

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 630
DATE RECIEVED: Dec. 5, 2019
DATE ACTIVATED: July 11, 2022
[REDACTED]
ELECTION CYCLES: 2010 – 2020
EXPIRATION OF SOL: January 21, 2018 –
October 7, 2026¹

RAD REFERRAL: 20L-04
DATE OF REFERRAL: Feb. 27, 2020
SENT TO RESPONDENT: Mar. 5, 2020
RESPONSE RECEIVED: Apr. 28, 2020
DATE ACTIVATED: July 11, 2022
[REDACTED]
ELECTION CYCLE: 2020
EXPIRATION OF SOL: April 30, 2025²

AUDIT REFERRAL: 19-01R
DATE OF REFERRAL: June 1, 2021
SENT TO RESPONDENT: June 7, 2021
RESPONSE RECEIVED: June 22, 2021
DATE ACTIVATED: July 11, 2022
[REDACTED]
ELECTION CYCLES: 2012 – 2018
EXPIRATION OF SOL: August 30, 2024 –
March 2, 2027³

MUR 7677
DATE COMPLAINT FILED: Dec. 27, 2019
DATE OF NOTIFICATION: Jan. 7, 2020
DATE ACTIVATED: July 11, 2022
[REDACTED]
ELECTION CYCLES: 2010 – 2020
EXPIRATION OF SOL: April 15, 2016 –
October 15, 2026

¹ Steve Chabot for Congress has provided 722 days of tolling in connection with this matter.

² Steve Chabot for Congress has provided 360 days of tolling in connection with this matter.

³ Steve Chabot for Congress has provided 868 days of tolling in connection with this matter.

SOURCE:**RESPONDENTS:**

Steve Chabot for Congress and Natalie Baur as
Treasurer
James R. Schwartz II

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30102(c)
52 U.S.C. § 30103(a), (b)
52 U.S.C. § 30104(b)
52 U.S.C. § 30114(b)(1)
11 C.F.R. § 102.2(a)(1), (2)
11 C.F.R. § 102.9
11 C.F.R. § 104.3
11 C.F.R. § 104.14(d)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

They concern an eight-year embezzlement scheme by James R. Schwartz II, the former campaign manager of Steve Chabot for Congress and Natalie Baur as treasurer (the "Committee"). Schwartz has since pleaded guilty to charges of wire fraud and the falsification of records in a federal investigation in connection with embezzling \$1.4 million from the Committee and related misrepresentations made in reports he prepared and filed on behalf of the Committee and falsified documents he provided to the Audit Division.

1 [REDACTED]

2 [REDACTED] The Committee
3 also acknowledges that it lacked internal controls recommended by the Commission, which
4 would have mitigated the likelihood of these reporting errors occurring.

5 Based on the available information, and consistent with the Commission's practice in
6 similar embezzlement matters, we recommend that the Commission transfer Pre-MUR 630,
7 RR 20L-04, and AR 19-01R to the Alternative Dispute Resolution Office ("ADRO"). We
8 further recommend that, in MUR 7677, the Commission find reason to believe that James R.
9 Schwartz II knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30103(b), (c), 30104(b),
10 30114(b)(1), and 11 C.F.R. §§ 102.2(a)(1), (2), 102.9, 104.3, 104.14(d) by converting Committee
11 funds to personal use, failing to keep complete Committee financial records, misrepresenting the
12 actual treasurer of the Committee, and failing to file accurate disclosure reports. We recommend
13 that the Commission enter into pre-probable cause conciliation with Schwartz to address these
14 violations.

15 II. FACTUAL BACKGROUND

16 Steve Chabot for Congress and Natalie Baur as treasurer is the principal campaign
17 committee of Ohio Representative Steve Chabot.⁴ James R. Schwartz II acted as the campaign

⁴ Steve Chabot for Congress, Statement of Organization (Oct. 11, 2021).

manager for the Committee from 2011 to 2019.⁵ During the same period the Committee listed his father, James Schwartz, Sr., as treasurer on all Committee filings.⁶

On April 23, 2019, the Commission voted to undertake an audit of the Committee's 2017-2018 election cycle activity.⁷ At the start of the audit, Schwartz communicated on behalf of the Committee and provided bank statements and internal records in response to the Audit Division's requests.⁸ After the Audit Division made follow-up requests, however, Schwartz became noncommunicative and, it was later learned, turned himself into law enforcement.⁹

On April 27, 2021, Schwartz was charged with wire fraud and falsification of records in a federal investigation in connection with a long running scheme to embezzle funds from the Committee,¹⁰ and Schwartz pleaded guilty to those charges in an amended plea agreement on May 28, 2021.¹¹ Schwartz stipulated that he had embezzled a total of \$1,420,475.23 from the Committee throughout his time as campaign manager for Chabot from 2011 through 2019. According to the plea, Schwartz effectuated this scheme by: (1) misrepresenting in reports to the Commission that his father was the Committee's treasurer; (2) writing checks from the

⁵ *United States v. Schwartz*, 1:21-cr-45, Information ¶ 12 ("Schwartz Information") (S.D. Ohio, Apr. 27, 2021); Compl., MUR 7677 (Dec. 27, 2019).

