

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL 22L-21

DATE REFERRED: Oct. 20, 2022

DATE OF NOTIFICATION: Oct. 21, 2022

DATE OF LAST RESPONSE: Apr. 13, 2023

DATE ACTIVATED: Apr. 17, 2023

ELECTION CYCLE: 2020

EXPIRATION OF SOL: Nov. 12, 2024 –
Jan. 31, 2026

SOURCE: Internally Generated

RESPONDENT: McSally PAC and Paul Kilgore in his official
capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30116(f)

52 U.S.C. § 30118(a)

11 C.F.R. § 103.3(b)

11 C.F.R. § 110.9

11 C.F.R. § 114.2(d)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division (“RAD”) referred McSally PAC and Paul Kilgore in his official capacity as treasurer (the “Committee”), formerly the principal campaign committee of 2020 Senate candidate Martha McSally, to the Office of General Counsel (“OGC”) for failing to timely remedy excessive contributions from individuals and multicandidate political action committees (“PACs”) totaling \$232,708.88 and apparent prohibited contributions from possible corporations, limited liability companies (“LLCs”) without reported attribution information, and unregistered organizations totaling \$13,232 for the 2020 primary and general elections, in

1 violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ At the time of
2 the Referral, based on a review of its disclosure reports, RAD determined that the Committee
3 untimely refunded \$162,939.51 in excessive contributions, leaving \$69,769.37 not remedied.²
4 RAD also determined that the Committee did not remedy any of the apparent prohibited
5 contributions totaling \$13,232.³ In sum, RAD determined that the Committee had not remedied
6 excessive and apparent prohibited contributions totaling \$83,001.37.⁴ As of the date of this
7 Report, the Committee has not disclosed any further remedies for the contributions at issue.

8 In its Response, the Committee does not dispute that it knowingly accepted excessive and
9 prohibited contributions but argues that the amounts stated in the Referral are wrong and \$19,534
10 is the correct amount for the remaining excessive and prohibited contributions that have not been
11 remedied, not \$83,001.37.⁵ Attached to the Response is a spreadsheet with treasurer’s notes for
12 many of the alleged excessive and prohibited contributions. However, neither the Response or
13 the treasurer’s notes explain how the Committee reached the amount of \$19,534.⁶ Regarding
14 excessive contributions, the treasurer’s notes purport refunds, redesignations, and reattributions
15 not contained in the Committee’s disclosure reports totaling \$44,792.63, indicating that these
16 contributions were untimely remedied and should be removed from the amount that has yet to be
17 remedied.⁷ The notes also reflect that contributions totaling \$8,580.67 were timely remedied,

¹ RAD Referral 22L-21 at 1 (McSally PAC) (Oct. 20, 2022) (“Referral”).


² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Resp. at 1 (Apr. 13, 2023).

⁶ *Id.*

⁷ *Id.* at 1, Attach. 1 (Excel spreadsheet containing treasurer’s notes regarding alleged unremedied


1 indicating that they should not count toward the amount in violation.⁸ Again, these purported
2 remedies are not contained in the Committee's disclosure reports. Finally, the treasurer's notes
3 also indicate that contributions totaling \$4,391.50 should not have been included in the Referral
4 because the contributions were made by individuals with the same or similar names or there was
5 an issue with the contributions listed in the Referral such as contributions being counted twice or
6 contributions listed in the Referral that the treasurer's notes state could not be found in the
7 disclosure reports.⁹

8 Regarding apparent prohibited contributions, the treasurer's notes indicate that \$8,432
9 were made with "Verified Permissible Funds."¹⁰ Specifically, the notes state that three of the
10 five contributions from apparent corporations were made with permissible funds; four of the five
11 contributions from LLCs were made with permissible funds; and all four of the contributions
12 from unregistered organizations were made with permissible funds.¹¹ However, the notes do not
13 provide attribution information for any of the contributions from apparent corporations or LLCs
14 that purportedly made contributions with permissible funds nor has the Committee reported any
15 such attribution information on its disclosure reports.¹²

16 After reviewing the treasurer's notes, RAD adjusted the total amount of excessive
17 contributions from \$232,708.88 to \$231,846.38 (a difference of \$862.50) and the unremedied
18 amount from \$69,769.37 to \$69,056.87 based on an assessment that four contributions assumed
19 to be made by individuals that had reached the individual limit were actually made by different

⁸ *Id.*

⁹ *Id.*

¹⁰ Resp. at 1, Attach. 1.

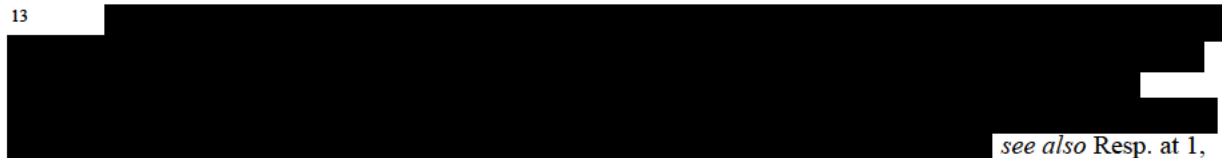
¹¹ *Id.*

¹² Referral, Attach. 1 at 423.

1 contributors with similar names.¹³ Accordingly, the combined total of unremedied excessive and
2 apparent prohibited contributions was reduced from \$83,001.37 to \$82,288.87.

