

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

**RR 23L-36**

DATE REFERRED: July 20, 2023

DATE OF NOTIFICATION: July 27, 2023

DATE OF RESPONSE: Aug. 15, 2023

DATE ACTIVATED: Oct. 13, 2023

ELECTION CYCLE: 2022

EXPIRATION OF SOL: Dec. 28, 2026

**SOURCE:**

Internally Generated

**RESPONDENT:**

Country Over Party PAC (f/k/a Kinzinger for Congress) and Paul Kilgore in his official capacity as treasurer

**RELEVANT STATUTES AND REGULATIONS:**

52 U.S.C. § 30116(f)

11 C.F.R. § 102.9(e)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

RAD Referral Materials

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Reports Analysis Division ("RAD") referred Country Over Party PAC and Paul Kilgore in his official capacity as treasurer (the "Committee"), formerly known as Kinzinger for Congress and previously the principal campaign committee of 2022 congressional candidate Adam Kinzinger, to the Office of General Counsel ("OGC") for failure to refund or redesignate \$133,450 in general election contributions within 60 days of Kinzinger's withdrawal from the 2022 primary election, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

The Committee does not dispute that it failed to timely refund or redesignate the contributions at issue, but argues that the Commission should decline to open a Matter Under

Review because it “promptly” refunded the contributions after receiving a Request for Additional Information (“RFAI”) from RAD.<sup>1</sup> In fact, the Committee refunded nearly all of the contributions between 54 and 69 days after it received the RFAI and between 298 and 313 days after the Committee received notice of Kinzinger’s withdrawal from the 2022 primary election.<sup>2</sup> The Committee explains that it failed to timely refund or redesignate the contributions due to a software issue.<sup>3</sup>

Based on the available information, we recommend that the Commission open a Matter Under Review (“MUR”) and find reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3). Because the record regarding the violations is complete, we further recommend that the Commission enter into pre-probable cause conciliation with the Committee and approve a proposed conciliation agreement [REDACTED]

## II. FACTUAL BACKGROUND

During the 2022 election cycle, the Committee was known as Kinzinger for Congress and was the principal campaign committee of Adam Kinzinger, a congressional candidate seeking reelection in Illinois’s 16th Congressional District.<sup>4</sup> On October 29, 2021, ahead of the primary election, Kinzinger announced his retirement from Congress.<sup>5</sup> On February 21, 2023, the

<sup>1</sup> Resp. at 1 (Aug. 15, 2023).

<sup>2</sup> Referral at 2 & Attach. 1 (July 20, 2023). One contribution was refunded on January 21, 2022, prior to the RFAI and one contribution was refunded 91 days after the RFAI and 335 days after the Committee had notice of Kinzinger’s withdrawal from the 2022 primary election.

<sup>3</sup> Resp. at 1.

<sup>4</sup> Kinzinger for Congress, Amended Statement of Organization at 1 (Apr. 8, 2021).

<sup>5</sup> Referral at 1 (citing Ally Mutnick, *et al.*, *Kinzinger Retiring from Congress, Vows ‘Broader Fight Nationwide’ Against Trumpism*, POLITICO (Oct. 29, 2021), <https://www.politico.com/news/2021/10/29/rep-adam-kinzinger-wont-seek-reelection-next-year-517599> and Rebecca Shahad, *GOP Rep. Adam Kinzinger, an outspoken*

Committee filed an Amended Statement of Organization changing its name to Country Over Party PAC and changing its committee type to a nonqualified PAC.<sup>6</sup> Paul Kilgore was the treasurer during the entire period.

According to the Referral, after Kinzinger announced his retirement, the Committee failed to timely refund or redesignate \$133,450 of 2022 general election contributions from individuals and multicandidate committees within the 60-day timeframe.<sup>7</sup> The Committee disclosed receipt of these contributions in its 2021 April, July and October Quarterly and Year-End Reports.<sup>8</sup> On June 30, 2022, eight months after Kinzinger announced his retirement, RAD sent the Committee an RFAI that identified unremedied contributions and requested that the Committee take corrective action.<sup>9</sup> On the Committee's 2022 April and October Quarterly Reports, filed on April 14, 2022 and October 12, 2022, respectively, it disclosed refunds of all the general election contributions at issue.<sup>10</sup> Accordingly, the contributions were refunded between 84 and 335 days after Kinzinger withdrew from the primary election.

