



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

February 14, 2024

**VIA ELECTRONIC MAIL**

[msanderson@capdale.com](mailto:msanderson@capdale.com)

Matthew T. Sanderson, Esq.  
Caplin & Drysdale  
One Thomas Circle NW  
Suite 1100  
Washington, DC 20005

RE: MUR 8212  
Country Over Party PAC (f/k/a  
Kinzinger for Congress) and Paul  
Kilgore in his official capacity as  
treasurer

Dear Mr. Sanderson:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting your clients may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On February 6, 2024, the Commission found 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) by failing to timely remedy general election contributions. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. 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 you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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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 you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether the Commission should find probable cause to believe that you violated the law. [REDACTED]

[REDACTED]

If you are interested in engaging in pre-probable cause conciliation, please contact Constatine Souplos, the attorney assigned to this matter, at [CSouplos@fec.gov](mailto:CSouplos@fec.gov) or (202) 694-1414, 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 sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are 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/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

We look forward to your response.

On behalf of the Commission,



Sean J. Cooksey  
Chairman

Enclosures  
Factual and Legal Analysis  
[REDACTED]

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Country Over Party PAC (f/k/a Kinzinger for Congress) MUR 8212  
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 (“RAI”) from RAD.<sup>1</sup> In fact, the Committee refunded nearly all of the contributions between 54 and 69 days after it received the RAI 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>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 RAI and one contribution was refunded 91 days after the RAI and 335 days after the Committee had notice of Kinzinger’s withdrawal from the 2022 primary election.

<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.

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

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<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 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.

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

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

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

<sup>10</sup> Kinzinger for Congress, 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.*

<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.*

### 1     **III.     LEGAL ANALYSIS**

2             During the 2022 election cycle, an authorized committee could not accept more than  
 3     \$2,900 per election from individuals and more than \$5,000 per election from a multicandidate  
 4     political committee.<sup>14</sup> A primary election and a general election are each considered a separate  
 5     “election” under the Act, and the contribution limits are applied separately with respect to each  
 6     election.<sup>15</sup> Candidates and political committees are prohibited from knowingly accepting  
 7     excessive contributions.<sup>16</sup>

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

14            Furthermore, if the candidate ultimately does not become a candidate for the general  
 15     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).

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 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 not pursue this matter 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

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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).

- 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).