

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 22L-08

DATE REFERRED: Feb. 24, 2022

DATE OF NOTIFICATION: Feb. 23, 2022

DATE OF LAST RESPONSE: Mar. 21, 2022

DATE ACTIVATED: May 9, 2022

ELECTION CYCLE: 2020

EXPIRATION OF SOL: Aug. 10, 2026-Dec. 25, 2026

SOURCE: Internally Generated

RESPONDENT: Kim Klacik for Congress and Bradley T. Crate in his official capacity as treasurer

RELEVANT STATUTE AND REGULATIONS:

- 52 U.S.C. § 30102(e)(3)(B)
- 52 U.S.C. § 30116(a)(1)(A), (f)
- 52 U.S.C. § 30118(a)
- 11 C.F.R. § 102.5(b)
- 11 C.F.R. § 103.3(b)
- 11 C.F.R. § 110.1(a), (b)
- 11 C.F.R. § 110.9
- 11 C.F.R. § 114.2(a), (d)

INTERNAL REPORTS CHECKED: Disclosure Reports
Reports Analysis Division Referral Materials

FEDERAL AGENCIES CHECKED: None

1. INTRODUCTION

36 The Reports Analysis Division (“RAD”) referred Kim Klacik for Congress and Bradley
37 T. Crate in his official capacity as treasurer (the “Committee”) to the Office of General Counsel
38 (“OGC”) for failing to timely remedy excessive and prohibited 2020 general election
39 contributions totaling \$100,259.62, in violation of the Federal Election Campaign Act of 1971,

RR 22L-08 (Kim Klacik for Congress)

First General Counsel's Report

Page 2 of 10

1 as amended (the “Act”).¹ The Committee responded to the notification of the Referral that its
 2 failure to timely refund the excessive contributions was due to “human error” and “a one-time
 3 mistake” and that it has subsequently implemented internal compliance measures, including
 4 hiring a new compliance firm, to prevent future violations.² In addition, the Committee asserts
 5 that it has now refunded the excessive and prohibited contributions identified in the Referral and
 6 has requested a refund of an excessive contribution that it made.³ Lastly, the Committee
 7 requests that the matter be resolved through the Alternative Dispute Resolution Office
 8 (“ADRO”).⁴

9 For the reasons discussed below, we recommend that the Commission open a Matter
 10 Under Review (“MUR”) and find reason to believe that the Committee violated: (1) 52 U.S.C.
 11 § 30116(f) and 11 C.F.R. §§ 103.3(b), 110.9 by knowingly accepting excessive contributions
 12 totaling \$93,500.00; (2) 52 U.S.C. § 30102(e)(3)(B) by making an excessive contribution of
 13 \$3,600.00; (3) 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 103.3(b) and 110.9 by knowingly
 14 accepting prohibited contributions totaling \$2,659.62 from corporations; and (4) 52 U.S.C. §
 15 30118(a) and 11 C.F.R. § 103.3(b) by knowingly accepting a prohibited \$500 contribution from
 16 an unregistered organization. Additionally, we recommend that the Commission, authorize pre-
 17 probable cause conciliation and approve the attached conciliation agreement containing an
 18 opening settlement offer of \$19,000.

19

¹ RAD Referral 22L-08 (Kim Klacik for Congress) (Feb.24, 2022) (“Referral”).¹ Referral Memorandum from Patricia C. Orrock, Chief Compliance Officer, RAD, to Lisa J. Stevenson, Acting General Counsel, OGC at 1 (Feb. 24, 2022).

² Resp. at 1 (Mar. 21, 2022).

³ *Id.*

⁴ *Id.*

RR 22L-08 (Kim Klacik for Congress)

First General Counsel's Report

Page 3 of 10

1 **II. FACTUAL BACKGROUND**

2 Kim Klacik for Congress is the principal campaign committee for Kimberly Klacik, a
 3 candidate in the 2019-2020 election cycle for Maryland's 7th Congressional District.⁵ The
 4 candidate lost the 2020 General Election. The Committee's current treasurer is Bradley T.
 5 Crate.⁶

6 The Committee's 2020 October Quarterly Report disclosed excessive contributions from
 7 39 individuals totaling \$74,750.00, two prohibited contributions from two apparent corporations
 8 (Economy Exterminators and Johnson's Decorating Center, Inc.)⁷ totaling \$2,659.62, and a
 9 prohibited contribution from an unregistered organization (Citizens to Elect Steve Schuch)⁸
 10 totaling \$500, that were not refunded, reattributed, or redesignated within the permissible
 11 timeframes.⁹ The report also disclosed an excessive contribution of \$3,600.00 the Committee
 12 made to Salling for Congress, another principal campaign committee, that has yet to be
 13 remedied.¹⁰

⁵ The Committee was also the subject of Administrative Fine Case # 4220 (Sept. 9, 2021) (\$12,081.00, assessed civil penalty, failure to file 48-Hour Notices for contributions totaling \$111,750.00).