⁶ Steve Chabot for Congress, Statement of Organization (Jan. 30, 2011); Steve Chabot for Congress, Statement of Organization (Oct. 31, 2019).

⁷ Letter from Patricia C. Orrock, FEC, to James Schwartz Sr. (Apr. 25, 2019).

⁸ *United States v. Schwartz*, 1:21-cr-45, Amended Plea Agreement, Attachment A ("Schwartz Plea Agreement") (S.D. Ohio, May 28, 2021).

⁹ Schwartz Plea Agreement.

¹⁰ Schwartz Information.

¹¹ Schwartz Plea Agreement.

1 Committee's bank account to himself and his consulting companies, Fountain Square Group
2 LLC and Prime Media LLC; (3) sending reports to the Commission that misrepresented the
3 Committee's cash on hand, receipts, and disbursements in order to hide the embezzlement; and
4 (4) falsifying documents in connection with a Commission audit, including sending auditors
5 fraudulently-altered bank account information.¹² On May 1, 2022, Schwartz was sentenced to
6 twenty four months of imprisonment and three years of supervised release and was required to
7 pay \$1,407,220.03 in restitution.¹³

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

¹² *Id.*, Attachment A.

¹³ *United States v. Schwartz*, 1:21-cr-45, Judgment in a Criminal Case (S.D. Ohio, Apr. 1, 2022).

[REDACTED]

1 [REDACTED] [REDACTED]
2 [REDACTED]
3 On December 27, 2019, the Committee also filed a Complaint with the Commission
4 alleging violations of the Act by Schwartz based on the criminal indictment and the Committee's
5 review of its records to-date.¹⁷ Schwartz did not file a Response despite repeated attempts to
6 contact him.

7 On August 30, 2021, in response to requests by the Office of General Counsel ("OGC"),
8 the Committee provided the following documents: (1) bank statements for the Committee's
9 depository account through the period that Schwartz functioned as treasurer; (2) bank statements
10 for a separate depository account the Committee's new treasurer created after the discovery of
11 Schwartz's embezzlement; (3) an executive summary of an internal audit performed by a
12 consulting firm hired by the Committee; (4) workbooks supporting the internal audit, which
13 included a reconciliation of the bank records with the Committee's filings for the 2017-2018
14 election cycle; and (5) compliance policies developed after the discovery of the embezzlement.
15 On October 4, 2021, the Committee provided a supplemental production of check images for the
16 depository account from 2016-2018. On April 4, 2022, the Committee supplemented its
17 reconciliation analysis to include the period in 2019 during which Schwartz functioned as
18 treasurer.

1 The written audit report provided by the Committee focused only on the 2017-2018
 2 period on the basis that this was the period covered by the audit.¹⁸ It identified “524 transactions
 3 that the campaign had not previously reported;” “81 contributions that the campaign reported . . .
 4 but which had not been deposited in the campaign’s bank account; and misreported cash on hand
 5 in the 2019 October Quarterly Report from \$380,586.13 (reported ending cash on hand on 2019
 6 July Quarterly Report) to \$75,492.90.¹⁹ The internal audit also “identified that over the course of
 7 2012-2019, \$3,203,749.68 was paid out to Jamie Schwartz, entities associated with Schwartz, or
 8 to personal vendors of Schwartz for his personal benefit.”²⁰ The report did not attempt to
 9 determine which of these payments were legitimate other than to reiterate the amount determined
 10 to have been embezzled [REDACTED]²¹

11 On December 22, 2021, the Commission’s Audit Division produced an analysis based on
 12 its own reconciliation of the records provided by the Committee for the 2017-2018 election
 13 cycle.²² The Audit Division identified \$44,724 in receipts and \$307,177 in disbursements that
 14 were either over-reported, under-reported, or were not reported and an ending cash-on-hand
 15 balance that was over-reported by \$1,180,226 at the end of calendar year 2017.²³ For calendar
 16 year 2018, the Audit Division identified \$420,112 in receipts and \$1,725,572 in disbursements

¹⁸ Aug. 20, 2021, production Doc. 9, Internal Audit of 2017-2018 Finances Executive Summary at 1.

¹⁹ *Id.* at 1-2.

²⁰ *Id.*

²¹ *Id.*

²² Analysis of Committee Documents Provided by the Office of General Counsel, Summary of Results (Dec. 22, 2021).

²³ *Id.* at 2.

