

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL’S REPORT**

4
5 RAD REFERRAL: 22L-25
6 DATE REFERRED: November 22, 2022
7 DATE OF NOTIFICATION: November 22, 2022
8 RESPONSE RECEIVED: December 6, 2022
9 DATE ACTIVATED: January 30, 2023

10
11 ELECTION CYCLE: 2020
12 EXPIRATION OF SOL: October 5, 2025

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14 **SOURCE:** Internally Generated

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16 **RESPONDENTS:** Dr. Manny for US Senate and Troy Brewer
17 in his official capacity as treasurer

18
19 **RELEVANT STATUTES**
20 **AND REGULATIONS:** 52 U.S.C. § 30116(f)
21 11 C.F.R. § 102.9(e)

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23 **INTERNAL REPORTS CHECKED:** Disclosure Reports
24 Reports Analysis Division Referral Materials

25
26 **AGENCIES CHECKED:** None

27
28 **I. INTRODUCTION**

29
30 The Reports Analysis Division (“RAD”) referred Dr. Manny for US Senate and Troy
31 Brewer in his official capacity as treasurer (the “Committee”) to the Office of General Counsel
32 (“OGC”) for failure to refund or redesignate 2020 general election contributions totaling
33 \$58,765.66 within the permissible timeframe after the candidate’s loss in the primary election, in
34 violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The
35 Committee admits that it has failed to “rectify” the general election contributions at issue in the
36 Referral.¹

37 We therefore recommend that the Commission open a Matter Under Review (“MUR”)
38 and find reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R.

¹ Resp. at 1 (Dec. 6, 2022).

1 § 102.9(e) by accepting and failing to remedy excessive contributions. Because the record
2 regarding the violations is complete, we recommend that the Commission enter into pre-probable
3 cause conciliation with the Committee.

4 **II. FACTUAL BACKGROUND**

5 The Committee is the principal campaign committee for Dr. Manny Sethi, a candidate in
6 the 2020 Tennessee Republican primary election for United States Senate.² The Committee's
7 treasurer is Troy Brewer.³ On August 6, 2020, Sethi lost the Tennessee primary election.⁴

8 According to the Referral, the Committee failed to refund or redesignate \$58,765.66 of
9 2020 general election contributions within the permissible timeframe.⁵ On May 16, 2021, RAD
10 sent a Request for Additional Information ("RFAI") to the Committee noting the Committee's
11 receipt of \$86,945.78 in 2020 general election contributions and requesting that the Committee
12 take corrective action.⁶ Subsequently, the Committee filed two Miscellaneous Electronic
13 Submissions (Form 99s) with the Commission indicating it had partially remedied the general
14 election contributions by refunding some of them.⁷ However, the Committee has failed to
15 completely remedy the violations in that it has still failed to refund \$58,765.66 in general
16 election contributions.⁸ Included in this total are eight contributions totaling \$22,400 for which
17 the Committee issued refund checks, but according to the Committee's August 2021 Form 99

² Dr. Manny for US Senate, Amended Statement of Organization (Aug. 3, 2021).

³ *Id.*

⁴ Referral at 1 (Nov. 22, 2022).

⁵ *Id.*

⁶ *Id.*; see also Dr. Manny for US Senate, RFAI at 3 (May 16, 2021),
<https://docquery.fec.gov/pdf/502/202105160300118502/202105160300118502.pdf>.

⁷ Referral at 3 (Nov. 22, 2022); see also Dr. Manny for US Senate, Form 99 (June 21, 2021),
<https://docquery.fec.gov/pdf/796/202106219449833796/202106219449833796.pdf>; Dr. Manny for US Senate, Form
99 (Aug. 23, 2021), <https://docquery.fec.gov/pdf/230/202108239466558230/202108239466558230.pdf>.

⁸ Referral at 2.

1 cited in the Referral, the refunds were subsequently voided because the checks were never
2 cashed.⁹ RAD advised the Committee to re-issue the uncashed 2020 general election
3 contribution refund checks or disgorge the funds to the U.S. Treasury.¹⁰ To date, the Committee
4 has not taken either corrective action.¹¹

5 In its response to the Referral, the Committee admits that it has failed to “rectify” the
6 general election contributions at issue.¹²

7 **III. LEGAL ANALYSIS**

8 During the 2020 election cycle, an authorized committee could not accept more than
9 \$2,800 per election from individuals and more than \$5,000 from a multicandidate political
10 committee.¹³ An authorized committee could not contribute more than \$2,000 to another
11 authorized committee.¹⁴ A primary election and a general election are each considered a
12 separate “election” under the Act, and the contribution limits are applied separately with respect
13 to each election.¹⁵ Candidates and political committees are prohibited from knowingly accepting
14 excessive contributions.¹⁶

15 The Commission’s regulations permit a candidate’s committee to receive contributions
16 for the general election prior to the primary election.¹⁷ However, the committee must use an
17 acceptable accounting method to distinguish between primary and general election

⁹ *Id.* at 3.