⁶ Gregory Stewart was the treasurer of record during the relevant period. Kim Klacik for Congress, Original Statement of Organization (Nov. 6, 2019). Bradley T. Crate became treasurer of the Committee on May 7, 2021. Kim Klacik for Congress, Amended Statement of Organization (May 7, 2021).

⁷ Referral, Attach 2.

⁸ *Id.* Citizens to Elect Steve Schuch is a State of Maryland candidate committee (Steve R. Schuh, County Executive, Anne Arundel County, Maryland).

<https://campaignfinance.maryland.gov/Public/ShowReview?memberID=2851&memVersID=105&cTypeCode=01>. Maryland laws allows contributions from individuals, business entities, and labor organizations. MD. CODE ANN. ELEC. LAW §§ 1-10, 13-306, and 13-226 (2013).

⁹ Referral at 2.

¹⁰ *Id.* at 2, Attach 2.

RR 22L-08 (Kim Klacik for Congress)

First General Counsel's Report

Page 4 of 10

1 The Committee's 2020 30-Day Post-General Report disclosed excessive contributions
 2 totaling \$18,700.00 from 15 individuals that were not refunded, reattributed, or redesignated
 3 within the permissible timeframe, and a \$50 excessive contribution from a prior reporting period
 4 that was untimely refunded.¹¹

5 On April 4, 2021, RAD sent the Committee two Requests for Additional Information
 6 ("RFAIs") referencing the excessive and prohibited contributions on the two reports described
 7 above.¹² In response, on May 10, 2021, the Committee filed two FEC Form 99s,¹³ indicating
 8 that the Committee: 1) would refund all excessive and prohibited contributions and disclose the
 9 refunds on the Committee's 2021 July Quarterly Report; 2) had requested a refund of the
 10 excessive contribution made to the Salling for Congress Committee; and 3) refunded one
 11 contribution from an unregistered organization.¹⁴

12 On July 15, 2021, the Committee filed its 2021 July Quarterly Report disclosing
 13 chargebacks and refunds of excessive and prohibited contributions, which were made outside of
 14 the permissible timeframe for the 2020 October Quarterly Report (for 39 individuals, two
 15 apparent corporations and one unregistered organization, totaling \$77,859.62)¹⁵ and the 2020

¹¹ *Id.* at 3.

¹² Kim Klacik for Congress, RFAI (Apr. 4, 2021) (referencing Amended 2020 October Quarterly Report); Kim Klacik for Congress, RFAI (Apr. 4, 2021) (referencing Amended 2020 30-Day Post-General Report). The Referral notes that the Committee received a \$50.00 excessive contribution during the 2020 12-Day Pre-General reporting period that was cited in the RFAI sent on the 2020 30-Day Post-General Report, which is included in Attachment 2 of the Referral.

¹³ Kim Klacik for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (May 10, 2021) (referencing the Amended 2020 October Quarterly Report); Kim Klacik for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (May 10, 2021) (referencing the Amended 2020 30-Day Post-General Report).

¹⁴ FEC Form 99 at 2-3 (May 10, 2021).

¹⁵ Referral at 3.

RR 22L-08 (Kim Klacik for Congress)

First General Counsel's Report

Page 5 of 10

1 30-Day Post-General Report (for 15 individuals totaling \$18,700.00).¹⁶ The excessive and
2 prohibited contributions were refunded between 141 days and 276 days late.¹⁷ Further, on
3 October 15, 2021, the Committee filed its 2021 October Quarterly Report, which disclosed one
4 additional refund to an individual contributor totaling \$50.00 made outside the permissible
5 timeframe.¹⁸

6 In sum, the Referral indicates that all refunds have been made by the Committee, except
7 for the \$3,600 excessive contribution the Committee itself made to Salling for Congress, which
8 has not been remedied. The RAD Communication log for January 13, 2022, indicates that a
9 Committee representative told RAD that he believed a request for refund had been made but the
10 Committee had not heard back.¹⁹ RAD also noted that the recipient committee (Salling for
11 Congress) did not appear to have sufficient funds (cash-on-hand) to repay the Committee.²⁰

12 In its Response to the Referral, the Committee admits that it did not timely refund
13 excessive and prohibited contributions.²¹ The Committee asserts that the delayed refunds
14 resulted from “human error” and the Committee has since implemented internal compliance
15 measures, including hiring a new compliance firm.²² The Committee further asserts that this was
16 “a one-time mistake,” which does not warrant the use of further Commission resources, and

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 3-4.

