



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 19, 2022

VIA ELECTRONIC MAIL ONLY

kreynolds@dickinson-wright.com

Katherine N. Reynolds, Esq.
Dickinson Wright PLLC
1825 Eye Street, NW, Suite 900
Washington, DC 20006

Re: MUR 8030 (RR 21L-66)
Dan Crenshaw for Congress

Dear Ms. Reynolds:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting your client, Dan Crenshaw for Congress and Paul Kilgore in his official capacity as treasurer (the “Committee”), may have violated the Federal Election Campaign Act of 1971, as amended (the “Act”). On July 14, 2022, the Commission found reason to believe that your client violated 52 U.S.C. §§ 30116(f) and 30118(a) by knowingly accepting excessive and prohibited corporate contributions. The Factual and Legal Analysis, which formed a basis for the Commission’s finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 60

MUR 8030 (Dan Crenshaw for Congress)

Paul Kilgore, Treasurer

Page 2

days, your client should respond to this notification as soon as possible. Accordingly, if your client is interested in engaging in pre-probable cause conciliation negotiations, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1505 or cgallagher@fec.gov, within seven days of receipt of this letter.

During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within 60 days. *See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A).* Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission’s “Guidebook for Complainants and Respondents on the FEC Enforcement Process,” which is available on the Commission’s website at <http://www.fec.gov/respondent.guide.pdf>. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public.

We look forward to your response.

On behalf of the Commission,



Allen Dickerson
Chairman

Enclosures

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Dan Crenshaw for Congress and MUR 8030
Paul Kilgore in his official capacity as treasurer

I. INTRODUCTION

8 The Reports Analysis Division (“RAD”) referred Dan Crenshaw for Congress and Paul
9 Kilgore in his official capacity as treasurer (the “Committee”) to the Office of General Counsel
10 (“OGC”) for failing to timely remedy excessive and apparent prohibited 2020 primary and
11 general election contributions totaling \$223,460.26, in violation of the Federal Election Campaign
12 Act of 1971, as amended (the “Act”).¹ The Committee responded to the Referral that its failure to
13 timely refund the excessive contributions was due to “human error,” and that it has subsequently
14 instituted internal controls to prevent a future violation.² It also asserts that it has now refunded
15 all of the excessive contributions identified in the Referral.³ On FEC Form 99s submitted prior to
16 the Referral, the Committee also stated that it returned certain apparent prohibited corporate and
17 limited liability company (“LLC”) contributions after it could not ascertain whether those funds
18 were from a permissible source.⁴ Lastly, the Committee states that it will agree to additional
19 compliance and procedure training.⁵

1 Referral (Nov. 5, 2021).

² Resp. at 1 (Dec. 7, 2021).

3 *Id.*

⁴ Referral at 2-4; *see also* Dan Crenshaw for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (Dec. 16, 2020) (referencing, among other things, the prohibited contributions appearing on the Committee’s 2020 October Quarterly and 2020 12-Day Pre-General Reports); Dan Crenshaw for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (Feb. 17, 2020) (referencing, among other things, the prohibited contributions appearing on the Committee’s 2020 30-Day Post-General Report).

5 Resp. at 1.

MUR 8030 (Dan Crenshaw for Congress)

Factual and Legal Analysis

Page 2 of 8

1 For the reasons set forth below, the Commission finds reason to believe that the
 2 Committee violated 52 U.S.C. §§ 30116(f) and 30118(a) by knowingly accepting excessive and
 3 prohibited corporate contributions.

4 **II. FACTUAL BACKGROUND**

5 Dan Crenshaw for Congress is the principal campaign committee for Dan Crenshaw, a
 6 U.S. Representative from Texas's 2nd Congressional District.⁶ The Committee's treasurer is Paul
 7 Kilgore.⁷

8 According to the Referral, the Committee received excessive and apparent prohibited
 9 contributions aggregating \$223,460.26 for the 2020 primary and general elections from 125
 10 individuals, one non-qualified political action committee, one qualified multicandidate
 11 committee, four corporations, and three LLCs.⁸ The excessive and apparent prohibited
 12 contributions were disclosed on the Committee's 2020 July Quarterly, 2020 October Quarterly,
 13 2020 12-Day Pre-General, 2020 30-Day Post-General Reports.⁹

14 RAD sent the Committee four Requests for Additional Information (RFAs) referencing
 15 the excessive and apparent prohibited contributions.¹⁰ In response to the RFAs, on
 16 December 16, 2020, the Committee filed an FEC Form 99 referencing both the 2020 October
 17 Quarterly and the 2020 12-Day Pre-General Reports stating that all of the excessive contributions
 18 were refunded or redesignated, and that because it was unable to verify the legality of the

⁶ Dan Crenshaw for Congress, Amended Statement of Organization (Oct. 13, 2021).

