after the Referral date.

MUR \_\_\_\_ (Burgess 4 Utah)  
Factual and Legal Analysis  
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- 1 believe that the Committee violated 52 U.S.C. § 30116(f) by knowingly accepting excessive
- 2 contributions that it failed to timely refund, reattribute, or redesignate.