1 that were over-reported, under reported, or not reported and an ending cash-on-hand balance that
 2 was over-reported by \$20,696 at the end of 2018.²⁴ The Audit Division also noted that the
 3 Committee's reported cash balance was inflated by \$933,705 at the beginning of 2017, indicating
 4 that "significant fraudulent activity likely occurred in previous years."²⁵

5 On April 4, 2022, the Committee provided a supplemental reconciliation of the
 6 Committee's depository account for 2019, which reflected \$634,923.90 in aggregate receipts and
 7 \$514,608.83 in aggregate disbursements from January 1, 2019, through June 30, 2019.²⁶ This
 8 reflected a gross departure of \$97,959.39 in receipts and \$333,794.10 in disbursements from the
 9 Committee's first and second quarter, 2019, filings.²⁷

10 Related to the audit discussed above, the Commission on May 20, 2021, voted to rescind
 11 authority to audit and transfer all referrable items to the Office of General Counsel.²⁸ The Audit
 12 Division referred the following findings to OGC: (1) disclosing a negative ending cash-on-hand
 13 amount of \$119,614 on the 2018 30 Day Post-General Report; (2) failing to properly itemize
 14 contributions from 227 individuals during the 2017-2018 election cycle; (3) filing three
 15 consecutive reports with election cycle-to-date discrepancies in excess of \$50,000 per report;

²⁴ *Id.* at 2-3.

²⁵ *Id.* at 1.

²⁶ Chabot for Congress, 1905 Account 2019 Reconciliation.

²⁷ *See* Chabot for Congress, July Quarterly Report (July 15, 2019) (reflecting \$536,964.51 in net receipts and \$180,814.73 in net disbursements year-to-date).

²⁸ Cert. AR 19-01R (May 27, 2021).

(4) and failing to file required 48-Hour Notices for the 2018 Primary and General Elections, for contributions totaling \$147,945.²⁹

The Committee's Response to the referral notification states that all the issues identified in the Audit Referral are attributable to Schwartz's actions [REDACTED]

[REDACTED]³⁰ It further represents that it "does not know specifics of each of these reporting failures . . . but it is clear that Mr. Schwartz failed to report this information properly to the FEC on behalf of [the Committee]."³¹

In RR 20L-04, RAD referred the Committee to OGC "for disclosing a cash-on-hand discrepancy totaling \$75,492.90 on the 2019 October Quarterly Report;" "amending its 2019 April Quarterly Report to disclose additional receipts of \$123,635.72, a 65.8% increase over the total receipts disclosed in the original 2019 April Quarterly Report;" "disclosing inadequate purposes for disbursements totaling \$57,004.50 on the 2019 October Quarterly Report;" and disclosing incorrect election cycle-to-date totals in its 2019 October Quarterly Report and the two immediately preceding reports "with discrepancies totaling \$925,784.92."³² The Committee in its Response reiterates that the issues identified by RAD arise from the same nexus of facts as described above.³³

²⁹ Compl. at 1-2, AR 19-01R (June 1, 2021).

³⁰ Resp. at 1, AR 19-01R (June 22, 2021).

³¹ *Id.* at 2.

³² Referral at 1-2, RR 20L-04 (Feb. 27, 2020).

³³ Resp. at 1, RR 20L-04 (Apr. 28, 2020).

III. LEGAL ANALYSIS

A. The Commission Should Transfer Pre-MUR 630, RR 20L-04, and AR 19-01R to ADRO

The Act requires a committee, through its treasurer, to keep an accurate account of receipts, disbursements, and cash-on-hand balances.³⁴ Committee reports must disclose: (1) the amount of cash-on-hand at the start of the reporting period; (2) the total amount of receipts; (3) the identity of any person who contributes more than \$200 in the election cycle, and the date and amount of his contribution(s); (4) the total amount of disbursements; (5) the identity of any person to whom the committee disburses over \$200 during the election cycle, together with the date, amount, and purpose of the expenditure(s); and (6) the amount of cash-on-hand at the close of the reporting period.³⁵

In 2007, the Commission established a safe harbor to benefit committees that file inaccurate reports because their funds were unknowingly misappropriated by committee fiduciaries and staff.³⁶ The Commission concluded that it would not seek a monetary penalty from a committee for filing inaccurate reports due to embezzlement if the committee maintained certain internal controls at the time and took certain steps after discovery.³⁷ The Commission concluded that those internal controls and post-discovery steps “represent the *minimum* efforts a committee must take to qualify for this safe harbor.”³⁸ Nonetheless, the Commission will

³⁴ 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

³⁵ *Id.* § 30104(b)(1)-(6); 11 C.F.R. § 104.3(a)-(b).

³⁶ *See* Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007) (“Safe Harbor Policy”).

³⁷ *Id.*

³⁸ *Id.* (emphasis added).