The Committee does not deny that it failed to timely refund or redesignate the contributions at issue.<sup>11</sup> However, the Committee requests that the Commission decline to open

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*Trump critic, will not seek re-election*, NBC NEWS (Oct. 29, 2021), <https://www.nbcnews.com/politics/congress/gop-rep-adam-kinzinger-outspoken-trump-critic-retiring-congress-n1282715>).

<sup>6</sup> Country Over Party PAC, Amended Statement of Organization at 1 (Feb. 21, 2023).

<sup>7</sup> Referral at 1-2.

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> Kinzinger for Congress, Request for Additional Info. ("RFAI") at 1 (June 30, 2022).

<sup>10</sup> Kinzinger for Congress, Amended 2022 April Quarterly Report (Apr. 14, 2022); Kinzinger for Congress, 2022 October Quarterly Report (Oct. 12, 2022).

<sup>11</sup> Resp. at 1. Although the Committee acknowledges that it failed to timely redesignate or refund the \$133,450 in general election contributions that are the subject of the Referral, it points out that it did timely refund 84 separate contributions totaling \$219,050. *Id.*

a MUR because the contributions, which were received via a joint fundraising committee, “did not originally get refunded due to a software issue that was unknown at the time” and discovered after RAD sent the RFAI, at which point the Committee “promptly remedied all general-election contributions.”<sup>12</sup> The Committee believes its “prompt” action to refund outstanding amounts, coupled with its “steps to prevent any recurrences,” indicates that “[n]o interest is served by dedicating additional resources to an issue that has already been resolved by the Committee itself.”<sup>13</sup> As noted above, one refund (\$2,900) was made on January 21, 2022, five months before the June 30, 2022 RFAI, and the remainder (\$130,550) were not completed until three months after the RFAI.

### III. LEGAL ANALYSIS

During the 2022 election cycle, an authorized committee could not accept more than \$2,900 per election from individuals and more than \$5,000 per election from a multicandidate political committee.<sup>14</sup> A primary election and a general election are each considered a separate “election” under the Act, and the contribution limits are applied separately with respect to each

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<sup>12</sup> *Id.* The Committee states that because both the Committee and the joint fundraising committee were housed in the same database, the contributions given originally to the joint fundraising committee and then allocated to the Committee for the 2022 general election were not included in the software report that the Committee compiled when it went to issue post-retirement refunds, *see id.*, but the Committee does not explain how the software failed.

<sup>13</sup> *Id.*

<sup>14</sup> 52 U.S.C. §§ 30116(a)(1)(A), 30116(a)(2)(A), (f); 11 C.F.R. §§ 110.1(b)(1), 110.2(b)(1); *see also* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021); 11 C.F.R. § 100.5(f)(1) (providing that an authorized committee means the principal campaign committee or any other political committee authorized by a candidate).

election.<sup>15</sup> Candidates and political committees are prohibited from knowingly accepting excessive contributions.<sup>16</sup>

The Commission's regulations permit a candidate's committee to receive contributions for the general election prior to the primary election.<sup>17</sup> However, the committee must use an acceptable accounting method to distinguish between primary and general election contributions.<sup>18</sup> The committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made.<sup>19</sup>

Furthermore, if the candidate ultimately does not become a candidate for the general election, the committee must refund, redesignate, or reattribute any general election contributions in accordance with applicable Commission regulations.<sup>20</sup> The committee must do so within 60 days of the date that the committee has actual notice of the need to redesignate, reattribute, or refund the contributions.<sup>21</sup> A committee cannot redesignate general election funds for the primary election if doing so would cause the contributor to exceed the maximum allowable contribution for that election.<sup>22</sup> Likewise, reattribution of a general election contribution may

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<sup>15</sup> 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

<sup>16</sup> 52 U.S.C. § 30116(f).

<sup>17</sup> 11 C.F.R. § 102.9(e)(1).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* § 102.9(e)(2).

<sup>20</sup> *Id.* § 102.9(e)(3).

<sup>21</sup> Factual and Legal Analysis at 6, MUR 7007 (Kyle McCarter for Congress Committee, *et al.*); *see* Advisory Opinion 2008-04 at 1 (Dodd); Advisory Opinion 1992-15 at 2 (Russo); *see also* 11 C.F.R. §§ 110.1(b)(3)(i), (b)(5); 110.2(b)(3)(i), (b)(5); 103.3(b)(3).