¹⁰ *Id.* at 3-4 (citing Dr. Manny for US Senate, Form 99 (Aug. 23, 2021),
<https://docquery.fec.gov/pdf/230/202108239466558230/202108239466558230.pdf>).

¹¹ *Id.*, Attach. 1.

¹² Resp. at 1.

¹³ 52 U.S.C. §§ 30116(a)(1)(A), (a)(2)(A), (f); 11 C.F.R. §§ 110.9, 110.1(a)-(b).

¹⁴ 52 U.S.C. § 30102(e)(3)(B).

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

¹⁶ 52 U.S.C. § 30116(f).

¹⁷ 11 C.F.R. § 102.9(e)(1).

1 contributions.¹⁸ The committee's records must demonstrate that prior to the primary election,
2 the committee's recorded cash on hand was at all times equal to or in excess of the sum of
3 general election contributions received less the sum of general election disbursements made.¹⁹

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

12 As set forth in the RAD Referral, the Committee failed to refund or redesignate 2020
13 general election contributions totaling \$58,765.66 within the permissible timeframe.²⁴ The
14 Committee admits to the violations in its Response. Therefore, we recommend that the
15 Commission open a MUR and find reason to believe that the Committee violated 52 U.S.C.

¹⁸ *Id.*

¹⁹ *Id.* § 102.9(e)(2).

²⁰ *Id.* § 102.9(e)(3).

²¹ *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) and (b)(5); 110.2(b)(3)(i) and (b)(5); 103.3(b)(3).

²² 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. 11 C.F.R. §§ 110.1(b)(5)(iii), 110.2(b)(5)(iii).

²³ *Id.* § 110.1(k)(3)(ii)(B)(I).

²⁴ Resp. at 1.

1 § 30116(f) and 11 C.F.R. § 102.9(e) by accepting and failing to remedy excessive
2 contributions.²⁵
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²⁵ See Conciliation Agreement ¶ V, MUR 7191 (Freedom for All Americans) (conciliating with the committee for violations of 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e) for failing to timely refund, reattribute, or redesignate general election contributions, which resulted in excessive contributions after Presidential candidate Rand Paul suspended his campaign and did not participate in the general election).

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3 **V. RECOMMENDATIONS**

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5 1. Open a Matter Under Review;

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7 2. Find reason to believe that Dr. Manny for US Senate and Troy Brewer in his
8 official capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R.

9 § 102.9(e);

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11 3. Approve the attached Factual and Legal Analysis;

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13 4. Enter into conciliation with Dr. Manny for US Senate and Troy Brewer in his
14 official capacity as treasurer prior to a finding of probable cause to believe;

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16 5. Approve the attached conciliation agreement; and

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6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel


Charles Kitcher
Associate General Counsel
for Enforcement

May 1, 2023


Date



Jin Lee
Deputy Associate General Counsel
for Enforcement



Mark Allen
Assistant General Counsel



Richard Weiss
Attorney

Attachments:

1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Dr. Manny for US Senate and Troy Brewer **MUR:** _____
 4 in his official capacity as treasurer

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 6 **I. INTRODUCTION**

7 This matter was generated by information ascertained by the Federal Election
 8 Commission in the normal course of carrying out its supervisory responsibilities.¹ The Reports
 9 Analysis Division (“RAD”) referred Dr. Manny for US Senate and Troy Brewer in his official
 10 capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for failure to
 11 refund or redesignate 2020 general election contributions totaling \$58,765.66 within the
 12 permissible timeframe after the candidate’s loss in the primary election, in violation of the
 13 Federal Election Campaign Act of 1971, as amended (the “Act”). The Committee admits that it
 14 has failed to “rectify” the general election contributions at issue in the Referral.²

15 As discussed below, the Commission finds reason to believe that the Committee violated
 16 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e) by accepting and failing to remedy excessive
 17 contributions.

18 **I. FACTUAL BACKGROUND**

19 The Committee is the principal campaign committee for Dr. Manny Sethi, a candidate in
 20 the 2020 Tennessee Republican primary election for United States Senate.³ The Committee’s
 21 treasurer is Troy Brewer.⁴ On August 6, 2020, Sethi lost the Tennessee primary election.⁵

1 ¹ See 52 U.S.C. § 30109(a)(2).