3 For the reasons discussed below, we recommend that the Commission open a Matter
4 Under Review ("MUR") and find reason to believe that the Committee violated: (1) 52 U.S.C.
5 § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive contributions totaling
6 \$231,846.38; and (2) 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by knowingly accepting
7 prohibited corporate contributions totaling \$11,050. We note that these amounts do not credit
8 the Committee for the representations that it makes in its Response and attached treasurer's notes
9 regarding refunds, reattributions, and redesignations of excessive contributions because they
10 were not reported in the Committee's disclosure reports, and the Committee did not otherwise
11 provide sufficient documentation to substantiate the remedies. These amounts also do not credit
12 the representations regarding apparent corporations and LLCs because the treasurer's notes do
13 not provide attribution information, nor is this information reported on the Committee's
14 disclosure reports. However, these amounts do credit the Committee's representations regarding
15 the unregistered organizations because nothing about the contributions suggests they were
16 impermissible. Thus, we recommend that the Commission find no reason to believe that the

13

 *see also* Resp. at 1, Attach. 1 (showing treasurer's notes regarding contributions from W. Cassels, Betty Kyle Moore, Linda Levy, and Michael Hickey). The contributions from W. Cassels, Michael Hickey, and Linda Levy, totaling \$612.50, were removed from the total amount in violation as well as the amount of unremedied contributions. For the \$250 contribution from Betty Kyle Moore, the full amount was removed from the total amount in violation. Further, \$100 was removed from the amount of unremedied contributions and \$150 was removed from the amount of remedied contributions; the split between these two categories is due to the refunds the Committee made that partially affected this contribution. This results in a total reduction to the amount in violation of \$862.50, a total reduction of \$712.50 in the amount of unremedied contributions, and a total reduction of \$150 to the remedied amount of excessive contributions.

Committee violated 11 C.F.R. § 103.3(b) by knowingly accepting contributions totaling \$2,182 from unregistered organizations without ascertaining whether the underlying funds complied with the limitations and prohibitions of the Act. Finally, we recommend that the Commission authorize pre-probable cause conciliation and approve the attached conciliation agreement

[REDACTED]

II. FACTUAL BACKGROUND

McSally PAC is a non-connected, multicandidate committee registered with the Commission.¹⁴ During the 2020 election cycle, the period at issue in this matter, the Committee was known as McSally for Senate and was the principal campaign committee of Martha McSally, who ran for election to the U.S. Senate in Arizona and lost.¹⁵ The Committee's treasurer is Paul Kilgore.¹⁶

As detailed in the Referral, the Committee disclosed excessive contributions from individuals and multicandidate PACs totaling \$232,708.88 and apparent prohibited contributions, *i.e.*, contributions from apparent corporations, LLCs for which the Committee did not report attribution information, and unregistered organizations, totaling \$13,232 in four 2020 disclosure reports: July Quarterly, 12-Day Pre-Primary, October Quarterly, and 30-Day Post-General.¹⁷

¹⁴ McSally PAC, Amended Statement of Organization (Aug. 10, 2022), <https://docquery.fec.gov/pdf/665/202208109525237665/202208109525237665.pdf>.

¹⁵ McSally For Senate Inc, Amended Statement of Organization at 2 (Oct. 30, 2020), <https://docquery.fec.gov/pdf/702/202010309336671702/202010309336671702.pdf>; State of Arizona Official Canvas 2020 General Election (Nov. 24, 2020), https://apps.azsos.gov/election/2020/2020_general_state_canvass.pdf (showing McSally's defeat in 2020 general election).

¹⁶ McSally PAC, Amended Statement of Organization (Aug. 10, 2022), <https://docquery.fec.gov/pdf/665/202208109525237665/202208109525237665.pdf>.

¹⁷ Referral at 1-3.

First, the Committee's 2020 July Quarterly Report disclosed excessive contributions from 33 individuals totaling \$34,982.67, that were not refunded, reattributed, or redesignated within the permissible timeframe.¹⁸ On October 7, 2020, RAD sent the Committee a Request for Additional Information ("RFAI") referencing these excessive contributions.¹⁹ The RFAI requested that the Committee refund, reattribute, or redesignate the excessive contributions.²⁰ In its 2020 October Quarterly and 30-Day Post-General Reports, the Committee reported refunding \$5,552 of the excessive contributions cited in the RFAI.²¹ According to the Referral, the Committee made these refunds between 25 and 169 days outside of the permissible timeframe, and \$29,430.67 remains unremedied from the 2020 July Quarterly Report.²²

Second, the Committee's 2020 12-Day Pre-Primary Report disclosed excessive contributions from 11 individuals totaling \$13,599.50 that were not refunded, reattributed, or redesignated within the permissible timeframe.²³ On October 7, 2020, RAD sent the Committee an RFAI referencing these excessive contributions and asking the Committee to refund,

¹⁸ *Id.* at 2; *id.*, Attach. 1 (listing excessive contributions from 33 individuals that were not refunded, reattributed, or redesignated within the permissible timeframe).

¹⁹ McSally PAC, RFAI (Oct. 7, 2020) (referencing 2020 July Quarterly Report), <https://docquery.fec.gov/pdf/594/202010070300087594/202010070300087594.pdf>.

²⁰ *Id.* at 2. The Committee responded to this RFAI by stating that the contributions in question "were temporarily excessive," and "[a]ll of the contributions have been either refunded or redesignated." McSally for Senate Inc, FEC Form 99 (Nov. 12, 2020), <https://docquery.fec.gov/pdf/364/202011129336987364/202011129336987364.pdf> (responding to both the RFAI for the 2020 July Quarterly Report and the RFAI for the 2020 12-Day Pre-Primary Report). The Committee further stated that "[s]ome of the redesignations and refunds were shown on the July Quarterly, Pre-Primary, October Quarterly or Pre-General Reports," and "the others" would be disclosed "on the upcoming Post-General Reports." *Id.*

²¹ McSally For Senate Inc, Third Amended 2020 July Quarterly Report (May 14, 2021) [hereinafter Third Amended 2020 July Quarterly Report], <https://docquery.fec.gov/pdf/774/202105149446713774/202105149446713774.pdf>; McSally For Senate Inc, Second Amended 2020 30-Day Post-General Report (May 14, 2021) [hereinafter Second Amended 2020 30-Day Post General Report], <https://docquery.fec.gov/pdf/115/202105149446768115/202105149446768115.pdf>.