<sup>22</sup> 11 C.F.R. §§ 110.1(b)(5)(iii), 110.2(b)(5)(iii). Furthermore, amounts redesignated may not exceed the net debts outstanding from the primary. *Id.* §§ 110.1(b)(5)(iii), 110.2(b)(5)(iii).

only occur to the extent that such attribution does not exceed the contributor's contribution limits.<sup>23</sup>

As set forth in the Referral, the Committee failed to remedy 2022 general election contributions totaling \$133,450 within the 60-day timeframe. The Committee does not deny the violations but requests that the Commission exercise its discretion and decline to open a MUR based on its prompt refunds after notification and its steps to prevent recurrence.<sup>24</sup> As noted above, it is questionable whether the refunds were prompt given that they were not completed until three months after RAD sent the RFAI to the Committee and 335 days after Kinzinger withdrew from the primary election. [REDACTED]

[REDACTED] Therefore, we recommend that the Commission open a Matter Under Review and find reason to believe that Country Over Party PAC (f/k/a Kinzinger for Congress) and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3).<sup>26</sup>

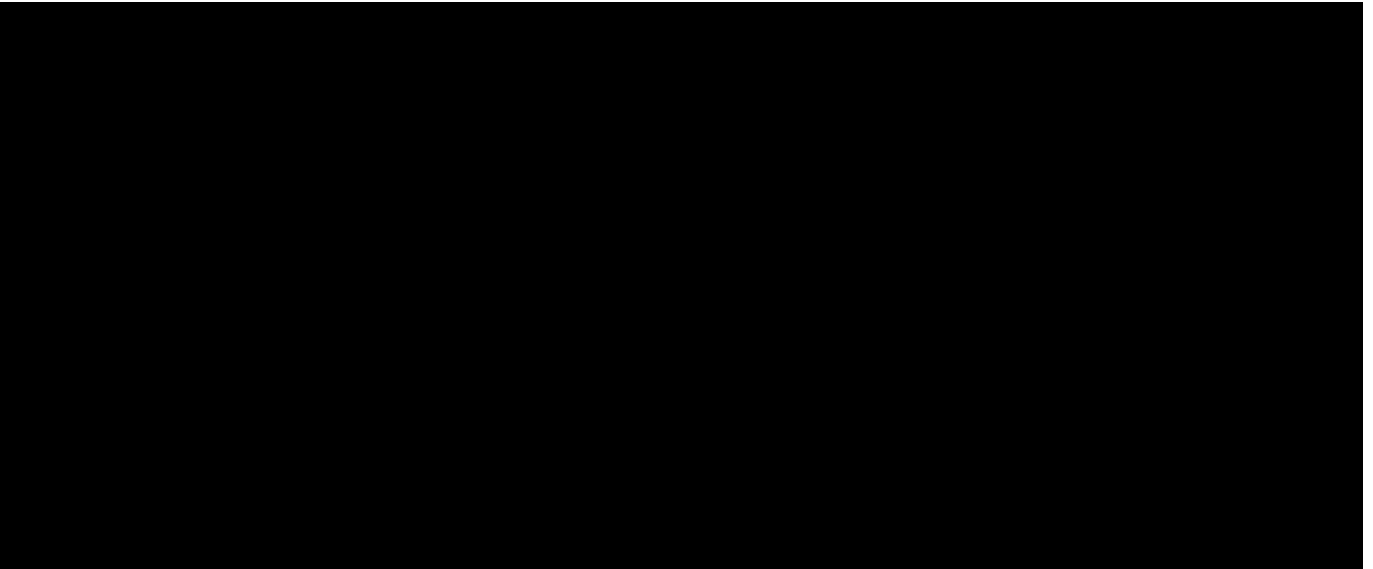
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<sup>23</sup> *Id.* § 110.1(k)(3)(ii)(B)(I).

<sup>24</sup> Resp. at 1-2. The Committee compares this matter to MUR 6811 (Marjorie 2014) in which OGC "recommend[ed] dismissal when the respondent had already remedied issue with general-election contributions." *Id.* at 1. That matter, however, did not involve the clear failure to timely refund or redesignate general election contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e) but rather involved allegations that Marjorie 2014 violated Section 102.9(e)(2) by spending general election funds on consultants and other vendors for the primary election and failing to maintain more cash-on-hand than the sum of general election contributions received less the sum of general election disbursements made, and the Commission found that the committee's advance payments to the vendors may have eliminated any deficit under Section 102.9(e)(2). Factual and Legal Analysis at 5, MUR 6811 (Marjorie 2014).