⁷ *Id.*

⁸ Referral at 1.

⁹ *Id.* at 1-6.

¹⁰ *Id.* at 3-6; *see also* Dan Crenshaw for Congress, RFAI (Oct. 13, 2020) (referencing 2020 July Quarterly Report); Dan Crenshaw for Congress, RFAI (Nov. 11, 2020) (referencing 2020 October Quarterly Report); Dan Crenshaw for Congress, RFAI (referencing Nov. 11, 2020) (referencing 2020 12-Day Pre-General Report); Dan Crenshaw for Congress, RFAI (Jan. 13, 2021) (referencing Amended 2020 30-Day Post-General Report).

MUR 8030 (Dan Crenshaw for Congress)

Factual and Legal Analysis

Page 3 of 8

1 corporate and LLC contributions those were also refunded.¹¹ Subsequently, on February 17,
 2 2021, the Committee filed another FEC Form 99, referencing the Amended 30-Day Post-General
 3 Report, stating that all the excessive contributions would be refunded, and again, that because it
 4 was unable to verify the legality of the corporate and LLC contributions they were refunded.¹²

5 The Referral notes that of the \$207,360.26 in excessive contributions it had received, the
 6 Committee had untimely refunded or redesignated \$200,343.76 between 115 and 612 days late.¹³
 7 Of the \$16,100 in apparent prohibited contributions, at the time of the Referral, the Committee
 8 had untimely refunded \$4,800 between 132 and 136 days late.¹⁴ Those refunds or redesignations
 9 were disclosed on the Committee's 2021 April Quarterly and Amended 2021 April Quarterly
 10 Reports, filed on April 15, 2021, and September 27, 2021, respectively.¹⁵ At that time, there
 11 remained a total of \$18,316.50 in unremedied illegal contributions: \$7,016.50 in unrefunded or
 12 not redesignated excessive contributions, and \$11,300 in unrefunded prohibited contributions.¹⁶

13 After the Referral, the Committee disclosed refunds of the remaining prohibited
 14 contributions and one excessive contribution from a qualified PAC (\$1,000) on its Amended 2021
 15 July Quarterly and Amended 2021 Year-End Reports, filed on January 12, 2022, and March 14,

¹¹ Referral at 2-4; *see also* Dan Crenshaw for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (Dec. 16, 2020). On December 21, 2020, the Committee filed amendments to its 2020 October Quarterly, 2020 12-Day Pre-General, and 2020 30-Day Post-General Reports, but made no changes to the excessive and prohibited contributions identified in the RFAIs. Referral at 3-4; *see also* Dan Crenshaw for Congress, Amended 2020 October Quarterly Report (Dec. 21, 2020); Dan Crenshaw for Congress, Amended 2020 12-Day Pre-General Report (Dec. 21, 2020); Dan Crenshaw for Congress, Amended 2020 30-Day Post-General Report (Dec. 21, 2020).

¹² Referral at 5; *see also* Dan Crenshaw for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (Feb. 17, 2020).

¹³ Referral, Attach. 2.

¹⁴ *Id.*

¹⁵ *Id.* at 1-5.

¹⁶ *Id.* at 1, Attach. 2.