¹⁸ *Id.*

¹⁹ Referral, Attach. 3 (RAD Communication Log for Kim Klacik for Congress).

²⁰ *Id.*

²¹ Resp. at 1; Kim Klacik for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (May 10, 2021) (referencing the Amended 2020 October Quarterly Report); Kim Klacik for Congress, Misc. Electronic Submission (FEC Form 99) at 1 (May 10, 2021) (referencing the Amended 2020 30-Day Post-General Report).

²² Resp. at 1.

RR 22L-08 (Kim Klacik for Congress)

First General Counsel's Report

Page 6 of 10

1 requests that the matter be sent to ADRO.²³ Finally, the Response states that the Committee has
2 now made all refunds of the excessive contributions.²⁴

3 **III. LEGAL ANALYSIS**

4 During the 2020 election cycle, an authorized committee could not accept more than
5 \$2,800 per election from individuals and an authorized committee may not contribute more than
6 \$2,000 per election to another authorized committee.²⁵ Further, the Act provides that no
7 political committee shall knowingly accept any contribution that exceeds contribution limits.²⁶
8 Contributions which either exceed the contribution limit on their face or in the aggregate may be
9 deposited or returned to the contributor.²⁷ If the excessive contribution is accepted, the treasurer
10 may request redesignation or reattribution of the contribution.²⁸ If a redesignation or
11 reattribution is not obtained, the treasurer must refund the contribution to the contributor within
12 60 days of receipt.²⁹

13 In addition, candidates and their authorized committees are prohibited from knowingly
14 accepting contributions that are not subject to the prohibitions of the Act,³⁰ including
15 contributions from corporations.³¹ If the treasurer cannot determine whether a contribution

²³ *Id.*

²⁴ *Id.*

²⁵ 52 U.S.C. §§ 30102(e)(3)(B), 30116(a)(l)(A), (f); 11 C.F.R. §§ 110.9, 110.1(a)-(b).

²⁶ 52 U.S.C. § 30116(f); *see also* 11 C.F.R. § 110.9 (“No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 11 CFR part 110.”).

²⁷ 11 C.F.R. § 103.3(b)(3).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See* 52 U.S.C. § 30118(a).

³¹ *Id.*

RR 22L-08 (Kim Klacik for Congress)

First General Counsel's Report

Page 7 of 10

1 complies with the source prohibitions of the Act, the treasurer must refund the contribution to the
 2 contributor within 30 days of receiving the contribution.³²

3 Further, an unregistered organization cannot make a contribution to a political committee
 4 unless such organization demonstrates that the underlying funds are subject to the limitations and
 5 prohibitions of the Act.³³ The treasurer of a political committee is responsible for ensuring that
 6 all contributions received comply with those limitations and prohibitions.³⁴

7 As an authorized campaign committee, the Committee was limited to accepting \$2,800
 8 per election from individuals, contributing \$2,000 to another authorized committee, and was
 9 prohibited from accepting any corporate contributions or contributions from an unregistered
 10 organization that does not demonstrate that the underlying funds are subject to the limitations
 11 and prohibitions of the Act. The Committee, however, received \$96,659.62 in excessive and
 12 prohibited contributions disclosed in the 2020 October Quarterly and 2020 30-Day Post-General
 13 Reports.³⁵ The excessive contributions totaling \$93,500.00,³⁶ which were deposited into the
 14 Committee's account, were refunded between 141 days and 276 days late, well beyond the 60-
 15 day refund period set out in the regulations.³⁷ Similarly, the prohibited contributions, totaling

³² 11 C.F.R. § 103.3(b)

³³ See *id.* § 102.5(b)(1) (providing that an unregistered organization must show that it has “received sufficient funds subject to the limitations and prohibitions of the Act to make [a] . . . contribution”); see also 52 U.S.C. §§ 30116(f), 30118(a).

