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FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

RAD REFERRAL: 16L-10  
DATE RECEIVED: ~~CEA~~ 06/06/16  
LAST RESPONSE FILED: 09/07/16  
DATE ACTIVATED: 09/22/16

ELECTION CYCLE: 2016  
EXPIRATION OF SOL: 07/02/20 – 01/22/21

**SOURCE:** Internally Generated

**RESPONDENTS:** Michael Fleck  
Pawlowski2016.com and Lisa Pawlowski  
in her official capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:** 52 U.S.C. § 30102(a), (b)(3), (c)  
52 U.S.C. § 30104(b)  
52 U.S.C. § 30114(b)  
11 C.F.R. § 102.9  
11 C.F.R. § 102.15  
11 C.F.R. § 104.3(b)(4)  
11 C.F.R. § 113.1(g)

**INTERNAL REPORTS CHECKED:** Disclosure reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

The Reports Analysis Division referred Pawlowski2016.com and Lisa Pawlowski in her official capacity as treasurer (the "Committee"), the authorized committee for Edwin Pawlowski's senate campaign, to the Office of General Counsel ("OGC") "unauthorized activity" in connection with the Committee's 2015 October Quarterly Report, which disclosed a \$76,500 disbursement with the notation "Purpose(s) unknown; documentation unavailable."<sup>1</sup> The

<sup>1</sup> Reports Analysis Division ("RAD"), Referral of Pawlowski2016.com, 16L-10 (June 6, 2016) ("Referral"), incorporated herein by reference.

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1 Committee later amended the report and explained that Michael Fleck, the Committee's former  
2 campaign manager, had written a \$76,500 check to H Street Consulting LLC ("H Street"), his  
3 consulting company, without authorization and had converted campaign funds to personal use.  
4 Fleck denies any conversion and states that the Committee owed him and H Street the money for  
5 his services.

6         Meanwhile, Fleck has pled guilty to one count of conspiracy to commit extortion and  
7 bribery offenses in connection with a scheme to trade campaign contributions — apparently to  
8 Pawlowski, the current mayor of Allentown, Pennsylvania — in exchange for city contracts and  
9 services.<sup>2</sup> Further, there is information that Pawlowski is under investigation regarding this  
10 scheme.

11         Based on the referral, responses, and publicly available information, there is reason to  
12 believe that the Committee failed to timely and properly disclose the purpose of the  
13 disbursement, and that Fleck converted Committee funds to personal use and commingled those  
14 funds with his personal funds. Accordingly, we recommend that the Commission open a MUR  
15 and find reason to believe that Pawlowski2016.com and Lisa Pawlowski in her official capacity  
16 as treasurer violated 52 U.S.C. § 30104(b) and that Michael Fleck knowingly and willfully  
17 violated 52 U.S.C. §§ 30102(b)(3) and 30114(b). Because additional fact finding is required to  
18 determine the extent of the Committee's knowledge of and circumstances surrounding the  
19 disbursement, we also recommend that the Commission authorize an investigation.<sup>3</sup>

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<sup>2</sup> Government's Guilty Plea Mem., *United States v. Fleck*, No. 5:16-cr-00171 (E.D. Pa. Apr. 26, 2016) ("Fleck Plea"). Fleck also pled guilty to a separate count of tax evasion, which is apparently unrelated to the scheme. *Id.* at 7-8.

<sup>3</sup> See, e.g., ADR 760 (P-MUR 561), ADR 764 (RR 13L-16), and MUR 6761 (Kenneth Barfield). In ADR 760, Dewhurst for Texas filed a *sua sponte* submission indicating that Barfield, while serving as campaign manager and assistant treasurer, misappropriated over a million dollars in the 2011-2012 election cycle, resulting in inaccurate reporting to the Commission. In ADR 764, RAD referred Dewhurst for Texas for the unauthorized use of campaign funds and the failure to refund, redesignate, or reattribute excessive and prohibited contributions within

1 **II. FACTUAL BACKGROUND**

2 **A. Respondents**

3 The Committee is the authorized committee of Pawlowski, the current mayor of  
 4 Allentown, Pennsylvania, who was a candidate for the U.S. Senate from Pennsylvania during the  
 5 2016 election cycle.<sup>4</sup> His wife, Lisa Pawlowski, is the Committee's treasurer. Pawlowski has  
 6 been Allentown's mayor since 2006. Fleck, the Committee's former campaign manager, is the  
 7 principal and co-owner of H Street, an Allentown-based consulting firm.<sup>5</sup> The Committee  
 8 retained Fleck and his firm to provide consulting, fundraising, and campaign management  
 9 services for Pawlowski's 2016 campaign.<sup>6</sup>

