

OCT 17 2008

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 08L-27

DATE ACTIVATED: July 17, 2008

**EXPIRATION OF SOL: June 20, 2011-
February 28, 2013**

PRE-MUR: 476

DATE ACTIVATED: September 22, 2008

**EXPIRATION OF SOL: June 20, 2011-
February 28, 2013**

MUR: 6063

DATE COMPLAINT FILED: August 28, 2008

DATE ACTIVATED: September 22, 2008

DATE OF NOTIFICATION: September 4, 2008

DATE RESPONSE RECEIVED: October 15, 2008

**EXPIRATION OF SOL: June 20, 2011-
February 28, 2013**

SOURCES:

Internally Generated

RESPONDENTS:

Safeguarding America by Expanding National Security
Political Action Committee and Christopher J. Ward, in
his official capacity as treasurer and in his personal
capacity

**RELEVANT STATUTES AND
REGULATIONS:**

2 U.S.C. § 432(b)(3)

2 U.S.C. § 432(c)

2 U.S.C. § 432(d)

2 U.S.C. § 434(b)

11 C.F.R. § 102.9

11 C.F.R. § 102.15

11 C.F.R. § 104.3(a)

11 C.F.R. § 104.3(b)

11 C.F.R. § 104.14(d)

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INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: _____

I. INTRODUCTION

_____ On August 28, 2008, SAXPAC, through
counsel, simultaneously filed a _____ submission and a complaint voluntarily disclosing the
misreporting and Ward's embezzlement. See Pre-MUR 476 and MUR 6063. By letter dated
September 4, 2008, Ward was notified of the complaint in MUR 6063. Counsel has entered an
appearance on behalf of Ward in this matter. See Letter from Counsel, dated October 10, 2008.
However, no response has been filed, and we do not anticipate that one will be filed, based on
our discussions with Ward's counsel in related MUR 6017 (PhilPAC).

According to SAXPAC, Ward concealed his misappropriations and reporting omissions,
which were not discovered until the Committee conducted an internal review of its bank records
following media reports of Ward's apparent embezzlement of National Republican
Congressional Committee ("NRCC") funds. It appears that Ward's activities in these matters
may be part of an overarching embezzlement scheme devised by Ward. See Pre-MUR 470/RR
08L-22 (NRCC), First General Counsel's Report, dated September 10, 2008; Pre-MURs 465,
466, 467 and 468 (Tuesday Group PAC, *et al.*), First General Counsel's Report, dated September
10, 2008; Pre-MUR 471/RR 08L-26/MUR 6017 (PhilPAC), First General Counsel's Report,
dated October 9, 2008.

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We

further recommend that the Commission find reason to believe that Christopher J. Ward, in his official capacity as treasurer of SAXPAC and in his personal capacity, knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), (c), (d) and 434(b) and 11 C.F.R. § 104.14(d), by commingling committee funds with his personal funds, failing to keep account of and disclose cash-on-hand, receipts, and disbursements on reports filed with the Commission, and failing to file timely, complete and accurate reports. Last, we recommend that the Commission authorize the use of compulsory process to obtain additional information regarding Ward's embezzlement scheme and the resulting reporting and recordkeeping omissions.

II. FACTUAL SUMMARY

SAXPAC is a multicandidate political committee and has been filing reports with the Commission since 2005. 2 U.S.C. § 441a(a)(4). The Committee filed a Termination Report and, on February 12, 2008, was granted a termination prior to RAD learning of the alleged embezzlement and related misreporting violations. RR 08L-27, at 1. Ward served as SAXPAC's treasurer since the PAC's inception in February 2005 until the Committee was granted a termination. Pre-MUR 476, at 1.

Following termination of its registration as a political committee and upon learning from media reports of the NRCC's concerns with Ward (the exact date is unknown at this point), SAXPAC began an internal review of its records and found discrepancies between its bank activity and information contained in reports Ward filed with the Commission. Pre-MUR 476,

1 at 1. On May 2, 2008, counsel for SAXPAC notified RAD via telephone that the Committee's
2 internal review revealed embezzlement of funds by Ward and various reporting discrepancies.
3 RR 08L-27, at 1. At that time, RAD advised counsel that SAXPAC should amend its disclosure
4 reports to reflect its actual financial activity. RR 08L-27, at 2.