1 consider “the presence of some but not all” of the controls as mitigating factors when fashioning
 2 a civil penalty offer even if a committee fails to satisfy the policy’s additional requirements.³⁹ In
 3 recent similar matters in which a Committee has self-reported violations of the Act related to a
 4 newly-discovered embezzlement scheme, the Commission’s practice has been to refer the
 5 Committee to ADRO.⁴⁰

6 The Committee acknowledges a wide variety of reporting errors caused by Schwartz’s
 7 efforts to obfuscate his scheme. Because of Schwartz’s embezzlement and his efforts to conceal
 8 it, the Committee failed to disclose or incorrectly disclosed approximately \$2.5 million in
 9 receipts and disbursements and over or under-reported cash on hand by \$1 million or more
 10 during the 2017-2018 election cycle alone.⁴¹ In the first half of 2019, the Committee’s reporting
 11 of receipts and disbursements were off by more than \$400,000.⁴² Schwartz also caused the
 12 Committee to inaccurately report its cash-on-hand throughout the same period.⁴³ It is likely that
 13 reporting errors occurred prior to 2017 as well — given that Schwartz acted as campaign

³⁹ *Id.* The internal controls identified in the policy include: (1) opening all bank accounts in the name of the committee using its Employer Identification Number; (2) reviewing monthly bank statements for unauthorized transactions and reconciling the statements by someone other than the individual with check-signing authority or who has responsibility for the committee’s accounting; (3) requiring two signatures on checks over \$1,000; (4) instituting procedures for handling incoming receipts by someone other than the individuals with accounting or banking authority; and (5) maintaining safeguards for managing a petty cash account. Further, when a committee discovers misappropriation of funds, under the policy the committee must notify the Commission and relevant law enforcement authorities and promptly amend its reports. *Id.*

⁴⁰ Pre-MUR 623 and MUR 7692 (Friends of Dave Joyce et al.) (formerly RR 16L-06) (assigning committee to ADRO for embezzlement of \$174,952.40); MUR 7225 (Rohrabacher)(assigning committee to ADRO for embezzlement of \$238,347.18); Pre-MUR 596/MUR 7132 (Amedisys PAC/Michael Pitts) (assigning committee to ADRO for embezzlement of \$79,640); MUR 6980 (formerly RR 15L-03/ADR 78) (McConnell Senate Committee) (assigning committee to ADRO for embezzlement of \$100,634).

⁴¹ *Supra* § II.

⁴² *Id.*

⁴³ *Id.*

1 manager from 2011 to 2019 and the cash-on-hand balance at the start of 2017 was inflated by
 2 nearly \$1 million — but the Committee has represented that it lacks access to sufficient records
 3 to fully calculate these errors. It further appears that the Committee lacked effective internal
 4 controls in its accounting and financial operations, as, according to the Committee's
 5 representations, it is not aware of any relevant policies or practices that were engaged in while
 6 Schwartz acted as treasurer.⁴⁴

7 The Committee maintains that it has now implemented procedures that would generally
 8 satisfy the internal control recommendations in the Commission's 2007 Policy Statement.⁴⁵ The
 9 Committee has not amended its reports after the discovery of the embezzlement. Counsel for the
 10 Committee explained that it has not amended its reports because the criminal pleadings indicate
 11 that Schwartz did not use the campaign depository account for many transactions and thus —
 12 because the Committee does not have a full record of what funds were received nor how they
 13 were spent outside of the campaign depository bank records — its current treasurer is not
 14 comfortable attesting to the accuracy of amended reports.⁴⁶

⁴⁴ Letter from E. Stewart Crosland, counsel for Committee, to Aaron Rabinowitz, FEC (Aug. 30, 2021).

⁴⁵ *See id.* Ex. 8, Steve Chabot for Congress, Compliance Policies, Procedures, and Staff Duties (listing adopted compliance policies including requirements that: “[a]ll campaign bank accounts must be opened using the committee’s name and Employer Identification Number only, not in any individual’s name or Social Security Number;” “[b]ank statements must be reviewed for unauthorized transactions and reconciled to the accounting records each month and to reports prior to filing. The reconciliations are done by someone other than a check signer or an individual responsible for handling the committee’s accounting;” “[c]hecks in excess of \$1,000 must be authorized in writing;” “[a]ll wire transfers must be authorized in writing;” and “[a]n individual who does not handle the committee’s accounting or have banking authority must receive incoming checks and monitors all other incoming receipts” and representing that the Committee does not maintain a petty cash fund).

⁴⁶ In addition, it appears that, because of Schwartz’s actions, the Committee falsely reported that its treasurer was Schwartz’s father, James Schwartz, Sr., when in fact Schwartz, Sr., was never involved in the campaign and did not know that he had been named as the Committee’s treasurer. The Committee therefore appears to have violated 52 U.S.C. § 30103(b), (c) and 11 C.F.R. § 102.2(a)(1), (2) by failing to accurately identify as Treasurer the person who actually was assigned the statutory duties of that function. In prior matters, the Commission has held committees accountable under Section 30103(c) for inaccurately reporting as treasurer an individual who does not

1 Although the Committee lacked effective controls, in similar circumstances the
 2 Commission has sent committees to the ADRO.⁴⁷ Accordingly, we recommend that the
 3 Commission do so here with respect to the Committee.