10 Fleck pled guilty to federal criminal violations arising out of a scheme to trade Allentown  
 11 city contracts and services in exchange for campaign contributions to "Public Official No. 3,"  
 12 who news reports have identified as Pawlowski.<sup>7</sup> Fleck and others who have pled guilty in  
 13 connection with the scheme have implicated Public Official No. 3 as the person who orchestrated  
 14 it.<sup>8</sup> These individuals are scheduled to be sentenced early in 2017.<sup>9</sup> The federal corruption

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the permissible timeframe. In MUR 6761, the Commission made reason to believe findings as to Barfield for multiple violations, including personal use and commingling violations in connection with the misappropriation, and authorized an investigation to determine the full scope of Barfield's and other individuals' involvement in the scheme. A parallel criminal proceeding concerning some of the same allegations is also proceeding.

<sup>4</sup> Pawlowski withdrew his candidacy in 2015.

<sup>5</sup> Fleck Plea at 4.

<sup>6</sup> See Committee Resp. at 2 (June 31, 2016), Decl. of Lisa Pawlowski ¶ 4 (June 29, 2016).

<sup>7</sup> See *infra* note 38, *infra*.

<sup>8</sup> Fleck Plea 4-6; see *infra* note 9.

<sup>9</sup> See *United States v. Wiles*, No. 2:15-cr-00561 (E.D. Pa. Oct. 19, 2016) (sentencing, Jan. 30, 2017); Order, *United States v. Fleck*, No. 5:16-cr-00171 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 6, 2017); Order, *United States v. Koval*, No. 2:16-cr-00009 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 6, 2017); Order, *United States v. Strathearn*, No. 5:16-cr-00179 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 7, 2017); Order, *United States v. McTish*, No. 5:16-cr-00179 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 9, 2017); Order, *United States v. Haddad*, No. 5:15-cr-00414 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 9, 2017).

1 investigation appears to be ongoing, although Pawlowski has not been charged to date.<sup>10</sup>

2 Pawlowski suspended his campaign in July 2015.<sup>11</sup>

3 **B. The Unauthorized Disbursement and the Referral**

4 The Committee's 2015 October Quarterly Report disclosed a \$76,500 disbursement to  
5 H Street made on July 2, 2015, with the notation "Purpose(s) unknown; documentation  
6 unavailable."<sup>12</sup> On December 21, 2015, RAD sent the Committee a Request for Additional  
7 Information ("RFAI") asking it to clarify the disbursement's purpose.<sup>13</sup> On January 22, 2016,  
8 the Committee filed an Amended 2015 October Quarterly Report, which included this  
9 explanation: "Payment never authorized by treasurer of committee; purpose(s) known only to  
10 payee's CEO who is estranged from committee and whereabouts unknown."<sup>14</sup> In a cover letter  
11 to the report, the Committee further noted that on or about July 2, 2015, H Street stopped doing  
12 business and abandoned its offices.<sup>15</sup>

13 On March 15, 2016, the Committee's counsel contacted RAD about the unauthorized  
14 disbursement and was advised that the Committee should amend its reports to disclose the

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<sup>10</sup> On July 2, 2015, the FBI raided Allentown City Hall, seizing documents and serving subpoenas. Pawlowski's two campaign accounts have been frozen pursuant to federal civil forfeiture relating to a separate investigation. *See* Peter Hall, *Judge Rejects Pawlowski's Request to Release Seized Bank Accounts*, *The Morning Call* (Sept. 29, 2016),

<sup>11</sup> *See, e.g.*, Emily Opilo, Scott Kraus and Matt Assad, *Allentown Mayor Ed Pawlowski's Consultant Recorded Conversations in FBI Probe, Sources Say*, *THE MORNING CALL*, Jul. 13, 2015, <http://www.mcall.com/news/nationworld/pennsylvania/>.

<sup>12</sup> *See* Pawlowski2016.com, October Quarterly Rpt. at 31 (Oct. 15, 2015).