MUR 8030 (Dan Crenshaw for Congress)

Factual and Legal Analysis

Page 4 of 8

1 2022, respectively.¹⁷ When taking into account the refunds disclosed after the Referral, the
 2 excessive contributions were refunded between 115 and 612 days late, and the prohibited
 3 contributions were refunded between 132 and 262 days late.¹⁸ The amount of excessive
 4 contributions from the Referral that have not yet been refunded is now \$3,216.50.¹⁹

5 The Committee admits that it accepted excessive contributions that were refunded or
 6 redesignated late and that it did not timely refund apparent prohibited corporate contributions
 7 after it could not ascertain whether the funds were from a permissible source.²⁰ The Committee
 8 asserts that the “delayed refunds were a result of human error,” were a “one-time mistake,” and
 9 requests that the matter be sent to ADRO.²¹ Further, the Response states that the Committee has
 10 now made all refunds of the excessive contributions identified in the Referral and has adopted
 11 internal compliance measures to ensure that these errors do not reoccur.²²

¹⁷ See Dan Crenshaw for Congress, Amended 2021 July Quarterly Report at 2,211, 2,213, 2,214, (Jan. 12, 2022) (disclosing refunds made on May 14, 2021, to: A.J. Letizio Sales & Marketing (\$1,000); A Levy & Associates (\$5,000); CMH Wealth Management, LLC (\$500); Dunn Exploration Co., LLC (\$2,000); Portsmouth Square, LTD (\$2,800)); *see also* Dan Crenshaw for Congress, Amended 2021 Year-End Report at 2,942 (Mar. 14, 2022) (disclosing refund made on December 6, 2021, to Academy of Nutrition & Dietetics PAC (\$1,000)). The excessive contribution from Academy of Nutrition & Dietetics PAC was required to be refunded because it was designated for the 2020 primary election, but received after the primary date, in absence of net debts outstanding. Referral, Attach. 2.

¹⁸ Referral, Attach. 2; *see also supra* note 17.

¹⁹ Contributions from Michael Manners and Charles Cusumano remained unrefunded. See Dan Crenshaw for Congress, Amended 2020 12-Day Pre-General Report at 1,243 (Dec. 21, 2020) (\$416.50 excessive contribution from Michael Manners made on September 27, 2020); Dan Crenshaw for Congress, Amended 2020 12-Day Pre-General Report at 242 (Aug. 20, 2021) (\$2,800 excessive contribution from Charles Cusumano made on October 13, 2020) (After the Referral, RAD reduced the amount of the excessive contribution from Charles Cusumano from \$5,600 to \$2,800 to account for an adjustment the Committee made to its Amended 2019 October Quarterly Report clarifying that the person previously reported as “Cusumano, Charles” is not the same person as “Cusumano, Charles P.” residing at the same address. See Dan Crenshaw for Congress, 2019 Amended October Quarterly Report at 80, 81 (Aug. 18, 2021)).

²⁰ Resp. at 1; Dan Crenshaw for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (Dec. 16, 2020); Dan Crenshaw for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (Feb. 17, 2020).

²¹ Resp. at 1.

²² *Id.* The Response does not explain how the errors occurred or specify the internal compliance measures that the Committee adopted.

1 **III. LEGAL ANALYSIS**

2 During the 2020 election cycle, an authorized committee was permitted to accept a total of
 3 \$2,800 per election from individuals.²³ Multicandidate committees are permitted to make
 4 contributions to authorized committees not exceeding an aggregate of \$5,000 per election.²⁴
 5 Candidates and their political committees are prohibited from knowingly accepting excessive
 6 contributions.²⁵

7 The Act also prohibits corporations from making contributions to federal candidates, and
 8 likewise bars candidates, political committees (other than independent expenditure-only political
 9 committees and committees with hybrid accounts), and other persons from knowingly accepting
 10 or receiving corporate contributions.²⁶ Commission regulations allow receipt of contributions
 11 from LLCs provided the LLC is treated as a partnership for tax purposes and has not elected to be
 12 treated as a corporation by the Internal Revenue Service.²⁷ LLCs that claim corporate status or
 13 those that are publicly traded are treated as corporations for purposes of the Act.²⁸

14 A committee's treasurer is responsible for examining all contributions received for
 15 evidence of illegality and for ascertaining whether contributions received, when aggregated with
 16 other contributions from the same contributor, exceed the Act's contribution limits.²⁹ Treasurers

²³ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(a)-(b); *see* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 84 Fed. Reg. 2504, 2506 (Feb. 19, 2019), https://www.fec.gov/resources/cms-content/documents/fedreg_notice_2019-03.pdf (setting the contribution limits for 2019-2020).

²⁴ 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 110.2(b)(i).

²⁵ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

²⁶ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (d).

²⁷ 11 C.F.R. § 110.1(g).

²⁸ *Id.* § 110.1(g)(3).

