

1 **FEDERAL ELECTION COMMISSION**
 2 **FIRST GENERAL COUNSEL’S REPORT**

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 4 **RAD REFERRAL: 20L-26**
 5 DATE REFERRED: 11/23/2020
 6 DATE OF NOTIFICATION: 11/24/2020
 7 LAST RESPONSE RECEIVED: 1/11/2021
 8 DATE ACTIVATED: 4/22/2021

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 10 ELECTION CYCLE: 2020
 11 EXPIRATION OF SOL: 7/1/2024–3/14/2025

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 13 **SOURCE:** Internally Generated

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 15 **RESPONDENT:** Kristine Schanbacher for Congress and
 16 Kyle Seay in his official capacity as treasurer

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 18 **RELEVANT STATUTES** 52 U.S.C. § 30116(a)(1)(A)
 19 **AND REGULATIONS:** 52 U.S.C. § 30116(f)
 20 11 C.F.R. § 102.9(e)(3)
 21 11 C.F.R. § 110.1(b)
 22 11 C.F.R. § 110.9

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 24 **INTERNAL REPORTS CHECKED:** Disclosure Reports

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 26 **FEDERAL AGENCIES CHECKED:** None

27 **I. INTRODUCTION**

28 The Reports Analysis Division (“RAD”) referred Kristine Schanbacher for Congress and
 29 Kyle Seay in his official capacity as treasurer (the “Committee”) to the Office of General
 30 Counsel (“OGC”) for failing to timely refund or redesignate \$36,250 in 2020 general election
 31 contributions after the candidate’s loss in the primary election.¹ The Committee acknowledges
 32 the violation, but states that it failed to refund or redesignate the general election contributions
 33 due to a misunderstanding of the applicable law. Once the Committee became aware of the
 34 apparent excessive contributions, it reported a debt to the contributors to refund their general

¹ RAD Referral 20L-26 at 1 (Schanbacher for Congress) (Nov. 23, 2020) (“Referral”).

1 election contributions, but did not make the necessary refunds until after receiving notice of the
2 Referral in this matter.²

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 failing to timely refund \$36,250 in
6 general election contributions which resulted in the Committee knowingly accepting excessive
7 contributions, authorize pre-probable cause conciliation with the Committee, and approve a
8 proposed conciliation agreement containing a civil penalty of \$7,000.

9 **II. FACTUAL BACKGROUND**

10 Kristine Schanbacher for Congress is the principal campaign committee of Kristine
11 Schanbacher, a congressional candidate in Illinois’s 7th Congressional District, who lost in the
12 Democratic Primary on March 17, 2020.³ The Committee’s current treasurer is Kyle Seay.⁴

13 The Committee received \$36,250 in contributions from 13 individuals designated for the
14 2020 general election.⁵ The Committee states that it obtained redesignations from the
15 contributors of these contributions and spent the redesignated \$36,250 to pay debt incurred
16 during the primary.⁶ However, each of the 13 contributors had made maximum contributions
17 during the primary election and thus their contributions were not eligible for redesignation.⁷ On

² Resp. at 2-3 (Jan. 8, 2021).

³ Kristine Schanbacher, Statement of Candidacy (July 1, 2019); Amended Statement of Org., Kristine Schanbacher for Congress (Dec. 9, 2020).

⁴ Kristine Schanbacher for Congress, Amended Statement of Org. (Dec. 9, 2020). During the relevant time period at issue, Stella Black was the Committee’s treasurer. Kristine Schanbacher for Congress Statement of Org. (July 1, 2019).

⁵ Referral at 1; *id.*, Attach. 2 (chart of contributions not refunded or redesignated).

⁶ Resp. at 2-3; *id.*, Attach. (Schanbacher Aff. at 9, 11 (Jan. 7, 2021)).

⁷ Referral at 1; *id.*, Attach. 2 (chart of contributions not refunded or redesignated).