<sup>13</sup> *See* Request for Additional Information, Pawlowski2016.com (Dec. 21, 2015).

<sup>14</sup> *See* Pawlowski2016.com, Amended October Quarterly Rpt., Memo Text (Jan. 22, 2016).

<sup>15</sup> Letter from Committee Treasurer to RAD (Jan. 22, 2016).

1 transaction as unauthorized and provide additional information for the public record.<sup>16</sup> RAD also  
2 indicated that the matter would be referred to another Commission office.<sup>17</sup>

3 On May 26, 2016, the Committee filed a Miscellaneous Text form, which reiterated that  
4 the payment was unauthorized, identified Fleck as H Street's CEO and co-owner and the  
5 Committee's former campaign manager, and stated that Fleck had left the Allentown area  
6 without providing contact information.<sup>18</sup> The Committee explained that Fleck, who had check-  
7 signing authority on the campaign account, had written "April thru August [2015] consulting,  
8 rent and travel" on the check's memo line.<sup>19</sup> However, the Committee stated that it had no  
9 documents from H Street regarding the payment, and that the Committee did not have a contract  
10 with H Street or Fleck regarding compensation for campaign consulting services, office rent, or  
11 travel reimbursement procedures.<sup>20</sup> The Committee also stated that on the first business day  
12 after it learned that the unauthorized check had cleared the Committee's bank account, the  
13 treasurer closed the account, as well as other Committee accounts to which Fleck had access.<sup>21</sup>  
14 The Committee and its treasurer concluded that Fleck had unlawfully converted campaign funds  
15 to personal use.<sup>22</sup>

16 On June 6, 2016, RAD referred this matter to OGC, and OGC notified both the  
17 Committee and Fleck. In response, the Committee explained that Fleck, without the

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<sup>16</sup> Referral at 2.

<sup>17</sup> The Committee previously requested Commission guidance as to whether it could submit a supplemental RFAI response that would not be placed on the public record. The Committee later withdrew the request.

<sup>18</sup> Pawlowski2016.com, Miscellaneous Text form (May 26, 2016).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

1 Pawlowskis' knowledge or authorization,<sup>23</sup> wrote a \$76,500 check to H Street and deposited it  
2 into a bank account Fleck controlled.<sup>24</sup> The Committee stated that, after learning of the deposit,  
3 the treasurer took prompt remedial action as set forth in the Commission's Safe Harbor Policy  
4 for Misreporting Due to Embezzlement.<sup>25</sup>

5 The Committee denies that it, Pawlowski, or its treasurer was negligent.<sup>26</sup> The  
6 Committee acknowledges that Fleck had check-signing authority, but maintains that Fleck still  
7 had to obtain the treasurer's advance authorization to pay campaign expenses.<sup>27</sup> Other than this  
8 statement, however, the Committee does not address what internal controls it had in place at the  
9 time of the disbursement.

10 The Committee also contends that the Pawlowskis have had a professional and social  
11 relationship with Fleck and his wife for over 10 years, and that Fleck has provided consulting  
12 and campaign management services to Pawlowski in all of his past campaigns for public office,  
13 including his 2016 senate campaign.<sup>28</sup> In a sworn declaration, Lisa Pawlowski stated that the  
14 retainer agreement with Fleck and H Street was informal, and that there was never a written  
15 contract with the campaign.<sup>29</sup> She further stated that Fleck and Pawlowski discussed a monthly  
16 campaign management fee in April or May 2015, but the parties never reached an agreement.<sup>30</sup>  
17 The response does not indicate, however, whether Fleck ever received any compensation for his

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<sup>23</sup> The Committee's treasurer, Lisa Pawlowski, is the candidate's wife.

<sup>24</sup> Committee Resp. at 1-3 (June 30, 2016).

<sup>25</sup> *Id.* at 2, 3 (citing Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("Safe Harbor Policy").

<sup>26</sup> Committee Resp. at 1.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.*

<sup>29</sup> Decl. of Lisa Pawlowski at ¶ 4.