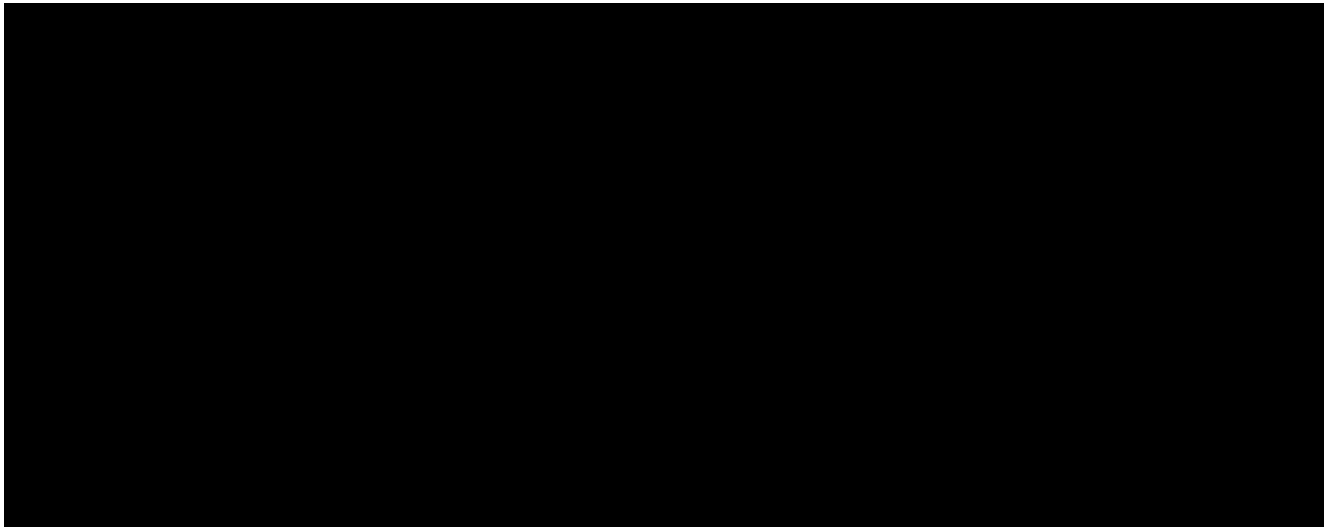
<sup>26</sup> See Certification ¶ 2 (June 7, 2023), MUR 8143 (Dr. Manny for US Senate) (finding reason to believe the committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e) after committee failed to timely refund general election contributions after candidate lost the primary).

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9 **V. RECOMMENDATIONS**

- 10 1. Open a Matter Under Review;
- 11 2. Find reason to believe that Country Over Party PAC (f/k/a Kinzinger for  
12 Congress) and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C.  
13 § 30116(f) and 11 C.F.R. § 102.9(e)(3) by failing to timely remedy general  
14 election contributions;
- 15 3. Approve the attached Factual and Legal Analysis;
- 16 4. Enter into conciliation with Country Over Party PAC (f/k/a Kinzinger for  
17 Congress) and Paul Kilgore in his official capacity as treasurer prior to a finding  
18 of probable cause to believe;
- 19 5. Approve the attached conciliation agreement; and

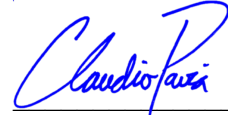


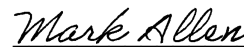
6. Approve the appropriate letter.


Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Associate General Counsel  
for Enforcement

Date: January 12, 2024

  
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Claudio J. Pavia  
Deputy Associate General Counsel  
for Enforcement

  
\_\_\_\_\_  
Mark Allen  
Assistant General Counsel

  
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Constantine Souprios  
Attorney

Attachments:

1. Factual and Legal Analysis





**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Country Over Party PAC (f/k/a Kinzinger for Congress) MUR\_\_\_\_  
and Paul Kilgore in his official capacity as treasurer

**I. INTRODUCTION**

The Reports Analysis Division (“RAD”) referred Country Over Party PAC and Paul Kilgore in his official capacity as treasurer (the “Committee”), formerly known as Kinzinger for Congress and previously the principal campaign committee of 2022 congressional candidate Adam Kinzinger, to the Office of General Counsel (“OGC”) for failure to refund or redesignate \$133,450 in general election contributions within 60 days of Kinzinger’s withdrawal from the 2022 primary election, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

The Committee does not dispute that it failed to timely refund or redesignate the contributions at issue, but argues that the Commission should not pursue this matter because it “promptly” refunded the contributions after receiving a Request for Additional Information (“RFAI”) from RAD.<sup>1</sup> In fact, the Committee refunded nearly all of the contributions between 54 and 69 days after it received the RFAI and between 298 and 313 days after the Committee received notice of Kinzinger’s withdrawal from the 2022 primary election.<sup>2</sup> The Committee explains that it failed to timely refund or redesignate the contributions due to a software issue.<sup>3</sup>

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<sup>3</sup> Resp. at 1.

For the reasons discussed below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e)(3).

## II. FACTUAL BACKGROUND

During the 2022 election cycle, the Committee was known as Kinzinger for Congress and was the principal campaign committee of Adam Kinzinger, a congressional candidate seeking reelection in Illinois's 16th Congressional District.<sup>4</sup> On October 29, 2021, ahead of the primary election, Kinzinger announced his retirement from Congress.<sup>5</sup> On February 21, 2023, the Committee filed an Amended Statement of Organization changing its name to Country Over Party PAC and changing its committee type to a nonqualified PAC.<sup>6</sup> Paul Kilgore was the treasurer during the entire period.

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<sup>6</sup> Country Over Party PAC, Amended Statement of Organization at 1 (Feb. 21, 2023).

<sup>7</sup> Referral at 1-2.

<sup>8</sup> *Id.* at 2-3.

Committee take corrective action.<sup>9</sup> On the Committee’s 2022 April and October Quarterly Reports, filed on April 14, 2022 and October 12, 2022, respectively, it disclosed refunds of all the general election contributions at issue.<sup>10</sup> Accordingly, the contributions were refunded between 84 and 335 days after Kinzinger withdrew from the primary election.

The Committee does not deny that it failed to timely refund or redesignate the contributions at issue.<sup>11</sup> However, the Committee requests that the Commission not pursue this matter because the contributions, which were received via a joint fundraising committee, “did not originally get refunded due to a software issue that was unknown at the time” and discovered after RAD sent the RFAI, at which point the Committee “promptly remedied all general-election contributions.”<sup>12</sup> The Committee believes its “prompt” action to refund outstanding amounts, coupled with its “steps to prevent any recurrences,” indicates that “[n]o interest is served by dedicating additional resources to an issue that has already been resolved by the Committee itself.”<sup>13</sup> As noted above, one refund (\$2,900) was made on January 21, 2022, five months before the June 30, 2022 RFAI, and the remainder (\$130,550) were not completed until three months after the RFAI.

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<sup>9</sup> Kinzinger for Congress, Request for Additional Info. (“RFAI”) at 1 (June 30, 2022).

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<sup>11</sup> Resp. at 1. Although the Committee acknowledges that it failed to timely redesignate or refund the \$133,450 in general election contributions that are the subject of the Referral, it points out that it did timely refund 84 separate contributions totaling \$219,050. *Id.*

<sup>12</sup> *Id.* The Committee states that because both the Committee and the joint fundraising committee were housed in the same database, the contributions given originally to the joint fundraising committee and then allocated to the Committee for the 2022 general election were not included in the software report that the Committee compiled when it went to issue post-retirement refunds, *see id.*, but the Committee does not explain how the software failed.