5 For the purpose of filing amendments to its inaccurate reports, SAXPAC retained counsel
6 and a certified public accounting firm to conduct an internal audit. Pre-MUR 476, at 1. During
7 its internal audit SAXPAC discovered that Ward wrote himself two unauthorized checks from its
8 bank account to which he was not entitled. Pre-MUR 476, at 2. The first check #1085 was dated
9 August 20, 2007 in the amount of \$5,000. *Id.* The second check #1086 was dated August 24,
10 2007 also in the amount of \$5,000. *Id.* It appears that Ward attempted to conceal his
11 misappropriations by not disclosing these checks as disbursements on SAXPAC's reports filed
12 with the Commission. *Id.*

13 In addition to not disclosing the two checks he wrote himself, SAXPAC's internal audit
14 revealed several other reporting discrepancies by Ward. In September 2007, October 2007, and
15 January 2008, Ward filed reports with the Commission disclosing payments totaling \$4,000 to
16 Political Compliance Services ("PCS"), which is a consulting company where Ward was a
17 partner. *Id.* However, according to SAXPAC, only a single payment of \$500 was made to PCS.
18 *Id.* During this same time period, Ward's reports filed with the Commission disclosed payments
19 totaling \$6,000 to McGahn & Associates, while only a single payment of \$3,000 was made to
20 this firm by check dated January 25, 2008 and cashed on February 29, 2008. *Id.*

21 On February 6, 2008, Ward made a cash deposit of \$2,393.45 into SAXPAC's bank
22 account. According to the Committee, this was an unauthorized deposit, it was not disclosed on

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1 the Committee's original reports covering this period, and the source of the funds used for this
2 deposit has not been identified. *Id.*

3 SAXPAC's internal review revealed other minor reporting discrepancies attributable to
4 Ward. First, the Committee's 2008 January Monthly Report discloses \$130.55 in miscellaneous
5 expenditures for which it can find no accompanying withdrawal from its bank account, and the
6 report omitted a \$1,000 deposit made on January 9, 2008. Pre-MUR 476, at 3. Second, there
7 were bank charges of \$12 per month for the months of 2007 October, November and December
8 and 2008 January and February, as well as a \$35 bounced check bank fee in February 2008,
9 which were not disclosed on the Committee's original reports filed with the Commission. *Id.*
10 Third, the Committee's original 2006 June Monthly Report disclosed a \$1,000 contribution from
11 Dannie J. O'Brien. However, it appears that this check was never deposited into SAXPAC's
12 bank account and the committee has no records in its possession indicating that O'Brien ever
13 made a contribution to SAXPAC. *Id.* Fourth, the 2008 April Monthly Report failed to disclose a
14 \$59.01 cash disbursement to Congressman Jim Saxton. *Id.* at 4. Last, Ward disclosed a closing
15 balance of \$0.00 on the Committee's Termination Report filed on January 27, 2008, when in
16 fact, the Committee had a \$600 cash-on-hand balance. RR 08L-27, at 1 - 2.

17 Following its internal audit, SAXPAC notified the appropriate law enforcement
18 authorities and the Commission of the instances of Ward's suspected theft of Committee funds.
19 Pre-MUR 476, at 2. On August 28, 2008, SAXPAC filed seven amended disclosure reports
20 covering June 2006 through February 2008 to accurately reflect its financial activities, as well as
21 two new disclosure reports for the months of March and April 2008 detailing activity that
22 occurred in its bank account after SAXPAC received termination approval from the Commission.

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- 1 *Id.* There is no available information to determine whether SAXPAC had any internal financial
2 controls present prior to its discovery of Ward's embezzlement of funds.