<sup>30</sup> *Id.*

1 services or was reimbursed for any campaign expenses. As evidence of Fleck's  
2 untrustworthiness, the Committee refers to his guilty plea and submits documents from his  
3 criminal proceedings.<sup>31</sup>

4 In mitigation, the Committee notes that it timely reported the \$76,500 disbursement on  
5 the next quarterly report after the disbursement, and that it disclosed the purpose of the  
6 disbursement in timely responses to an RFAI.<sup>32</sup> The Committee states it could not seek recovery  
7 of the funds or explain why Fleck may have thought that the payment was authorized because  
8 Fleck moved to an unknown location.<sup>33</sup>

9 Fleck's counsel submitted an email to OGC asking for additional time to file a formal  
10 response,<sup>34</sup> and stating that Fleck no longer lived near Allentown and is difficult to reach. In that  
11 same email, counsel asserted that Fleck "categorically denies that he converted campaign funds  
12 from the Pawlowski campaign" and that "payment was for obligations owed and due, and for  
13 monies earned by the recipient."<sup>35</sup> Fleck deposited the Committee's check, which appears to  
14 contain a memo entry: "April-Aug Consul + Rent + Travel,"<sup>36</sup> on July 2, 2015,<sup>37</sup> the same day

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<sup>31</sup> Committee Resp. at 2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Fleck did not file a formal response.

<sup>35</sup> *See* Fleck Resp. (Sept. 7, 2016).

<sup>36</sup> Committee Resp., Exhibit A.

<sup>37</sup> Pawlowski Decl. ¶ 3.

1 that the FBI apparently raided Allentown City Hall.<sup>38</sup> Counsel noted that the FBI, IRS and/or  
2 DOJ possess most of Fleck's personal and business records.<sup>39</sup>

### 3 **III. LEGAL ANALYSIS**

#### 4 **A. Relevant Law**

5 Under the Act, a committee, through its treasurer, is required to keep an accurate account  
6 of and disclose its receipts, disbursements, and cash-on-hand balances.<sup>40</sup> Committees are  
7 required to file reports with the Commission through their treasurers disclosing, among other  
8 things, the amount of cash on hand at the beginning of the reporting period and the total amount  
9 of disbursements, including the name and address of each person to whom an expenditure  
10 exceeding \$200 is made together with the date, amount, and purpose of the expenditure.<sup>41</sup> The  
11 Act further prohibits any person from converting contributions to a federal candidate to personal  
12 use,<sup>42</sup> and requires that all funds of a political committee "be segregated from, and may not be  
13 commingled with, the personal funds of any individual."<sup>43</sup>

14 In 2007, the Commission established a safe harbor to benefit committees that file  
15 inaccurate reports because their funds were unknowingly misappropriated by committee

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<sup>38</sup> According to news articles, the check was deposited on July 2, 2015, the same day that Fleck closed his political consulting business, and the FBI raided Allentown City Hall. Pawlowski ended his Senate run after the raid. See Emily Opilo and Scott Kraus, *Allentown mayor Ed Pawlowski Implicated in FBI Probe*, THE MORNING CALL (Sept. 10, 2015).

<sup>39</sup> See Fleck Resp.

<sup>40</sup> See 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

<sup>41</sup> See 52 U.S.C. § 30104(b)(1), (2), (4)(G), (5), (6)(A).

<sup>42</sup> *Id.* § 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).

<sup>43</sup> *Id.* § 30102(b)(3).



1 fiduciaries and staff.<sup>44</sup> The Commission stated that it would not seek a monetary penalty from a  
2 committee for filing inaccurate reports due to embezzlement if the committee, among other  
3 things, required written authorization for and/or two signatures on checks larger than \$1,000, and  
4 promptly alerted the Commission and other law enforcement authorities of misappropriations.<sup>45</sup>

5 Finally, the Act prescribes additional monetary penalties for violations that are knowing  
6 and willful.<sup>46</sup> A violation of the Act is knowing and willful if the “acts were committed with  
7 full knowledge of all the relevant facts and a recognition that the action is prohibited by law.”<sup>47</sup>  
8 This does not require proving knowledge of the specific statute or regulation the respondent  
9 allegedly violated.<sup>48</sup> Rather, it is sufficient to demonstrate that a respondent “acted voluntarily  
10 and was aware that his conduct was unlawful.”<sup>49</sup> This awareness may be shown through  
11 circumstantial evidence from which the respondent’s unlawful intent reasonably may be  
12 inferred.<sup>50</sup>

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<sup>44</sup> See Safe Harbor Policy.

<sup>45</sup> The other 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) instituting procedures for handling incoming receipts by someone other than the individuals with accounting or banking authority; and (4) 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 also promptly amend its reports. 72 Fed. Reg. 16695.