1 June 24, 2020, RAD sent the Committee a Request for Additional Information (“RFAI”),
2 explaining that the redesignations had resulted in excessive contributions since those individuals
3 had already made the maximum contribution during the primary.⁸ The RFAI stated that the
4 Committee was required to either refund, redesignate or reattribute the excessive contributions.⁹
5 In response to the RFAI, the Committee amended its disclosure reports to reflect a debt owed to
6 the contributors with the purpose: “General election contribution to be refunded.”¹⁰ The
7 Committee states that it could not afford to make the refunds at the time of the amendment since
8 it lacked sufficient funds.¹¹ In December 2020, shortly after receiving a notification about the
9 Referral, the Committee issued \$36,250 in refunds to each of the contributors.¹²

10 The Committee asserts that its failure to “timely refund the general election contributions
11 was solely based on a misunderstanding of the law and was an unintentional violation made in
12 good faith reliance on the guidance of its campaign finance compliance professional.”¹³ The
13 Committee states that it made the refunds after the candidate “used her personal funds to make

⁸ *Id.* at 2; *see also* Kristine Schanbacher for Congress, Letter from Michael Dobi, Sr. Campaign Finance & Reviewing Analyst, RAD, to Stella Black, Treasurer, Kristine Schanbacher for Congress at 1 (June 24, 2020) (“RFAI”).

⁹ RFAI at 2-3. The RFAI provided guidelines for how to properly redesignate or reattribute excessive contributions, and specifically, general election contributions received prior to the primary election when the candidate does not participate in the general election. *Id.*

¹⁰ Referral at 2; Resp. at 2-3; Schanbacher Aff. at 10; Kristine Schanbacher for Congress, Amended 2020 April Quarterly Report at 89-93 (July 1, 2020) (showing \$33,450 in debt owed to 12 individuals for the purpose of “General election contributions to be refunded”). It appears that the Committee inadvertently omitted the \$2,800 contribution from Jordan H. Haskins. *See* RFAI at 2, n.1.

¹¹ Referral at 2; Resp. at 3.

¹² Resp. at 3; *id.*, Attach. B (copies of refund checks); Schanbacher Aff. at 13; Kristine Schanbacher for Congress, 2020 Year-End Report at 6-11, 16-21 (Jan. 26, 2021).

¹³ Resp. at 3; Schanbacher Aff. at 7-9, 12 (“Emily Wurth explained to me that based on her review of the information on the FEC’s website, that contributions made for the general election could be re-designated to pay primary debts.”); Resp., Attach. A (email from Emily Wurth to Kristine Schanbacher (Nov. 30, 2020 8:36:05 PM CST) (“It was my understanding after doing this review on the FEC’s website that should the committee go into debt in the course of the election that donors could designate their donations and reattribute them toward paying down primary debt.”).

1 contributions to the Committee to cover the amount necessary to issue refunds for all of the
2 general election contributions,” which was “a substantial financial hardship for her.”¹⁴

3 **III. LEGAL ANALYSIS**

4 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of
5 value made by any person for the purpose of influencing any election for federal office.¹⁵ The
6 Act limits the amount an individual may contribute to a candidate’s authorized committee per
7 election,¹⁶ and likewise, the Act prohibits any candidate or committee from knowingly accepting
8 an excessive contribution.¹⁷ During the 2020 election cycle, an authorized committee was
9 permitted to accept a total of \$2,800 per election from an individual.¹⁸ A primary election and a
10 general election are each considered a separate “election,” and the individual contribution limits
11 are applied separately with respect to each election.¹⁹

12 The Commission’s regulations permit a candidate or his or her authorized committee to
13 receive contributions for the general election prior to the primary election.²⁰ If, however, the
14 candidate does not become a candidate in the general election, the committee must: (1) refund
15 the contributions designated for the general election; (2) redesignate such contributions to the
16 primary election in accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute

¹⁴ Resp. at 3, Schanbacher Aff. ¶ 13; Kristine Schanbacher for Congress, 2020 Year-End Report at 5 (disclosing receipt from Kristine Schanbacher for \$37,942 on Dec. 6, 2021) (Jan. 26, 2021).

¹⁵ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

¹⁶ 52 U.S.C. § 30116(a)(1)(A); *see also* 11 C.F.R. § 110.1(b).

¹⁷ 52 U.S.C. § 30116(f), *see also* 11 C.F.R. § 110.9.

¹⁸ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2,504, 2,505 (Feb. 7, 2019) (adjusting certain limitations for the 2019-2020 election cycle).

¹⁹ 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2(b)-(c), 110.1(j).

²⁰ *See* 11 C.F.R. § 102.9(e)(l) (requiring the committee to use an acceptable accounting method to distinguish between primary and general election contributions).