3 **III. LEGAL ANALYSIS**

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B. Liability of Christopher J. Ward for Commingling and Reporting Violations

According to Commission policy and practice, a former treasurer may be named as a respondent in his personal capacity when it appears that, while serving as a treasurer, he may have violated obligations that the Act or Commission regulations impose personally on a treasurer and where, among other situations, the violations were knowing and willful. See *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3 (January 3, 2005); see, e.g., MUR 5610 (Earl Allen Haywood), MUR 5721 (Lockheed Martin Employees' PAC) and MUR 5971 (Lindsey Graham for Senate). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In

1 *Hopkins*, the court found that an inference of a knowing and willful violation could be drawn
2 "from the defendants' elaborate scheme for disguising their . . . political contributions. . ." *Id.* at
3 214-15. The court also found that the evidence did not have to show that a defendant "had
4 specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of
5 mind," if there were "facts and circumstances from which the jury reasonably could infer that
6 [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United*
7 *States v. Buzleem*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 493 U.S. 838 (1989)).

8 The available information suggests that Ward attempted to disguise his embarrassment by
9 not disclosing the unauthorized transactions to himself in Committee reports filed with the
10 Commission and instead intentionally mischaracterized them as disbursements to vendors.
11 Pre-MUR 476, at 2. Therefore, we recommend that the Commission make knowing and willful
12 findings as to Ward in his personal capacity in connection with violations of the Act and
13 Commission regulations while performing the duties of treasurer of SAXPAC.

14 As treasurer, Ward was required to accurately keep an account of and disclose, cash-on-
15 hand, receipts and disbursements. See 2 U.S.C. §§ 432(c)(5), (d), 434(b)(1), (2), (3), (4), (5) and
16 (6)(A) and 11 C.F.R. § 104.3(a), (b). Committee treasurers required to file any report or
17 statement under the Act and the Commission's regulations are also personally responsible for the
18 timely and complete filing of the report or statement and for the accuracy of any information or
19 statement contained in it. 11 C.F.R. § 104.14(d). It appears Ward knowingly and willfully failed
20 to keep an accurate account of all receipts, disbursements and cash-on-hand with respect to his
21 activities as treasurer of SAXPAC to hide his fraudulent scheme and failed to accurately disclose
22 certain receipts, disbursements and cash-on-hand in reports filed with the Commission.

1 The Act also prohibits the commingling of committee funds with the "personal funds of
2 any individual," including officers of a committee. 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15.
3 The Commission has previously made findings that respondents have violated 2 U.S.C.
4 § 432(b)(3) in matters where individuals misappropriated committee funds by making
5 unauthorized disbursements to themselves or others to pay for personal expenses. *See, e.g.,*
6 MUR 5610 (Dole), MUR 5721 (Lockheed Martin Employees PAC), MUR 5811 (Dogett for
7 Congress), MUR 5814 (Lamutt for Congress), MUR 5872 (Hague for Congress), MUR 5920
8 (Women's Campaign Fund), and MUR 5971 (Lindsey Graham for Senate). *But see, e.g.,* MUR
9 5898 (Ryan Pennington) (The Commission voted 3-3 not to accept the negotiated conciliation
10 agreement with the embezzler, which included an admission to knowingly and willfully violating
11 2 U.S.C. § 432(b)(3), where the embezzler deposited committee funds to his personal account
12 from a third-party intermediary account with a separate legal existence).

13 Based on information contained in the submission, Ward knowingly and willfully
14 misappropriated committee funds by writing himself checks from SAXPAC's bank account
15 without authorization. It appears that Ward either cashed the checks or deposited them into his
16 personal bank account. SAXPAC's submission attached copies of the check #s 1085 and 1086
17 that he wrote himself. Pre-MUR 476, at Attachments 1 and 2. Ward endorsed the back of the
18 checks and wrote account #1010007631296. *Id.* We believe this account is Ward's personal
19 account, given information we received from the NRCC in related Pre-MUR 470, that this same
20 account was used by Ward to deposit expense reimbursement checks from the NRCC to him and
21 that the beneficiary on the account is Christopher J. Ward.