<sup>46</sup> See 52 U.S.C. §§ 30109(a)(5)(B), (d).

<sup>47</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>48</sup> *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)).

<sup>49</sup> *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)).

<sup>50</sup> *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           **A.     There is Reason to Believe that the Pawlowski Committee Improperly**  
2           **Disclosed the Purpose of the \$76,500 Disbursement**

3  
4           The available information indicates that the Committee did not provide complete and  
5 timely information about the disbursement when it disclosed the purpose for the \$76,500  
6 disbursement on its original 2015 October Quarterly Report as “unknown; documentation  
7 unavailable.” It was only in an amendment filed three months later that the Committee disclosed  
8 the disbursement as unauthorized and provided further information about the alleged  
9 misappropriation of committee funds.

10           In addition, the Committee does not appear to qualify for the safe harbor’s protections.  
11 The Committee’s Response does not describe the internal controls it had in place at the time of  
12 the misappropriation, other than a stating that Fleck was required to obtain the Treasurer’s  
13 authorization to make a disbursement. Most notably, the response does not indicate whether the  
14 Committee required that checks larger than \$1,000, such as the disbursement at issue, be  
15 authorized in writing and/or signed by two individuals, as the Safe Harbor Policy provides. Nor  
16 did the Committee fully and timely notify the Commission after it discovered the embezzlement.  
17 The Committee learned of the unauthorized disbursement on July 6, 2015, but did not notify the  
18 Commission that the disbursement was unauthorized until January 22, 2016, over six months  
19 later, and only in response to an RFAI. Moreover, we have no information that the Committee  
20 notified law enforcement authorities regarding the misappropriation. Thus, the Committee does  
21 not appear to qualify for the safe harbor’s protections.

22           Further, the circumstances raise questions about the Committee’s assertions that  
23 Pawlowski and his wife did not know about the disbursement. According to the Government’s  
24 Plea Memorandum, Fleck conspired to trade campaign contributions for official favors with  
25 Public Official No. 3, who is reportedly Pawlowski, and Fleck tipped off others with the intent of

1 warning Public Official No. 3 about the FBI's investigation.<sup>51</sup> Given that Fleck was also  
2 Pawlowski's campaign manager, had check-signing authority, and had access to campaign funds,  
3 the Committee's knowledge with respect to the disbursement in is unclear.

4 In addition, the available information casts doubts on the Committee's assertions about  
5 what it knew about the disbursement. Lisa Pawlowski avers that the Pawlowkis and the Flecks  
6 had a long professional and social relationship, and that Fleck performed campaign management  
7 services for all of Pawlowski's past campaigns, including his 2016 Senate campaign.  
8 Presumably, Fleck did not volunteer his services, yet except for a \$3,000 disbursement for rent to  
9 H Street,<sup>52</sup> Fleck's consulting firm, the Committee's disclosure reports do not reflect any  
10 itemized disbursements to Fleck for consulting services or reimbursement for expenses, and the  
11 Committee has not fully explained whether or how Fleck received any compensation for such  
12 services. Thus, additional fact finding is necessary to determine the circumstances surrounding  
13 this disbursement. We thus recommend that the Commission open a MUR, find reason to  
14 believe that Pawlowski2016.com and Lisa Pawlowski in her official capacity as treasurer  
15 violated 52 U.S.C. § 30104(b) for improperly disclosing the purpose for the disbursement.<sup>53</sup>

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<sup>51</sup> Fleck Plea at 7 (stating that on March 11, 2015, Fleck falsely stated to the FBI that he had told no one agents had confronted him earlier in the day when Fleck knew he had disclosed the encounter to several others with the intent of warning Public Official No. 3 about the FBI's investigation into the scheme).

<sup>52</sup> See FEC Form 3, Report of Receipts and Disbursements for an Authorized Committee, Amended July 15 Quarterly Report, at 95 (filed Aug. 18, 2015).

<sup>53</sup> We are aware of recent cases involving committees that were victims of embezzlement in which the Commission referred the committee to the Alternative Dispute Resolution Office ("ADRO") and pursued the embezzler through the enforcement process. See, e.g., R 15L-03, 15L-12, 15L-16 (McConnell Senate Committee *et al.*) (referring committees to ADRO); Pre-MUR 561 (Dewhurst for Texas) (same); RR 12L-42, *et al.* (Los Angeles County Dem. Central Comm., *et al.*) (same); Pre-MUR 521 (LoBiondo for Congress) (same). The facts here, though, counsel in favor of investigating the underlying circumstances of the disbursement through the Enforcement process.