²² Referral at 2, Attach 1 (listing Committee's refunds made between 25 and 169 days outside of the permissible timeframe).

²³ *Id.* at 2.

1 reattribute, or redesignate the remaining excessive contributions.²⁴ The Committee later
 2 disclosed in its 2020 October Quarterly and 30-Day Post-General Reports late refunds totaling
 3 \$5,700 for excessive contributions noted in the RFAI.²⁵ According to the Referral, the
 4 Committee made these refunds between 16 and 74 days outside of the permissible timeframe,
 5 and \$7,899.50 remains unremedied from the 2020 12-Day Pre-Primary Report.²⁶

6 Third, the Committee's 2020 October Quarterly Report disclosed excessive contributions
 7 totaling \$21,025 from 23 individuals and two multicandidate PACs, as well as six apparent
 8 prohibited contributions totaling \$5,249 from one unregistered organization, three LLCs for
 9 which there was no attribution information, and two apparent corporations for a total of \$26,274,
 10 that were not refunded, reattributed, or redesignated within the permissible timeframes.²⁷ On
 11 April 7, 2021, RAD sent the Committee an RFAI referencing the excessive and apparent
 12 prohibited contributions, and asking the Committee to refund, reattribute, or redesignate these
 13 contributions.²⁸ In its 2020 30-Day Post-General and 2021 July Quarterly Reports, the

²⁴ McSally PAC, RFAI (Oct. 7, 2020), <https://docquery.fec.gov/pdf/637/202010070300087637/202010070300087637.pdf>; *see supra* note 20 (summarizing the Committee's response to this RFAI, which stated that the contributions "were temporarily excessive," were refunded or redesignated, and some of the redesignations and refunds were already reported and others would be disclosed later).

²⁵ Third Amended 2020 July Quarterly Report; Second Amended 30-Day Post-General Report.

²⁶ Referral at 2, Attach. 1.

²⁷ *Id.* at 2, Attach. 1. The Committee did not report any attribution information for the LLC contributions, suggesting that they were from corporate LLCs rather than partnership LLCs. *See* 11 C.F.R. § 110.1(g) (addressing contributions by LLCs and providing that contributions from LLCs treated as a partnership shall be attributed to the partnership and to each partner in direct proportion of his or her share or by agreement of the partners and that contributions from LLCs with a single natural person member shall be attributed only to that single member).

²⁸ McSally PAC, RFAI (Apr. 7, 2021), <https://docquery.fec.gov/pdf/632/202104070300114632/202104070300114632.pdf>. The Committee responded to this RFAI by stating, *inter alia*, that it had refunded "all contributions from corporate entities"; "[a]ny contributions where the permissibility could not be verified have been refunded"; and the "contributions that were flagged as potentially excessive have all been resolved" McSally for Senate Inc, FEC Form 99 (May 12, 2021), <https://docquery.fec.gov/pdf/474/202105129446584474/202105129446584474.pdf> (responding to RFAs regarding the 2020 Amended October Quarterly Report, the 2020 30-Day Post-General Report, and the 2020 Year-End Report). The Committee stated that the refunds and reattributed contributions would be reported on the 2021 July Quarterly Report. *Id.*

Committee reported refunding \$6,272 of the excessive contributions cited in the RFAI.²⁹ These refunds were made between 50 and 150 days outside of the permissible timeframe.³⁰ According to the Referral, excessive contributions totaling \$14,753 and contributions from corporations, LLCs, and unregistered organizations totaling \$5,249 remain unremedied from the 2020 October Quarterly Report, for a total of \$20,002.³¹

Fourth, the Committee's 2020 30-Day Post-General Report disclosed excessive contributions totaling \$163,101.71 from 274 individuals, as well as eight apparent prohibited contributions totaling \$7,983 from three unregistered organizations, two LLCs for which no attribution information was provided, and three apparent corporations, for a total of \$171,084.71, that were not refunded, reattributed, or redesignated within the permissible timeframes.³² On April 7, 2021, RAD sent the Committee an RFAI regarding these contributions, asking the Committee to refund, reattribute, or redesignate them.³³ In its 2021 July Quarterly Report, the Committee reported making refunds totaling \$145,415.51 for some of the excessive contributions cited in the RFAI, but those refunds were untimely made between 85 and 158 days late.³⁴ According to the Referral, excessive contributions totaling \$17,686.20 and apparent

²⁹ Second Amended 30-Day Post-General Report; McSally For Senate Inc, Amended 2021 July Quarterly Report (Dec. 21, 2022) [hereinafter Amended 2021 July Quarterly Report], <https://docquery.fec.gov/pdf/982/202212219574193982/202212219574193982.pdf>.

³⁰ Referral at 3, Attach. 1.

³¹ *Id.* at 3.

³² *Id.*, Attach. 1.

³³ McSally PAC, RFAI (Apr. 7, 2021), <https://docquery.fec.gov/pdf/661/202104070300114661/202104070300114661.pdf>; see *supra* note 28 (summarizing the Committee's response to the RFAI, which stated that the Committee refunded all corporate contributions and "[a]ny contributions where the permissibility could not be verified have been refunded" and "resolved" the "potentially excessive" contributions).

³⁴ Amended 2021 July Quarterly Report.

prohibited contributions from corporations, LLCs, and unregistered organizations totaling \$7,983 remain unremedied from the 2020 30-Day Post-General Report, for a total of \$25,669.20.³⁵

After reviewing the treasurer's notes that accompanied the Committee's Response, which indicated that contributions totaling \$862.50 cited in the Referral were not from individuals who had already reached the limit but rather were made by different contributors with similar names, RAD adjusted the total amount of excessive contributions from \$232,708.88 to \$231,846.38 and the unremedied amount of excessive contributions from \$69,769.37 to \$69,056.87.³⁶

Below is a chart summarizing the contributions cited in the Referral, including the adjustment described above, as disclosed on the Committee's 2020 July Quarterly, 12-Day Pre-Primary, October Quarterly, and 30-Day Post-General Reports, and the status of the Committee's remediation of those contributions.