22 Accordingly, we recommend that the Commission find reason to believe that Christopher
23 J. Ward, in his official capacity as treasurer of SAXPAC and in his personal capacity, knowingly

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1 and willfully violated 2 U.S.C. §§ 432(b)(3), (c), (d), 434(b) and 11 C.F.R. § 104.14(d) by
2 commingling committee funds with his personal funds, failing to keep account of and disclose
3 receipts, disbursements and cash-on-hand in reports filed with the Commission, and failing to file
4 timely, complete and accurate reports with the Commission.

5 Ward is also a respondent in Pre-MUR 470/08L-22 (NRCC), Pre-MURs 465, 466, 467,
6 468 (Tuesday Group PAC, *et al.*), and RR 08L-26/Pre-MUR 471/MUR 6017(PhiPAC). The
7 First General Counsel's Reports in these matters were circulated to the Commission on October
8 14, 2008. In addition, there is another matter involving allegations of misappropriations by Ward
9 which will be forthcoming. RR 08L-30 (LUISPAC).

10 **IV. PROPOSED INVESTIGATION**

11 We do not have sufficient information from the RAD Referral or SAXPAC's submission
12 to allow the Commission to proceed directly to pre-probable cause conciliation. While the
13 amount in violation in this matter appears at this time to be relatively low, we recommend going
14 forward with an investigation because it is not clear how, if at all, Ward's various embezzlements
15 are interrelated. The embezzlement may be intertwined with an overarching embezzlement
16 scheme devised by Ward. Because at this point we do not know the full extent of Ward's
17 embezzlement scheme, we cannot be certain of the full amount in violation in this matter. An
18 investigation of Ward in connection with this matter and Pre-MUR 470/RR 08L-22 involving the
19 NRCC, Pre-MURs 465, 466, 467 and 468 involving four other leadership PACs and Pre-MUR
20 471/RR 08L-26/MUR 6017 involving PhilPAC, may reveal that he made further unauthorized
21 transactions from these committees which have not yet been discovered.

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2 However, SAXPAC's termination was approved
3 prior to RAD learning of the violations and the Committee appears to have some continued
4 existence. For example, following termination, it (1) reviewed its internal reports and retained
5 counsel and an accounting firm to conduct a more in depth audit, (2) amended several inaccurate
6 reports and filed two new reports to reflect bank activity subsequent to the filing of its
7 termination report, e.g., an unauthorized deposit made by Ward, an outstanding check that was
8 cashed and bank fees, and (3) filed the instant *sua sponte* submission. Given its activity
9 subsequent to termination, part of our investigation would focus on determining the extent to
10 which SAXPAC remains a functioning entity. In addition, our investigation of SAXPAC would
11 focus on determining how Ward carried out his misappropriations and how he concealed them
12 from the Committee in order to obtain evidence regarding the full extent of his broader
13 embezzlement scheme.

14 Therefore, we recommend that the Commission authorize the use of compulsory process.
15 Our investigation would be focused on getting a full picture of Ward's scheme. We will also
16 seek additional information about SAXPAC's internal financial controls, including segregation
17 of duties, supervision of Ward, signature authority on the accounts, and the extent of Ward's
18 commingling. Accordingly, we request that the Commission authorize the issuance of
19 appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.

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V. RECOMMENDATIONS

MUR 6063:

1. Find reason to believe Christopher J. Ward, in his official capacity as treasurer of Safeguarding America by Expanding National Security Political Action Committee and in his personal capacity, knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), (c), (d), 434(b), and 11 C.F.R. § 104.14(d).
2. Approve the attached Factual and Legal Analysis.
3. Authorize the use of compulsory process in this matter, including the issuance of interrogatories, document subpoenas, deposition subpoenas and orders.

4. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

10/17/08
Date

BY:


Ann Marie Terzaken
Associate General Counsel for Enforcement


Sidney Rocke
Assistant General Counsel


Christine C. Gallagher
Attorney

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