1           **B.       There is Reason to Believe that Fleck Knowingly and Willfully Violated the**  
2           **Commingling and Conversion Provisions of the Act**  
3

4           Fleck denies that he converted campaign funds from the Pawlowski campaign, claiming  
5           that the \$76,500 payment was for campaign services and expenses.<sup>54</sup> However, Fleck has not  
6           provided documents to support his claim — although this may be due to the fact that other  
7           federal agencies have Fleck's records. But it is undisputed that Fleck deposited the \$76,500 in  
8           Committee funds into an account that he controlled. And while we do not know what Fleck has  
9           done with these funds, according to his criminal plea agreement, Fleck has previously "made  
10          cash withdrawals of company funds in order to knowingly pay certain expenses with company  
11          funds."<sup>55</sup> It is notable that Fleck made the disbursement the same day the FBI raided  
12          Pawlowski's offices. Accordingly, the available information supports a reasonable inference that  
13          Fleck may have converted Committee funds to personal use.<sup>56</sup> In so doing, he may have  
14          commingled the "funds of a political committee . . . with [] the personal funds of any individual"  
15          in violation of the Act.<sup>57</sup> As with the Committee, an investigation is needed to determine the  
16          circumstances underlying the \$76,500 disbursement.

17          There is also information that Fleck acted knowingly and willfully in misappropriating  
18          Committee funds. Even if questions remain as to whether the Committee truly did not know the  
19          purpose of the disbursement, the treasurer has sworn that the disbursement was unauthorized and  
20          that Fleck never told her of his plan to withdraw the funds. Fleck's short response says only that

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<sup>54</sup> See Email from Counsel for Fleck to CELA (Sept. 7, 2016).

<sup>55</sup> According to the Plea Agreement, Fleck made those withdrawals from his company account between April 2012 and October 6, 2014. Fleck Plea at 7-8.

<sup>56</sup> 52 U.S.C. § 30114; *see* MUR 6761 (Kenneth A. Barfield) (finding reason to believe that Respondent violated section 439a(b) (now 52 U.S.C. § 30114(b)) where he made unauthorized disbursements from an authorized campaign committee's account and used the funds for personal expenses).

<sup>57</sup> 52 U.S.C. § 30102(b)(3); *see* MUR 6526 (Cora Carper) (finding reason to believe that Respondent violated section 432(b)(3) (now 52 U.S.C. § 30102(b)(3)) where she deposited cash into personal accounts after cashing committee checks that she had issued to herself without authorization).

1 the disbursement represented money he was due, not that he informed the Committee he was  
2 making it. Consequently, Fleck's conduct suggests that he sought to conceal his withdrawal of  
3 committee funds. Accordingly, we recommend that the Commission find reason to believe that  
4 Fleck knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and 30114(b) by converting  
5 campaign funds to personal use and commingling campaign funds with his personal funds.

### 6 **III. INVESTIGATION**

7 Based on the above and given the limited information regarding the circumstances  
8 surrounding the disbursement at issue in this matter, an investigation is needed to learn the true  
9 purpose of this disbursement and identify the individuals who were aware of such purpose.

10  
11 In the event further investigation is necessary,  
12 we recommend that the Commission authorize the use of compulsory process.

### 13 **IV. RECOMMENDATIONS**


- 14 1. Open a MUR;
- 15 2. Find reason to believe that Pawlowski2016.com and Lisa Pawlowski in her  
16 official capacity as treasurer violated 52 U.S.C. § 30104(b);
- 17 3. Find reason to believe that Michael Fleck knowingly and willfully violated  
18 52 U.S.C. §§ 30102(b)(3) and 30114(b);
- 19 4. Approve the attached Factual and Legal Analyses;
- 20 5. Authorize the use of compulsory process, as necessary; and
- 21 6. Approve the appropriate letters.
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- Attachments:  
A. Factual and Legal Analysis for Pawlowski 2016  
B. Factual and Legal Analysis for Michael Fleck



1 services.<sup>3</sup> Further, there is information that Pawlowski is under investigation regarding this  
2 scheme.