³⁵ Referral at 3.

³⁶

The contributions from W. Cassels, Michael Hickey, and Linda Levy, totaling \$612.50, were removed from the total amount in violation as well as the amount of unremedied contributions. For the \$250 contribution from Betty Kyle Moore, the full amount was removed from the total amount in violation. Further, \$100 was removed from the amount of unremedied contributions and \$150 was removed from the amount of remedied contributions; the split between these two categories is due to the refunds the Committee made that partially affected this contribution. This results in a total reduction to the amount in violation of \$862.50, a total reduction of \$712.50 in the amount of unremedied contributions, and a total reduction of \$150 to the remedied amount of excessive contributions.

2020 Primary & General Elections	Amount of Excessive Contributions	Amount of Contributions from LLCs, Corporations, and Unregistered Organizations	Untimely Remedied Amount	Unremedied Amount Remaining
2020 July Quarterly Report	\$34,982.67	\$0	\$5,552 (all excessives)	\$29,430.67
2020 12-Day Pre-Primary Report	\$13,599.50	\$0	\$5,700 (all excessives)	\$7,899.50
2020 October Quarterly Report	\$21,025	\$5,249	\$6,272 (all excessives)	\$20,002.00
2020 30-Day Post-General Report	\$163,101.71	\$7,983	\$145,415.51 (all excessives)	\$25,669.20
Total:	\$232,708.88 (revised to \$231,846.38)	\$13,232	\$162,939.51	\$83,001.37 (revised to \$82,288.87)

On July 5, 2022, RAD emailed the Committee's treasurer, noting that "[w]hile most of the excessive contributions were remedied outside of the permissible timeframe, the apparent prohibited contributions were not refunded" and attached a list of the contributions cited in the RFAIs.³⁷ Having received no response, on July 18, 2022, RAD sent a follow-up email to the Committee's treasurer, updating the list of excessive and apparent prohibited contributions and informing him that RAD was in the process of referring this matter.³⁸ On October 20, 2022, RAD referred this matter to OGC.³⁹

³⁷ Referral, Attach. 2.

³⁸ *Id.*

³⁹ *Id.* at 1.

1 In its Response to the Referral, the Committee does not dispute that it knowingly
 2 accepted excessive and prohibited contribution but contends that its “treasurer reviewed
 3 Attachment 1 of the Referral and concluded that the correct figure for the remaining excessive
 4 and prohibited contributions is \$19,534, not \$83,001.37.”⁴⁰ The Committee provides a
 5 spreadsheet containing the treasurer’s notes regarding its remedial efforts to address the alleged
 6 unremedied excessive and prohibited contributions, but none of the transactions are reflected on
 7 the Committee’s disclosure reports.⁴¹ Regarding the excessive contributions, the notes indicate
 8 that many of the contributions have been remedied, albeit untimely (\$44,792.63) and that some
 9 may not have been violations because they were timely remedied (\$8,580.67).⁴² In addition, the
 10 treasurer’s notes assert that contributions totaling \$4,391.50 were not excessive because they
 11 were made by individuals with the same or similar names or there was an issue with the
 12 contributions listed in the Referral such as contributions listed in the Referral not being found in
 13 the Committee’s disclosure reports or a contribution being counted twice.⁴³ Regarding the

⁴⁰ Resp. at 1. McSally for Senate Inc, FEC Form 99 (Nov. 12, 2020), <https://docquery.fec.gov/pdf/364/202011129336987364/202011129336987364.pdf> (responding to both the RFAI for the 2020 July Quarterly Report and the RFAI for the 2020 12-Day Pre-Primary Report); McSally for Senate Inc, FEC Form 99, (May 12, 2021), <https://docquery.fec.gov/pdf/474/202105129446584474/202105129446584474.pdf> (responding to RFAs regarding the 2020 Amended October Quarterly Report, the 2020 30-Day Post-General Report, and the 2020 Year-End Report).

⁴¹ The treasurer’s notes assert that the Committee plans to refund excessive contributions totaling \$17,456 and prohibited contributions totaling \$1,100, Resp. at 1, Attach. 1, but has yet to report any of these transactions on its disclosure reports. These figures are not counted in the amounts listed in this paragraph regarding purported remedies.

⁴² *Id.* at 1, Attach. 1.

⁴³ This total is comprised of the contributions totaling \$862.50 from W. Cassels, Betty Kyle Moore, Michael Hickey, and Linda Levy that RAD removed from the violation amount, as well as contributions totaling \$729 from Marvin N. Tabb, and a contribution totaling \$2,800 from James Rill which remain in the violation amount. As for the contributions from Tabb and Rill, the explanations provided in the treasurer’s notes are not confirmed by our review of the Committee’s disclosure reports. Regarding the Tabb contributions, the treasurer’s notes state that the treasurer “was unable to find” Tabb’s contributions “anywhere in reports.” Resp., Attach. 1. However, all eight of Tabb’s contributions were reported on the Committee’s disclosure reports. *FEC Receipts: Filtered Results*, FEC.gov (last visited Feb. 13, 2024), https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00666040&contributor_name=tabb%2C+marvin&two_year_transaction_period=2020 (listing all contributions made by Marvin Tabb and Marvin N. Tabb to the Committee during the 2020 election cycle, including those listed

1 apparent prohibited contributions, the notes state that most of the contributions (\$8,432) were
 2 made with “Verified Permissible Funds.”⁴⁴ These numbers, however, do not support the
 3 Committee’s contention that the figure for the remaining excessive and prohibited contributions
 4 should decrease by \$63,467.37 from \$83,001.37 to \$19,534. When added together, the amount
 5 of contributions that the Committee asserts were remedied or made with permissible funds
 6 equals \$66,196.80. The treasurer’s notes are described in more detail below.