<sup>13</sup> *Id.*

### III. LEGAL ANALYSIS

During the 2022 election cycle, an authorized committee could not accept more than \$2,900 per election from individuals and more than \$5,000 per election from a multicandidate political committee.<sup>14</sup> A primary election and a general election are each considered a separate “election” under the Act, and the contribution limits are applied separately with respect to each election.<sup>15</sup> Candidates and political committees are prohibited from knowingly accepting excessive contributions.<sup>16</sup>

The Commission’s regulations permit a candidate’s committee to receive contributions for the general election prior to the primary election.<sup>17</sup> However, the committee must use an acceptable accounting method to distinguish between primary and general election contributions.<sup>18</sup> The committee’s records must demonstrate that prior to the primary election, the committee’s recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made.<sup>19</sup>

Furthermore, if the candidate ultimately does not become a candidate for the general election, the committee must refund, redesignate, or reattribute any general election contributions

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<sup>14</sup> 52 U.S.C. §§ 30116(a)(1)(A), 30116(a)(2)(A), (f); 11 C.F.R. §§ 110.1(b)(1), 110.2(b)(1); *see also* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021); 11 C.F.R. § 100.5(f)(1) (providing that an authorized committee means the principal campaign committee or any other political committee authorized by a candidate).

<sup>15</sup> 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

<sup>16</sup> 52 U.S.C. § 30116(f).

<sup>17</sup> 11 C.F.R. § 102.9(e)(1).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* § 102.9(e)(2).

MUR \_\_\_\_ (Country Over Party PAC)

Factual and Legal Analysis

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1 in accordance with applicable Commission regulations.<sup>20</sup> The committee must do so within 60  
 2 days of the date that the committee has actual notice of the need to redesignate, reattribute, or  
 3 refund the contributions.<sup>21</sup> A committee cannot redesignate general election funds for the  
 4 primary election if doing so would cause the contributor to exceed the maximum allowable  
 5 contribution for that election.<sup>22</sup> Likewise, reattribution of a general election contribution may  
 6 only occur to the extent that such attribution does not exceed the contributor's contribution  
 7 limits.<sup>23</sup>

8 As set forth in the Referral, the Committee failed to remedy 2022 general election  
 9 contributions totaling \$133,450 within the 60-day timeframe. The Committee does not deny the  
 10 violations but requests that the Commission exercise its discretion and not pursue this matter  
 11 based on its prompt refunds after notification and its steps to prevent recurrence.<sup>24</sup> As noted  
 12 above, it is questionable whether the refunds were prompt given that they were not completed

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<sup>20</sup> *Id.* § 102.9(e)(3).

<sup>21</sup> Factual and Legal Analysis at 6, MUR 7007 (Kyle McCarter for Congress Committee, *et al.*); *see* Advisory Opinion 2008-04 at 1 (Dodd); Advisory Opinion 1992-15 at 2 (Russo); *see also* 11 C.F.R. §§ 110.1(b)(3)(i), (b)(5); 110.2(b)(3)(i), (b)(5); 103.3(b)(3).

<sup>22</sup> 11 C.F.R. §§ 110.1(b)(5)(iii), 110.2(b)(5)(iii). Furthermore, amounts redesignated may not exceed the net debts outstanding from the primary. *Id.* §§ 110.1(b)(5)(iii), 110.2(b)(5)(iii).

<sup>23</sup> *Id.* § 110.1(k)(3)(ii)(B)(I).

<sup>24</sup> Resp. at 1-2. The Committee compares this matter to MUR 6811 (Marjorie 2014) in which OGC “recommend[ed] dismissal when the respondent had already remedied issue with general-election contributions.” *Id.* at 1. That matter, however, did not involve the clear failure to timely refund or redesignate general election contributions in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e) but rather involved allegations that Marjorie 2014 violated Section 102.9(e)(2) by spending general election funds on consultants and other vendors for the primary election and failing to maintain more cash-on-hand than the sum of general election contributions received less the sum of general election disbursements made, and the Commission found that the committee’s advance payments to the vendors may have eliminated any deficit under Section 102.9(e)(2). Factual and Legal Analysis at 5, MUR 6811 (Marjorie 2014).

MUR \_\_\_\_ (Country Over Party PAC)  
Factual and Legal Analysis  
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- 1 until three months after RAD sent the RFAI to the Committee and 335 days after Kinzinger
- 2 withdrew from the primary election.

- 3 Therefore, the Commission finds reason to believe that Country Over Party PAC (f/k/a
- 4 Kinzinger for Congress) and Paul Kilgore in his official capacity as treasurer violated 52 U.S.C.
- 5 § 30116(f) and 11 C.F.R. § 102.9(e)(3).<sup>25</sup>

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<sup>25</sup> See Certification ¶ 2 (June 7, 2023), MUR 8143 (Dr. Manny for US Senate) (finding reason to believe the committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e) after committee failed to timely refund general election contributions after candidate lost the primary).