²⁹ *Id.* § 103.3(b).

MUR 8030 (Dan Crenshaw for Congress)

Factual and Legal Analysis

Page 6 of 8

1 must make their best efforts to determine the legality of the contribution.³⁰ If the legality of the
 2 contribution cannot be determined, the treasurer must refund the contribution within 30 days of
 3 receipt.³¹ Contributions which on their face exceed the contribution limits, and contributions
 4 which do not appear to exceed the contribution limits but exceed contribution limits when
 5 aggregated with other contributions, and which cannot be accepted under the net debts
 6 outstanding provisions, may be returned to the contributor or deposited.³² If deposited,
 7 contributions must be: (1) redesignated in accordance with 11 C.F.R. §§ 110.1(b)(5) or
 8 110.2(b)(5); (2) reattributed in accordance with 11 C.F.R. § 110.1(k)(3); or (3) refunded within 60
 9 days of the date that the committee has actual notice of the need to refund, redesignate or
 10 reattribute the contributions.³³

11 As an authorized campaign committee, the Committee was limited to accepting \$2,800 per
 12 election from individuals, \$5,000 from multicandidate committees, and was prohibited from
 13 accepting any corporate contributions. The Committee, however, received \$223,460.26 in
 14 excessive and apparent prohibited contributions across four disclosure reports: the 2020 July
 15 Quarterly, 2020 October Quarterly, 2020 12-Day Pre-General, and the 2020 30-Day Post-General
 16 Reports.³⁴ The excessive contributions that were deposited into the Committee's account were
 17 not refunded within the 60-day period set forth in the regulations.³⁵ The bulk of the excessive
 18 contributions, totaling \$207,360.26, were refunded well outside the 60-day period, and there still

³⁰ *Id.* § 103.3(b)(1).

³¹ *Id.*

³² *Id.* § 103.3(b)(3); *see also id.* § 110.1(b)(3) (a contribution designated for a particular election shall not exceed the amount of net debts outstanding from that election).

³³ *Id.* § 103.3(b)(3).

³⁴ Referral at 1-5.

³⁵ 11 C.F.R. § 103.3(b)(3).

MUR 8030 (Dan Crenshaw for Congress)

Factual and Legal Analysis

Page 7 of 8

1 remains \$3,216.50 in excessive contributions that have not yet been refunded. The apparent
 2 corporate contributions, totaling \$16,100, which were deposited and which the Committee
 3 acknowledges did not have evidence of legality, were not refunded until more than the 30-day
 4 period set forth in the regulation.³⁶ When taking into account the refunds made after the Referral,
 5 the excessive contributions were refunded between 115 and 612 days late or not at all, and the
 6 prohibited contributions were refunded between 132 days and 262 days late.³⁷ In light of the
 7 wide range of late refunds, the Committee’s receipt of excessive and prohibited contributions
 8 does not appear to be a “one-time mistake” as asserted in its response.³⁸

9 The Committee does not dispute its failure to make timely refunds, but asserts that since
 10 the filing of the Referral, it has now refunded all excessive contributions.³⁹ As described above,
 11 the Committee’s amended reports and recent filings disclose refunds for all but \$3,216.50 in
 12 excessive contributions from individuals.⁴⁰ The Committee asserts that it issued late refunds of
 13 the apparent prohibited contributions after it could not ascertain whether the source of funds was
 14 permissible.⁴¹ Since notification of the filing of the Referral, the Committee has disclosed the
 15 refunds of the apparent prohibited contributions on its amended reports.⁴²

³⁶ *Id.* § 103.3(b)(1).

³⁷ Referral Attach. 2; *see also supra* note 17.

³⁸ Resp. at 1.

³⁹ *Id.*

⁴⁰ *Supra* notes 17, 19.

⁴¹ Dan Crenshaw for Congress, Misc. Text (FEC Form 99) at 1 (Dec. 16, 2020); Dan Crenshaw for Congress, Misc. Text (FEC Form 99) at 1 (Feb. 17, 2020).

⁴² *Supra* note 17.

MUR 8030 (Dan Crenshaw for Congress)

Factual and Legal Analysis

Page 8 of 8

1 Therefore, the Commission finds reason to believe that Dan Crenshaw for Congress and
2 Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30118(a) by
3 knowingly accepting excessive and prohibited contributions.