7 First, regarding the excessive contributions, the notes describe purported refunds,
 8 reattributions, and redesignations, both timely and untimely, for 54 contributions totaling
 9 \$53,373.30. Not all of the remedies have dates. Our review of these contributions indicates that
 10 12 contributions totaling \$8,580.67 may have been remedied within the permissible timeframe,
 11 indicating that these contributions should not be included within the amount of violation;
 12 however, the Committee did not disclose these purported refunds. The treasurer’s notes
 13 regarding excessive contributions totaling \$44,792.63 either lacked a date for the purported
 14 remedy or were untimely remedied, indicating that these contributions were apparent violations
 15 but should not be included in the amount that has yet to be remedied. Although the treasurer’s
 16 notes provide information about these remedies, none of these transactions appear on the
 17 Committee’s disclosure reports. Further, aside from the statements in the treasurer’s notes that

in the treasurer’s notes: \$100 on May 17, 2020; \$250, \$250, \$9, \$8, \$7, and \$5 on June 29, 2020; and \$100 on June 30, 2020). Regarding the Rill contributions, the treasurer’s notes assert that two contributions from James Rill, each for \$2,800 and dated June 14, 2020, and June 21, 2020, were actually only one contribution of \$2,800. Resp., Attach. 1. Again, the Committee’s disclosure reports do not confirm this assertion. The Committee disclosed both contributions on its disclosure reports. *FEC Receipts: Filtered Results*, FEC.gov (last visited Feb. 13, 2024), https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00666040&contributor_name=rill%2C+james&two_year_transaction_period=2020 (listing all contributions made by James Rill to the Committee during the 2020 election cycle, including two contributions for \$2,800 made on June 14, 2020, and June 21, 2020).

⁴⁴ Resp. at 1, Attach 1.

1 the remedies were made, the Committee has not provided any documentation to substantiate
2 these transactions.

3 The notes also point to the four instances where the alleged excessive contributions
4 totaling \$862.50 were not actually excessive because the names of four contributors were
5 mistaken for similar names of other contributors.⁴⁵ As explained above, RAD removed these
6 contributions from the amount in violation. Moreover, the notes list “many contributions”
7 totaling \$729 from Marvin Tabb that the treasurer was “unable to find anywhere in reports” and
8 two contributions of \$2,800 from James Rill that the treasurer states were actually only one
9 contribution.⁴⁶ Regarding the Tabb contributions, these receipts are plainly reported on the
10 Committee’s disclosure reports and easily found, and regarding the Rill contributions, again, the
11 Committee did not make these corrections on its disclosure reports to reflect that it was a single
12 contribution.⁴⁷

13 Next, regarding the apparent prohibited contributions, the Committee’s spreadsheet
14 claims that “Verified Permissible Funds” were used in the apparent prohibited contributions
15 totaling \$1,750 from possible corporations (Flying M Ranch, \$1,000; G. G. Industries, \$250;
16 Group, The Car, \$500), but the Committee did not amend its reports to report attribution
17 information for those contributions.⁴⁸ In similar fashion, the Committee’s spreadsheet asserts
18 that “Verified Permissible Funds” were used in the apparent prohibited contributions from LLCs
19 totaling \$4,500 (Albor Restaurant Group, LLC, \$500; Duit Family, LLC, \$2,000; Fred Burns

⁴⁵ See *id.* (identifying contributions from \$500 from W. Cassels, \$250 from Betty Kyle Moore, \$12.50 from Linda Levy, and \$100 from Michael Hickey).

⁴⁶ See *supra* note 43; Resp. at 1, Attach. 1.

⁴⁷ See *supra* note 43 (explaining the Tabb and Rill contributions in detail).

⁴⁸ Resp., Attach. 1.

Builders, LLC, \$1,000; Optilab, LLC, \$1,000), but the Committee did not amend its reports to show the LLC attribution information which would presumably be necessary if the funds were permissible.⁴⁹ Similarly, the spreadsheet claims that “Verified Permissible Funds” were used in contributions from unregistered organizations Lincoln County Republican Party (\$999), Otow Central Republican Club (\$500), Republican Party Of Harrison County (\$333), and The Committee To Elect Kathleen Kositzky Crank (\$350).⁵⁰ Further, the spreadsheet states that the Committee was unable to verify that permissible funds were used in apparent prohibited contributions totaling \$2,000 from two possible corporations (JG Kennedy MD Frcs (Orth) PC, \$1,000; West Coast Wash, \$1,000).⁵¹ The total amount of contributions identified in the spreadsheet as being made with verified permissible funds equals \$6,250 (\$1,750 + \$4,500).

Finally, the Committee points broadly to the spreadsheet and asserts that the remaining unremedied contributions it claims total \$19,534 “are primarily the result of duplicate records created by misspelled names in online donations,” suggesting that they were not, in fact, excessive, but the Response does not provide any specific information regarding this point.⁵²

The Committee asserts that it seeks to terminate, has “a current cash-on-hand of \$317.08,” “no prospect of raising additional funds,” and offers to pay its cash-on-hand as an administrative fine to resolve this matter.⁵³

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ The treasurer’s notes place the contribution from JG Kennedy MD Frcs (Orth) PC in the “To Refund” column but appear to misstate the amount of the contribution. Resp. at 1, Attach. 1. The Referral states that the amount of the contribution was \$1,000, but the Committee’s spreadsheet indicates that the “To Refund” amount is \$100 with no explanation for the remaining \$900. *Id.*

⁵² Resp. at 1.