4 **B. The Commission Should Find Reason to Believe that James R. Schwartz II**
 5 **Knowingly and Willfully Violated the Act**

6 Each treasurer is required to keep an accurate account of and disclose, among other
 7 things, its receipts, disbursements, and cash-on-hand balances.⁴⁸ Committees, through their
 8 treasurers, are also required to file a statement of organization that accurately discloses the
 9 current name and address of the treasurer of the committee.⁴⁹ The Act prohibits any person from
 10 converting contributions to a federal candidate to personal use.⁵⁰ The Act prescribes additional
 11 monetary penalties for violations that are knowing and willful.⁵¹ A violation of the Act is
 12 knowing and willful if the “acts were committed with full knowledge of all the relevant facts and
 13 a recognition that the action is prohibited by law.”⁵² This does not require proving knowledge of

actually perform the duties of treasurer prescribed by the Act. *See* MUR 5276 (Friends of Jack Machek); MUR 3921 (Ken Bell for Cong.); MUR 3790 (Comm. to Elect Tony Valencia for Cong.); MUR 2539 (Almqvist for Cong.); MUR 2211 (Populist Party); MUR 2083 (Bob Richards for President); MUR 2002 (Comm. to Elect Bennie O. Batts); MUR 1927 (Comm. to Elect Charles Connor). However, in other matters the Commission has declined to do so and has identified as treasurer the person named in the Statement of Organization even if there is evidence that he or she nominally serves in that role. *See* MUR 5358 (Morgan for Congress, *et al.*); MUR 5646 (Burchfield, *et al.*); MUR 6889 (National Air Transportation Association, *et al.*).

⁴⁷ *Supra* n. 40 and accompanying text.

⁴⁸ 52 U.S.C. § 30104(a), (b).

⁴⁹ 52 U.S.C. § 30103(a), (b); 11 C.F.R. § 102.2(a)(1), (2).

⁵⁰ 52 U.S.C. § 30114(b)(1). A contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of federal office. *Id.* § 30114(b)(2).

⁵¹ *Id.* §§ 30109(a)(5)(B), 30109(d).

⁵² 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

1 the specific statute or regulation the respondent allegedly violated.⁵³ Rather, it is sufficient to
 2 demonstrate that a respondent “acted voluntarily and was aware that his conduct was
 3 unlawful.”⁵⁴ This awareness may be shown through circumstantial evidence from which the
 4 respondent’s unlawful intent reasonably may be inferred.⁵⁵

5 Although Schwartz was not named in Committee filings as the Committee’s treasurer, the
 6 available information establishes that Schwartz performed all the duties of the treasurer while he
 7 was campaign manager, including maintaining the Committee’s depository account and
 8 preparing and filing reports with the Commission.⁵⁶ The Commission has consistently held that
 9 an individual who is assigned the duties of a treasurer will be liable for violations of his or her
 10 duties even if the Committee names a figurehead treasurer in its reports.⁵⁷

11 The available information, including the Committee’s internal audit, the criminal
 12 investigation, and the plea agreement, confirms that Schwartz converted campaign funds to

⁵³ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

⁵⁴ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

⁵⁵ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁵⁶ *See United States v. Schwartz*, 1:21-cr-45, Amended Plea Agreement, [REDACTED] Letter from E. Stewart Crosland, counsel for Committee, to Aaron Rabinowitz, FEC (Aug. 30, 2021).

⁵⁷ *See, e.g.*, Conciliation Agreement at 5-6, MUR 5358 (Jamie Morgan) (holding candidate personally liable where treasurer of record ceased performing his duties, but the candidate subsequently signed and filed nine disclosure reports); Factual & Legal Analysis at 7, MUR 5646 (Burchfield) (Mar. 3, 2005) (holding campaign manager personally liable as *de facto* treasurer where campaign manager prepared the committee’s reports, performed finance-related duties, deposited contributions, and prepared checks to pay the campaign’s expenses).

1 personal use and caused the Committee to inaccurately report its receipts, disbursements, cash-
2 on-hand, the identity of the Committee's treasurer and other information while he functioned as
3 treasurer. In addition, the available information, including Schwartz's plea agreement
4 acknowledging that he purposefully filed inaccurate reports to conceal his embezzlement,
5 supports a knowing and willful finding.

6 Therefore, we recommend that the Commission find reason to believe that James R.
7 Schwartz II knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30103(b), (c), 30104(b),
8 30114(b)(1), and 11 C.F.R. §§ 102.2(a)(1), (2), 102.9, 104.3, 104.14(d) by converting Committee
9 funds to personal use, failing to keep complete Committee financial records, misrepresenting the
10 actual treasurer of the Committee, and failing to file accurate disclosure reports.

⁵⁸ See, e.g., Conciliation Agreement, MUR 6179 (Ward) (imposing a 10-year prohibition); Conciliation Agreement, MUR 6475 (McCrosen) (same). *But see* Conciliation Agreement, MUR 6597 (Durkee) (imposing a 15-year prohibition given the magnitude of the respondent's violations).