1 such contributions to another contributor in accordance with 11 C.F.R. § 110.1(k)(3).²¹ The
2 committee must do so within 60 days of the date that the committee has actual notice of the need
3 to refund, redesignate, or reattribute, such as the date the candidate loses the primary or
4 withdraws from the campaign.²²

5 A contribution redesignated for another election shall not exceed the limitations on
6 contributions made with respect to that election.²³ “If a candidate fails to qualify for the general
7 election, any contributions designated for the general election that have been received from
8 contributors who have already reached their contribution limit for the primary election would
9 exceed [the Act’s] contribution limits.”²⁴ A contribution redesignated for a previous election
10 shall not exceed the adjusted amount of net debts outstanding on the date the contribution is
11 received.²⁵

12 In this matter, the Committee accepted \$36,250 in aggregate contributions from 13
13 individuals specifically designated for the general election prior to the primary election taking

²¹ *Id.* § 102.9(e)(3).

²² 11 C.F.R. §§ 102.9(e)(3); 110.1(b)(5)(ii)(A)(2), 110.1(k)(3)(ii)(A)(2); *see* Advisory Op. 1992-15 (Russo for Congress Committee) at 2 (“[T]he Commission concludes that for losing primary candidates . . . 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. 2008-04 (Dodd). The Commission’s regulations include procedures for reattributing or redesignating a contribution. 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. *Id.* § 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. *Id.* §§ 110.1(b)(5), 110.1(k)(3).

²³ 11 C.F.R. § 110.1(b)(5)(iii).

²⁴ Advisory Op. 2007-03 (Obama for America) at 3. A violation of the Act’s contributions limits may be avoided, however, if the committee refunds, redesignates or reattributes the excessive contributions within 60 days. *See id.* at 3-4 (citing 11 C.F.R. §§ 102.9(e)(3); 103.3(b)(3), 110.1(b)(3)(i), (b)(5), 110.2(b)(3)(i),(b)(5); Advisory Op. 2003-18 at 2-3 (Smith)).

²⁵ *See* 11 C.F.R. § 110.1(b)(3), (5).

1 place.²⁶ On March 17, 2020, Schanbacher lost the primary election. The Committee initially
2 redesignated general election contributions to the primary election to pay off debt incurred
3 during the primary. However, each of those individuals whose contributions were redesignated
4 had already made the maximum \$2,800 contribution during the primary election, resulting in
5 excessive contributions. Although the Committee amended its reports to reflect that it owed a
6 refund to each of the contributors for their general election contributions, it did not issue refunds
7 until December 2020, approximately seven to nine months after receiving the contributions,²⁷ six
8 months after receiving notice of the apparent violation from RAD, and thus well beyond the 60-
9 day regulatory period for remedial actions. The refunds also post-date when the Committee
10 received notice of the Referral in this matter.

11 The Committee contends that it relied in good faith on the advice of a campaign finance
12 professional who stated that it was permissible for the campaign to redesignate general election
13 contributions to pay off primary debt.²⁸ Nevertheless, the Committee appears to have failed to
14 recognize, separate from this general advice, that an excessive contribution would result when it
15 redesignated general election contributions to the primary for contributors who had already
16 contributed the maximum in the primary.

17 Given these facts, we recommend that the Commission find reason to believe that the
18 Committee violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions, and
19 enter into pre-probable cause conciliation.

²⁶ Referral at 1; *id.*, Attach. 2 (chart of contributions not refunded or redesignated).

²⁷ The Committee received contributions designated for the general election beginning on July 1, 2019, from Richard Laferla in the amount of \$2,800, and ending on March 14, 2020, from Joseph Schanbacher in the amount of \$1,800. *Id.*

²⁸ *Supra* note 13 and accompanying text.

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16 **V. RECOMMENDATIONS**

17 1. Open a MUR;

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- 1 2. Find reason to believe that Kristine Schanbacher for Congress and Kyle Seay in
- 2 his official capacity as treasurer violated 52 U.S.C. § 30116(f);
- 3
- 4 3. Approve the attached Factual and Legal Analysis;
- 5
- 6 4. Enter into pre-probable cause conciliation with Kristine Schanbacher for
- 7 Congress and Kyle Seay in his official capacity as treasurer prior to a finding of
- 8 pre-probable cause to believe;
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- 10 5. Approved the attached conciliation agreement; and
- 11
- 12 6. Approve the appropriate letter.

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