⁵³ *Id.*

1 **III. LEGAL ANALYSIS**

2 During the 2020 election cycle, an authorized committee could not accept more than
 3 \$2,800 per election from individuals⁵⁴ and could not accept more than \$5,000 per election from a
 4 nonconnected political committee.⁵⁵ Contributions which either exceed the contribution limit on
 5 their face or in the aggregate may be deposited or returned to the contributor.⁵⁶ If the excessive
 6 contribution is deposited, the treasurer may request redesignation or reattribution of the
 7 contribution.⁵⁷ If a redesignation or reattribution is not obtained, the treasurer must refund the
 8 contribution to the contributor within 60 days of receipt.⁵⁸

9 The Act prohibits corporations from making contributions to federal candidates, and
 10 likewise bars candidates, political committees (other than independent expenditure-only political
 11 committees and committees with hybrid accounts), and other persons from knowingly accepting
 12 or receiving corporate contributions.⁵⁹ A contribution by a partnership shall be attributed to the
 13 partnership and to each partner in direct proportion to his or her share of the partnership profits,
 14 according to instructions which shall be provided by the partnership to the political committee or
 15 candidate or by agreement of the partnership, as long as only the profits of the partners to whom
 16 the contribution is attributed are reduced (or losses increased), and these partners' profits are
 17 reduced (or losses increased) in proportion to the contribution attributed to each of them.⁶⁰

⁵⁴ 52 U.S.C. 30116(a)(1)(A),(a)(1)(C), (f); 11 C.F.R. §§ 110.9, 110.1(a)-(b); *see* 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019) (providing notice of adjustment to contribution limits).

⁵⁵ 52 U.S.C. § 30116(a)(1)(C), (f).

⁵⁶ 11 C.F.R. § 103.3(b)(3).

⁵⁷ *Id.*

⁵⁸ *Id.*

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

⁶⁰ 11 C.F.R. § 110.1(g)(3).

Under Commission regulations, an LLC that elects to be treated as a corporation by the Internal Revenue Service shall be considered a corporation pursuant to 11 C.F.R. § 110.1.⁶¹ If an LLC elects to be treated as a partnership by the Internal Revenue Service, or does not elect treatment as either a partnership or a corporation, a contribution from the LLC shall be considered a contribution from a partnership.⁶² Contributions from an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service shall be attributed only to that single member.⁶³

Contributions that present genuine questions as to whether they were made by a corporation may be, within ten days of receipt, either deposited into a campaign depository or returned to the contributor.⁶⁴ If any such contribution is deposited, the treasurer must use best efforts to determine the legality of the contribution.⁶⁵ And if within 30 days of receipt of the contribution the treasurer cannot determine whether the contribution is legal, the treasurer must refund the contribution.⁶⁶

The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.⁶⁷ These reports must include, *inter alia*, the total amount of receipts and disbursements, including the appropriate itemizations, where

⁶¹ *Id.* § 110.1(g).

⁶² *Id.* § 110.1(g)(2); *see also* Factual & Legal Analysis (“F&LA”) at 15-16, MUR 8092 (Provenance) (finding reason to believe that an LLC that elected to be treated as a partnership for purposes of contribution limits made excessive contributions).

⁶³ 11 C.F.R. § 110.1(g)(4).

⁶⁴ *Id.* § 103.3(b)(1).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ F&LA at 6, MUR 8061 (Republican Party of Minnesota — Federal) (citing 52 U.S.C. § 30104(a)(1) and 11 C.F.R. § 104.1(a) and finding reason to believe committee failed to timely and accurately report receipts and disbursement).

required.⁶⁸ In addition, the reports must disclose “rebates, refunds, and other offsets to operating expenditures.”⁶⁹

Unregistered organizations are broadly categorized as “[o]rganizations that are not political committees under the Act”⁷⁰ and as such “must demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution . . . the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution.”⁷¹ The treasurer of a political committee is responsible for ensuring that contributions received from unregistered organizations were made with permissible funds.⁷² If the treasurer cannot determine whether a contribution complies with the source prohibitions of the Act, the treasurer must refund the contribution to the contributor within 30 days of receiving the contribution.⁷³

With respect to the allegations that the Committee accepted excessive contributions and apparent prohibited corporate contributions, we recommend that the Commission open a MUR and find reason to believe that the Committee knowingly accepted excessive contributions totaling \$231,846.38 and prohibited corporate contributions totaling \$11,050. As explained

⁶⁸ *Id.* at 6 (citing 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b)).

⁶⁹ 52 U.S.C. § 30104(b)(2)(I); 11 C.F.R. § 104.3(b)(2)(v)(A).

⁷⁰ 11 C.F.R. § 102.5(b) (providing that any organization that makes contributions, expenditures, and exempted payments but that does not qualify as a political committee “must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission”).

⁷¹ *Id.*

⁷² *Id.* § 103.3(b) (“The treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 C.F.R. §§ 110.1 or 110.2.”); F&LA 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).

⁷³ 11 C.F.R. § 103.3(b)(1).

below, these amounts reflect the full amount of excessive contributions identified in the Referral (but as modified slightly by RAD to account for \$862.50 in contributions that the spreadsheet attached to the Response points out was made by contributors with the same or similar names and not by individuals that had already met the contribution limit). These amounts also reflect the full amount of the apparent corporate contributions, *i.e.*, contributions from apparent corporations and LLCs without attribution information, but do not include the contributions from unregistered organizations.

First, regarding the excessive contributions, the Referral states that the Committee received \$232,708.88 in excessive contributions from individuals and multicandidate PACs as reported on its 2020 July Quarterly, 12-Day Pre-Primary, October Quarterly, and 30-Day Post-General Reports and that \$162,939.51 was refunded between 16 and 169 days after the Committee received the contributions, well outside the 60-day timeframe, and that \$69,769.37 remains remedied.⁷⁴ After reviewing the treasurer's notes attached to the Response, RAD modified these amounts to account for contributions totaling \$862.50 that were made by different contributors with the same or similar names and therefore not excessive. Accordingly, the amounts changed such that the total amount of excessive contributions is \$231,846.38 and the amount that remains unremedied is \$69,056.87. The amount that the Committee refunded outside the permissible timeframe is \$162,789.51.