PMUR 630 / RR 20L-04 / AR 19-01R / MUR 7677 (Steve Chabot for Congress, *et al.*)

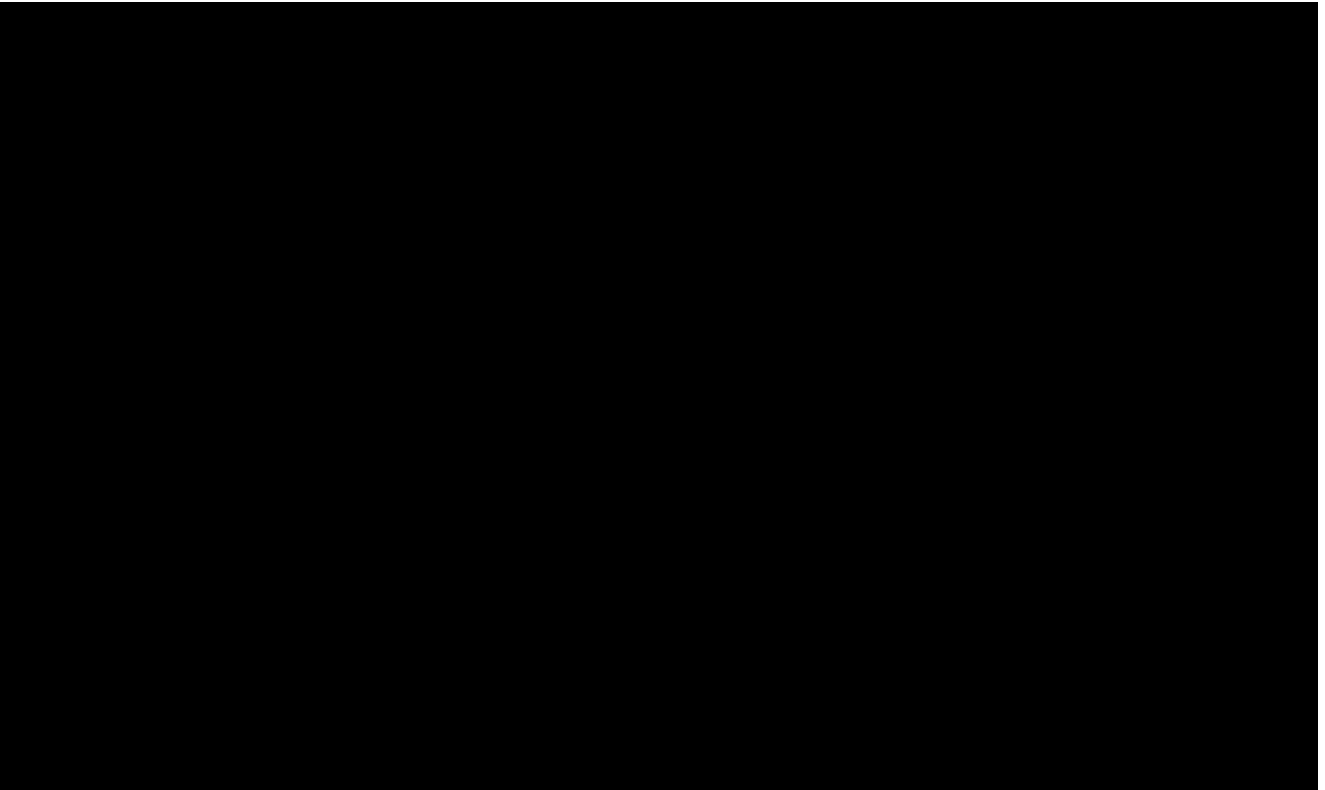
First General Counsel's Report

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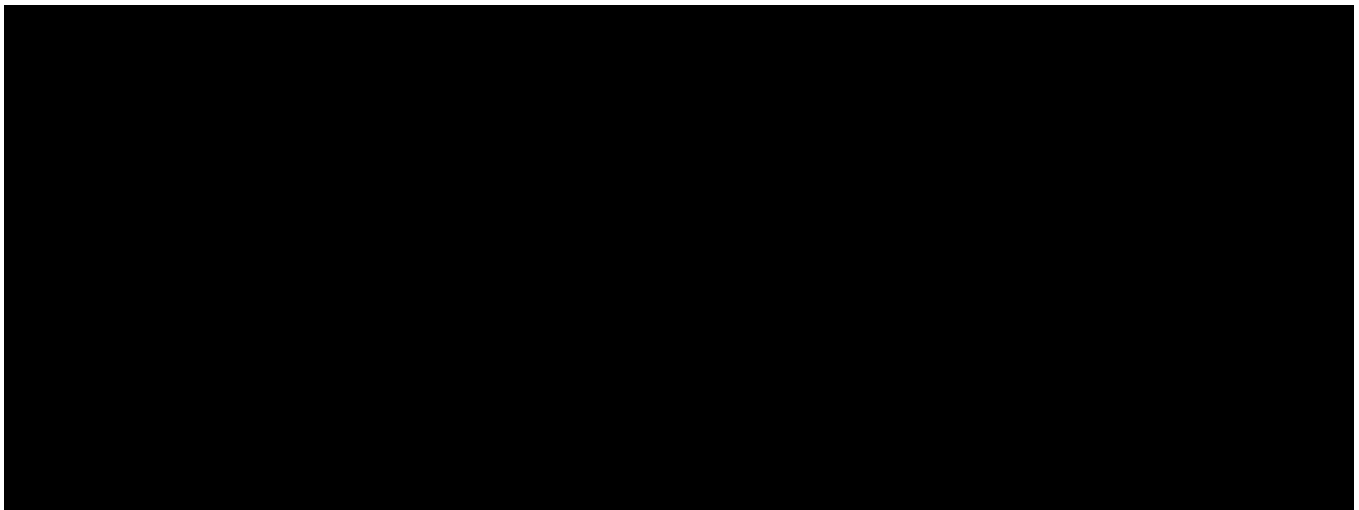
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12 **V. RECOMMENDATIONS**