³⁴ 11 C.F.R. § 103.3(b); Factual & Legal Analysis at 4-5, MUR 7872 (South Dakota Democratic Party) (finding reason to believe that a state party committee violated 11 C.F.R. § 103.3(b) by accepting contributions from unregistered organizations without ascertaining whether the underlying funds complied with the limitations and prohibitions of the Act).

³⁵ Referral at 1.

³⁶ *Id.*, Attach 2.

³⁷ 11 C.F.R. § 103.3(b)(3); Referral, Attach. 2.

RR 22L-08 (Kim Klacik for Congress)

First General Counsel's Report

Page 8 of 10

1 \$3,159.62, which were deposited, were refunded between 260 and 284 days late,³⁸ well outside
 2 the 30-day period set forth in the regulation.³⁹ Further, the Committee has made an excessive
 3 contribution of \$3,600 to Salling for Congress, which the Committee has yet to remedy. Given
 4 the wide range of late refunds, the Committee's receipt of excessive and prohibited contributions
 5 does not appear to be a "one-time mistake" as asserted in the response.⁴⁰ Finally, although the
 6 Committee requests that this matter be sent to ADRO, the aggregate amount in violation,
 7 \$100,259.62 meets the RAD threshold amount for referral to OGC, not ADRO.⁴¹

8 Accordingly, we recommend that the Commission open a MUR and find reason to
 9 believe that the Committee violated: (1) 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 103.3(b)(3), and
 10 110.9 by knowingly accepting excessive contributions totaling \$93,500.00; (2) 52 U.S.C.
 11 § 30102(e)(3)(B) by making an excessive contribution of \$3,600.00; (3) 52 U.S.C. § 30118(a)
 12 and 11 C.F.R. §§ 103.3(b) and 110.9 by knowingly accepting prohibited contributions totaling
 13 \$2,659.62 from corporations; and (4) 52 U.S.C. § 30118(a) and 11 C.F.R. § 103.3(b) by
 14 knowingly accepting a prohibited \$500 contribution from an unregistered organization.

³⁸ Referral, Attach 2.

³⁹ 11 C.F.R. § 103.3(b)(1).

⁴⁰ Resp. at 1.

⁴¹ Memorandum Transmitting Referral from Patricia C. Orrock, Chief Compliance Officer, RAD, to Lisa Stevenson, Acting General Counsel, OGC at 1, n.1; *see also RAD Review and Referral Procedures For the 2019-2020 election cycle* at 53, 62, 64

In similar enforcement matters where the referral thresholds for sending a matter to OGC were met, the Commission did not send the RAD Referral to ADRO. *See, e.g.*, MUR 8030 (RR 21L-66) (Dan Crenshaw for Congress); MUR 7374 (RR17L-39) (Wright 2016); MUR 6956 (RR15L-05) (Espaillat for Congress); MUR 7075 (RR15L-24) (SCOTT PAC).

RR 22L-08 (Kim Klacik for Congress)

First General Counsel's Report

Page 9 of 10

1

2

3

4

5

6

7

8

9

10

11

12

13 **V. RECOMMENDATIONS**

14 1. Open a Matter Under Review;

15 2. Find reason to believe Kim Klacik for Congress and Bradley T. Crate in his
16 official capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R.
17 §§ 103.3(b) and 110.9 by knowingly accepting excessive contributions;

18 3. Find reason to believe Kim Klacik for Congress and Bradley T. Crate in his
19 official capacity as treasurer violated 52 U.S.C. § 30102(e)(3)(B) by making an
20 excessive contribution;

RR 22L-08 (Kim Klacik for Congress)

First General Counsel's Report

Page 10 of 10

4. Find reason to believe Kim Klacik for Congress and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 103.3(b) and 110.9 by knowingly accepting prohibited corporate contributions;
5. Find reason to believe Kim Klacik for Congress and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 103.3(b) by knowingly accepting a prohibited contribution from an unregistered organization;
6. Approve the attached Factual and Legal Analysis;
7. Authorize pre-probable cause conciliation with Kim Klacik for Congress and Bradley T. Crate in his official capacity as treasurer;
8. Approve the attached proposed conciliation agreement; and
6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement

Sept. 6, 2022

Date

Jin Lee

Deputy Associate General Counsel for Enforcement

Peter J. Blumberg

Peter G. Blumberg
Assistant General Counsel

Dominique Dillenseger
Dominique Dill

Dominique Dillenseger
Attorney