The Committee does not dispute that it accepted excessive contributions but claims, despite what its disclosure reports show, to have remedied or addressed \$213,174.88 in excessive contributions, leaving all but \$19,534 to be remedied.⁷⁵ The Committee's spreadsheet shows a

⁷⁴ Referral at 1-3.

⁷⁵ *Id.*

total of \$18,556 in excessive and prohibited contributions that it purportedly planned to refund, but the Committee has not reported any of these additional purported transactions in its disclosure reports or provided any other specific information.

We do not recommend that the Commission credit the Committee's contentions that (1) the contributions it purports were timely remedied should be removed from the amount in violation, and (2) the contributions it purports were untimely remedied should be removed from the amount of the contributions to be remedied because the Committee has not amended its disclosure reports to reflect any of the purported remedies listed in the treasurer's notes despite its duty to do so nor has the Committee provided sufficient documentation to substantiate any of these transactions.⁷⁶ The Commission adopted a similar approach in MUR 7973 (Burgess 4 Utah) where a committee stated in its response that it had made timely refunds for \$14,000 in excessive contributions.⁷⁷ The response listed the names of the contributors, the contribution amounts, the dates of the contributions, and the dates of the purported refunds.⁷⁸ No additional information was provided and the transactions were not reported on the Committee's disclosure reports.⁷⁹ The Commission approved a civil penalty calculation that treated these contributions as unrefunded excessive contributions, *i.e.*, it did not credit the committee for having made the contributions.⁸⁰ The First General Counsel's Report explained that OGC would change the civil penalty calculations if the Committee provided sufficient documentation and would ask the

⁷⁶ We note that disclosure reports are signed by the treasurer with the affirmation that the contents of the report have been examined by the treasurer and are, to the best of the treasurer's knowledge and belief, true, correct and complete. 52 U.S.C. § 30104(a)(1)(A), (i). Yet, the treasurer's notes attached to the Response are not signed by the treasurer and contain no such affirmation. Resp. at 1, Attach 1.

⁷⁷ See First Gen. Counsel's Rpt. at 7-8 & Certification ("Cert.") ¶ 4, MUR 7973 (Burgess 4 Utah).

⁷⁸ First Gen. Counsel's Rpt. at 7-8, MUR 7973 (Burgess 4 Utah).

⁷⁹ *Id.* at 7.

⁸⁰ See *id.* & Cert. ¶ 4, MUR 7973 (Burgess 4 Utah).

Committee to amend the appropriate reports to disclose the refunds.⁸¹ In sum, given that we cannot verify that these amounts were remedied, we do not recommend further reducing the amount in violation for excessive contributions or remedied excessive contributions amount at this time. Should the Committee provide additional documentation during pre-probable cause conciliation, allowing OGC to substantiate these purported timely and untimely remedied excessive contributions, we will factor that into our negotiations accordingly and ask the Committee to amend its disclosure reports.⁸²

Second, regarding the apparent prohibited contributions — not including contributions from unregistered organizations, which is analyzed further below — the Committee reported receiving \$3,750 from apparent corporations and \$7,300 from LLCs with no reported attribution information (suggesting they were corporations), which were disclosed in the Committee's 2020 July Quarterly, 12-Day Pre-Primary, October Quarterly, and 30-Day Post-General Reports.⁸³ The Committee does not dispute that it received prohibited corporate contributions totaling \$4,800 and that it failed to refund those contributions within 30 days.⁸⁴ However, as to the apparent corporations totaling \$3,750, the Committee asserts that three of those contributions, totaling \$1,750, were not prohibited, stating in the treasurer's notes that these contributions were

⁸¹ First Gen. Counsel's Rpt. at 7-8, MUR 7973 (Burgess 4 Utah).

⁸² See First Gen. Counsel's Rpt. at 7-8, MUR 7973 (Burgess 4 Utah) (recommending that the Commission not lower the amount in violation to account for purported refunds at the initial reason-to-believe stage, explaining that OGC would reduce the civil penalty during pre-probable cause conciliation if the committee provided documentation to substantiate the purported refunds, and noting that OGC would ask the committee to amend its disclosure reports to disclose the purported refunds) & Cert. ¶ 4 (Mar. 25, 2022), MUR 7973 (Burgess 4 for Utah) (approving conciliation agreement); see also Memorandum to Accept Pre-Probable Cause Conciliation Agreement at 1-2, n.3, MUR 7978 (Burgess 4 for Utah) (explaining that the committee provided documentation to substantiate timely refunds for \$11,200 in apparently excessive contributions which were removed from the amount in violation); Cert. ¶ 1 (July 28, 2022), MUR 7973 (Burgess 4 Utah) (approving negotiated conciliation agreement).

⁸³ Referral at 1.

⁸⁴ Resp. at 1. The \$4,800 total in prohibited corporate contributions is comprised of two corporate contributions totaling \$2,000 and one LLC contribution totaling \$2,800.

1 made with “Verified Permissible Funds.”⁸⁵ The Committee further asserts that \$4,500 of the
2 contributions totaling \$7,300 from LLCs were also made with “Verified Permissible Funds.”⁸⁶

3 The Committee has not amended its disclosure reports to reflect either that the funds
4 received for these contributions were permissible or to provide attribution information for any of
5 the relevant entities. For instance, if the contributions were from a partnership or an LLC that
6 elected to be treated as a partnership or does not elect treatment as either a partnership or a
7 corporation, attribution information would be required; corporations, *i.e.*, entities for which
8 attribution information is not required, are not permitted to make contributions to an authorized
9 committee.⁸⁷ Yet, the Committee has disclosed no attribution information to the Commission or
10 provided any attribution information in its treasurer’s notes.⁸⁸ Consistent with the analysis above
11 concerning the remedial information about excessive contributions that were not disclosed, we
12 recommend that the Commission not credit this information at this time.