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1. Transfer Pre-MUR 630, RR 20L-04, and AR 19-01R to the Office of Alternative Dispute Resolution;
2. Find reason to believe that James R. Schwartz II knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30103(b), (c), 30104(b), 30114(b)(1) and 11 C.F.R. §§ 102.2(a)(1), (2), 102.9, and 104.3, 104.14(d) by converting Committee funds



1 to personal use, failing to keep complete Committee financial records, and failing
2 to file accurate disclosure reports;

3 3. Enter into conciliation with James R. Schwartz II prior to a finding of probable
4 cause to believe;

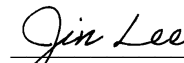
5 4. Approve the attached Conciliation Agreement;

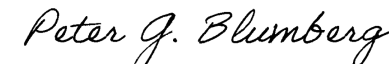
6 5. Approve the attached Factual and Legal Analysis; and

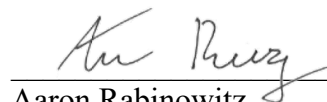
7 6. Approve the appropriate letter.

8 Lisa J. Stevenson
9 Acting General Counsel

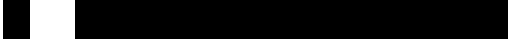
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11
12 Date: November 8, 2022

13 
14 Jin Lee
15 Associate General Counsel for
16 Enforcement

17 
18 Peter G. Blumberg
19 Assistant General Counsel

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21
22 
23 Aaron Rabinowitz
24 Attorney

25
26
27 Attachment:

28 1) Factual and Legal Analysis – James R. Schwartz II
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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: James R. Schwartz II

MUR 7677

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (the “Commission”), which alleges violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), relating to allegations of an eight-year embezzlement scheme by James R. Schwartz II, the former campaign manager of Steve Chabot for Congress and Natalie Baur as treasurer (the “Committee”). The Committee submitted a complaint shortly after learning of the embezzlement scheme in which it acknowledges that Schwartz, as part of his efforts to conceal the misappropriations of funds, caused it to file inaccurate disclosure reports that misrepresented its receipts, disbursements, and cash-on-hand balances. Schwartz has since pleaded guilty to charges of wire fraud and the falsification of records in a federal investigation in connection with embezzling \$1.4 million from the Committee and related misrepresentations made in reports he prepared and filed on behalf of the Committee and falsified documents he provided to the Audit Division.

Based on the available information, the Commission finds reason to believe that James R. Schwartz II knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30103(b), (c), 30104(b), 30114(b)(1), and 11 C.F.R. §§ 102.2(a)(1), (2), 102.9, 104.3, 104.14(d) by converting Committee funds to personal use, failing to keep complete Committee financial records, misrepresenting the actual treasurer of the Committee, and failing to file accurate disclosure reports.

II. FACTUAL BACKGROUND

Steve Chabot for Congress and Natalie Baur as treasurer is the principal campaign committee of Ohio Representative Steve Chabot.¹ James R. Schwartz II acted as the campaign manager for the Committee from 2011 to 2019.² During the same period the Committee listed his father, James Schwartz, Sr., as treasurer on all Committee filings.³

On April 23, 2019, the Commission voted to undertake an audit of the Committee's 2017-2018 election cycle activity.⁴ At the start of the audit, Schwartz communicated on behalf of the Committee and provided bank statements and internal records in response to the Audit Division's requests.⁵ After the Audit Division made follow-up requests, however, Schwartz became noncommunicative and, it was later learned, turned himself into law enforcement.⁶

On April 27, 2021, Schwartz was charged with wire fraud and falsification of records in a federal investigation in connection with a long running scheme to embezzle funds from the Committee,⁷ and Schwartz pleaded guilty to those charges in an amended plea agreement on

¹ Steve Chabot for Congress, Statement of Organization (Oct. 11, 2021).

² *United States v. Schwartz*, 1:21-cr-45, Information ¶ 12 ("Schwartz Information") (S.D. Ohio, Apr. 27, 2021); Compl., MUR 7677 (Dec. 27, 2019).

³ Steve Chabot for Congress, Statement of Organization (Jan. 30, 2011); Steve Chabot for Congress, Statement of Organization (Oct. 31, 2019).

⁴ Letter from Patricia C. Orrock, FEC, to James Schwartz Sr. (Apr. 25, 2019).