2 ² Resp. at 1 (Dec. 6, 2022).

3 ³ Dr. Manny for US Senate, Amended Statement of Organization (Aug. 3, 2021).

4 ⁴ *Id.*

5 ⁵ Referral at 1 (Nov. 22, 2022).

1 According to the Referral, the Committee failed to refund or redesignate \$58,765.66 of
2 2020 general election contributions within the permissible timeframe.⁶ On May 16, 2021, RAD
3 sent a Request for Additional Information (“RFAI”) to the Committee noting the Committee’s
4 receipt of \$86,945.78 in 2020 general election contributions and requesting that the Committee
5 take corrective action.⁷ Subsequently, the Committee filed two Miscellaneous Electronic
6 Submissions (Form 99s) with the Commission indicating it had partially remedied the general
7 election contributions by refunding some of them.⁸ However, the Committee has failed to
8 completely remedy the violations in that it has still failed to refund \$58,765.66 in general
9 election contributions.⁹ Included in this total are eight contributions totaling \$22,400 for which
10 the Committee issued refund checks, but according to the Committee’s August 2021 Form 99
11 cited in the Referral, the refunds were subsequently voided because the checks were never
12 cashed.¹⁰ RAD advised the Committee to re-issue the uncashed 2020 general election
13 contribution refund checks or disgorge the funds to the U.S. Treasury.¹¹ To date, the Committee
14 has not taken either corrective action.¹²

⁶ *Id.*

⁷ *Id.*; *see also* Dr. Manny for US Senate, RFAI at 3 (May 16, 2021), <https://docquery.fec.gov/pdf/502/202105160300118502/202105160300118502.pdf>.

⁸ Referral at 3 (Nov. 22, 2022); *see also* Dr. Manny for US Senate, Form 99 (June 21, 2021), <https://docquery.fec.gov/pdf/796/202106219449833796/202106219449833796.pdf>; Dr. Manny for US Senate, Form 99 (Aug. 23, 2021), <https://docquery.fec.gov/pdf/230/202108239466558230/202108239466558230.pdf>.

⁹ Referral at 2.

¹⁰ *Id.* at 3.

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 7 authorized committee.¹⁵ A primary election and a general election are each considered a
 8 separate “election” under the Act, and the contribution limits are applied separately with respect
 9 to each election.¹⁶ Candidates and political committees are prohibited from knowingly accepting
 10 excessive contributions.¹⁷

11 The Commission’s regulations permit a candidate’s committee to receive contributions
 12 for the general election prior to the primary election.¹⁸ However, the committee must use an
 13 acceptable accounting method to distinguish between primary and general election
 14 contributions.¹⁹ The committee’s records must demonstrate that prior to the primary election,
 15 the committee’s recorded cash on hand was at all times equal to or in excess of the sum of
 16 general election contributions received less the sum of general election disbursements made.²⁰

¹³ Resp. at 1.

¹⁴ 52 U.S.C. §§ 30116(a)(1)(A), (a)(2)(A), (f); 11 C.F.R. §§ 110.9, 110.1(a)-(b).

¹⁵ 52 U.S.C. § 30102(e)(3)(B).

¹⁶ 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

¹⁷ 52 U.S.C. § 30116(f).

¹⁸ 11 C.F.R. § 102.9(e)(1).

¹⁹ *Id.*

²⁰ *Id.* § 102.9(e)(2).

1 Furthermore, if the candidate ultimately does not become a candidate for the general
2 election, the committee must refund, redesignate, or reattribute any general election contributions
3 in accordance with applicable Commission regulations.²¹ The committee must do so within 60
4 days of the date that the committee has actual notice of the need to redesignate, reattribute, or
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10 general election contributions totaling \$58,765.66 within the permissible timeframe.²⁵ The
11 Committee admits to the violations in its Response. Therefore, the Commission finds reason to
12 believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e) by accepting
13 and failing to remedy excessive contributions.²⁶

²¹ *Id.* § 102.9(e)(3).

²² *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) and (b)(5); 110.2(b)(3)(i) and (b)(5); 103.3(b)(3).

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²⁵ Resp. at 1.

²⁶ *See* Conciliation Agreement ¶ V, MUR 7191 (Freedom for All Americans) (conciliating with the committee for violations of 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e) for failing to timely refund, reattribute, or redesignate general election contributions, which resulted in excessive contributions after Presidential candidate Rand Paul suspended his campaign and did not participate in the general election).