13 Third, the Committee reported receiving contributions from unregistered organizations
14 totaling \$2,182 which did not have notations on the relevant reports indicating that they were
15 made with permissible funds.⁸⁹ However, we recommend that the Commission find no reason to
16 believe that a violation occurred. In MUR 7872 (South Dakota Republican Party), the
17 Commission found reason to believe that a state party committee violated 11 C.F.R. § 103.3(b)
18 where the committee received a total of \$23,827 in contributions from unregistered organizations

⁸⁵ Resp. at 1, Attach 1.

⁸⁶ *Id.*

⁸⁷ 52 U.S.C. § 30118; 11 C.F.R. § 110.1(e), (g)(2)-(3); *see also id.* § 110.1(g)(4) (providing that a contribution by an LLC with a single natural person member that does not elect to be treated as a corporation shall be attributed only to that single member).

⁸⁸ Resp., Attach. 1.

⁸⁹ Referral, Attach. 1 at 423.

1 that may have raised impermissible funds, and the committee did not have any records to show
 2 that the contributions at issue were made with permissible funds.⁹⁰ Here, however, the
 3 Committee provides notes from its treasurer which indicate that each of the four contributions
 4 were made with “Verified Permissible Funds.” Although the Committee has not provided any
 5 further details about the permissibility of the funds, there is nothing about the contributions to
 6 suggest that they were made with impermissible funds.⁹¹ The Committee’s reporting made no
 7 indications one way or the other about the permissibility of the funds and, when the suggestion
 8 of impermissible funds was raised in the Referral, the treasurer indicated through the notes that
 9 the funds were permissible. Without anything to suggest that the funds were impermissible, we
 10 see no reason to not accept the treasurer’s notes for these contributions.

11 Therefore, based on the available information, we recommend that the Commission find
 12 reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by
 13 knowingly accepting excessive contributions totaling \$231,846.38 of which \$162,789.51 was
 14 untimely refunded leaving \$69,056.87 in unremedied excessive contributions, and violated

⁹⁰ F&LA at 4-5, MUR 7872 (South Dakota Democratic Party).

⁹¹ One of the organizations, The Committee To Elect Kathleen Kositzky Crank, filed disclosure reports that indicate it possessed available funds within the amount limitations and source prohibitions of the Act to have made the contribution at issue. See 2018 Gubernatorial Post-General Report, The Committee To Elect Kathleen Kositzky Crank, Md. State Board of Elections (Nov. 19, 2018), <https://campaignfinance.maryland.gov/Public/ShowReview?memberID=5975744%20&memVersID=2%20&cTypeCode=01> (showing most recent disclosed contributions from four individuals totaling \$468.62). The other three entities either did not file disclosure reports (Republican Party of Harrison County and Otow Central Republican Club) or filed disclosure reports that showed no activity during the relevant time (Lincoln County Republican Party PAC). See Texas Ethics Comm’n Finance Rpt. of Republican Party of Harrison County, [https://jasper.prd.tecprd.ethicsefile.com/jasperserver-pro/flow.html?_flowId=viewReportFlow&standAlone=true&_flowId=viewReportFlow&ParentFolderUri/public/publicData&reportUnit=/public/publicData/datasource/CFS/By_Filer_Name&decorate=no&SuperName=republican%20party%20of%20harrison%20county&FilerType=ANY&FirstName=&CorrFlag=N&tec-pp=u=PUBLIC2&7CexpireTime=Fri%20Feb%2016%202024%2017:50:29%20GMT-0500%20\(Eastern%20Standard%20Time\)](https://jasper.prd.tecprd.ethicsefile.com/jasperserver-pro/flow.html?_flowId=viewReportFlow&standAlone=true&_flowId=viewReportFlow&ParentFolderUri/public/publicData&reportUnit=/public/publicData/datasource/CFS/By_Filer_Name&decorate=no&SuperName=republican%20party%20of%20harrison%20county&FilerType=ANY&FirstName=&CorrFlag=N&tec-pp=u=PUBLIC2&7CexpireTime=Fri%20Feb%2016%202024%2017:50:29%20GMT-0500%20(Eastern%20Standard%20Time)) (showing most recent report was filed in 2006); 4th Quarter Rpt., Lincoln County Republican Party PAC, Tenn. Online Campaign Finance (Jan. 27, 2021), https://apps.tn.gov/tncamp/search/pub/report_full.htm?reportId=94226 (showing \$0 for all balances). Regarding these three organizations, although the available information does not show that they could have made the contributions with permissible funds, there is also nothing to show that they could not have.

1 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by knowingly accepting corporate contributions
2 totaling \$11,050. We further recommend that the Commission find no reason to believe that the
3 Committee violated 11 C.F.R. § 103.3(b) by knowingly accepting contributions from
4 unregistered organizations without ascertaining whether the underlying funds complied with the
5 limitations and prohibitions of the Act.

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V. RECOMMENDATIONS

- 11 1. Open a Matter Under Review;
- 12 2. Find reason to believe that McSally PAC and Paul Kilgore in his official capacity
13 as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly
14 accepting excessive contributions;
- 15 3. Find reason to believe that McSally PAC and Paul Kilgore in his official capacity
16 as treasurer violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) by knowingly
17 accepting prohibited corporate contributions;


4. Find no reason to believe that McSally PAC and Paul Kilgore in his official capacity as treasurer violated 11 C.F.R. § 103.3(b) by knowingly accepting contributions from unregistered organizations without ascertaining whether the underlying funds complied with the limitations and prohibitions of the Act;
5. Approve the attached Factual and Legal Analysis;
6. Authorize pre-probable cause conciliation with McSally PAC and Paul Kilgore in his official capacity as treasurer;
7. Approve the attached proposed conciliation agreement; and
8. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

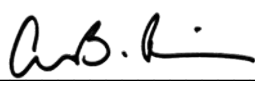
Charles Kitcher
Associate General Counsel for Enforcement

February 21, 2024

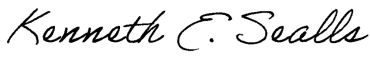
Date



Claudio J. Pavia
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