⁵ *United States v. Schwartz*, 1:21-cr-45, Amended Plea Agreement, Attachment A ("Schwartz Plea Agreement") (S.D. Ohio, May 28, 2021).

⁶ Schwartz Plea Agreement.

⁷ Schwartz Information.

May 28, 2021.⁸ Schwartz stipulated that he had embezzled a total of \$1,420,475.23 from the Committee throughout his time as campaign manager for Chabot from 2011 through 2019. According to the plea, Schwartz effectuated this scheme by: (1) misrepresenting in reports to the Commission that his father was the Committee's treasurer; (2) writing checks from the Committee's bank account to himself and his consulting companies, Fountain Square Group LLC and Prime Media LLC; (3) sending reports to the Commission that misrepresented the Committee's cash on hand, receipts, and disbursements in order to hide the embezzlement; and (4) falsifying documents in connection with a Commission audit, including sending auditors fraudulently-altered bank account information.⁹ On May 1, 2022, Schwartz was sentenced to twenty four months of imprisonment and three years of supervised release and was required to pay \$1,407,220.03 in restitution.¹⁰

On December 27, 2019, the Committee filed a Complaint with the Commission alleging violations of the Act by Schwartz based on the criminal indictment and the Committee's review of its records to-date.¹¹ Schwartz did not file a Response.

III. LEGAL ANALYSIS

Each treasurer is required to keep an accurate account of and disclose, among other things, its receipts, disbursements, and cash-on-hand balances.¹² Committees, through their

⁸ Schwartz Plea Agreement.

⁹ *Id.*, Attachment A.

¹⁰ *United States v. Schwartz*, 1:21-cr-45, Judgment in a Criminal Case (S.D. Ohio, Apr. 1, 2022).

¹¹ Compl.

¹² 52 U.S.C. § 30104(a), (b).

1 treasurers, are also required to file a statement of organization that accurately discloses the
 2 current name and address of the treasurer of the committee.¹³ The Act prohibits any person from
 3 converting contributions to a federal candidate to personal use.¹⁴ The Act prescribes additional
 4 monetary penalties for violations that are knowing and willful.¹⁵ A violation of the Act is
 5 knowing and willful if the “acts were committed with full knowledge of all the relevant facts and
 6 a recognition that the action is prohibited by law.”¹⁶ This does not require proving knowledge of
 7 the specific statute or regulation the respondent allegedly violated.¹⁷ Rather, it is sufficient to
 8 demonstrate that a respondent “acted voluntarily and was aware that his conduct was
 9 unlawful.”¹⁸ This awareness may be shown through circumstantial evidence from which the
 10 respondent’s unlawful intent reasonably may be inferred.¹⁹

¹³ 52 U.S.C. § 30103(a), (b); 11 C.F.R. § 102.2(a)(1), (2).

¹⁴ 52 U.S.C. § 30114(b)(1). A contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of federal office. *Id.* § 30114(b)(2).

¹⁵ *Id.* §§ 30109(a)(5)(B), 30109(d).

¹⁶ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

¹⁷ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

¹⁸ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

¹⁹ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

1 Although Schwartz was not named in Committee filings as the Committee's treasurer, the
2 available information establishes that Schwartz performed all the duties of the treasurer while he
3 was campaign manager, including maintaining the Committee's depository account and
4 preparing and filing reports with the Commission.²⁰ The Commission has consistently held that
5 an individual who is assigned the duties of a treasurer will be liable for violations of his or her
6 duties even if the Committee names a figurehead treasurer in its reports.²¹

7 The available information, including the criminal investigation, and the plea agreement,
8 confirms that Schwartz converted campaign funds to personal use and caused the Committee to
9 inaccurately report its receipts, disbursements, cash-on-hand, the identity of the Committee's
10 treasurer and other information while he functioned as treasurer. In addition, the available
11 information, including Schwartz's plea agreement acknowledging that he purposefully filed
12 inaccurate reports to conceal his embezzlement, supports a knowing and willful finding.

13 Therefore, the Commission finds reason to believe that James R. Schwartz II knowingly
14 and willfully violated 52 U.S.C. §§ 30102(c), 30103(b), (c), 30104(b), 30114(b)(1), and 11
15 C.F.R. §§ 102.2(a)(1), (2), 102.9, 104.3, 104.14(d) by converting Committee funds to personal
16 use, failing to keep complete Committee financial records, misrepresenting the actual treasurer of
17 the Committee, and failing to file accurate disclosure reports.

²⁰ *See United States v. Schwartz*, 1:21-cr-45, Amended Plea Agreement, Attachment A.

²¹ *See, e.g.*, Conciliation Agreement at 5-6, MUR 5358 (Jamie Morgan) (holding candidate personally liable where treasurer of record ceased performing his duties, but the candidate subsequently signed and filed nine disclosure reports); Factual & Legal Analysis at 7, MUR 5646 (Burchfield) (Mar. 3, 2005) (holding campaign manager personally liable as *de facto* treasurer where campaign manager prepared the committee's reports, performed finance-related duties, deposited contributions, and prepared checks to pay the campaign's expenses).