3 Based on the referral, response, and publicly available information, the Commission finds  
4 reason to believe that the Committee failed to timely and properly disclose the purpose of the  
5 disbursement, in violation of 52 U.S.C. § 30104(b) of the Federal Election Campaign Act of  
6 1971, as amended (the “Act”).

## 7 **II. FACTUAL BACKGROUND**

8 The Committee is the authorized committee of Pawlowski, the current mayor of  
9 Allentown, Pennsylvania, who was a candidate for the U.S. Senate from Pennsylvania during the  
10 2016 election cycle.<sup>4</sup> His wife, Lisa Pawlowski, is the Committee’s treasurer. Pawlowski has  
11 been Allentown’s mayor since 2006.

12 Fleck, the Committee’s former campaign manager, is the principal and co-owner of  
13 H Street, an Allentown-based consulting firm.<sup>5</sup> The Committee retained Fleck and his firm to  
14 provide consulting, fundraising, and campaign management services for Pawlowski’s 2016  
15 campaign.<sup>6</sup>

16 Fleck pled guilty to federal criminal violations arising out of a scheme to trade Allentown  
17 city contracts and services in exchange for campaign contributions to “Public Official No. 3,”

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<sup>3</sup> Government’s Guilty Plea Mem., *United States v. Fleck*, No. 5:16-cr-00171 (E.D. Pa. Apr. 26, 2016) (“Fleck Plea”). Fleck also pled guilty to a separate count of tax evasion, which is apparently unrelated to the scheme. *Id.* at 7-8.

<sup>4</sup> Pawlowski withdrew his candidacy in 2015.

<sup>5</sup> Fleck Plea at 4.

<sup>6</sup> See Committee Resp. at 2 (June 31, 2016), Decl. of Lisa Pawlowski ¶ 4 (June 29, 2016).



1 who news reports have identified as Pawlowski.<sup>7</sup> Fleck and others who have pled guilty in  
2 connection with the scheme have implicated Public Official No. 3 as the person who orchestrated  
3 it.<sup>8</sup> These individuals are scheduled to be sentenced early in 2017.<sup>9</sup> The federal corruption  
4 investigation appears to be ongoing, although Pawlowski has not been charged to date.<sup>10</sup>  
5 Pawlowski suspended his campaign in July 2015.<sup>11</sup>

6 The Committee's 2015 October Quarterly Report disclosed a \$76,500 disbursement to  
7 H Street made on July 2, 2015, with the notation "Purpose(s) unknown; documentation  
8 unavailable."<sup>12</sup> On December 21, 2015, RAD sent the Committee a Request for Additional  
9 Information ("RFAI") asking it to clarify the disbursement's purpose.<sup>13</sup> On January 22, 2016,  
10 the Committee filed an Amended 2015 October Quarterly Report, which included this  
11 explanation: "Payment never authorized by treasurer of committee; purpose(s) known only to

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<sup>7</sup> See *infra* note 36.

<sup>8</sup> Fleck Plea 4-6 and see *infra* note 9.

<sup>9</sup> See *United States v. Wiles*, No. 2:15-cr-00561 (E.D. Pa. Oct. 19, 2016) (sentencing, Jan. 30, 2017); Order, *United States v. Fleck*, No. 5:16-cr-00171 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 6, 2017); Order, *United States v. Koval*, No. 2:16-cr-00009 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 6, 2017); Order, *United States v. Strathearn*, No. 5:16-cr-00179 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 7, 2017); Order, *United States v. McTish*, No. 5:16-cr-00179 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 9, 2017); Order, *United States v. Haddad*, No. 5:15-cr-00414 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 9, 2017).

<sup>10</sup> On July 2, 2015, the FBI raided Allentown City Hall, seizing documents and serving subpoenas. Pawlowski's two campaign accounts have been frozen pursuant to federal civil forfeiture relating to a separate investigation. See Peter Hall, *Judge Rejects Pawlowski's Request to Release Seized Bank Accounts*, *The Morning Call* (Sept. 29, 2016).

<sup>11</sup> See, e.g., Emily Opilo, Scott Kraus and Matt Assad, *Allentown Mayor Ed Pawlowski's Consultant Recorded Conversations in FBI Probe, Sources Say*, *The Morning Call* (July 13, 2015), <http://www.mcall.com/news/nationworld/pennsylvania/>.

<sup>12</sup> See Pawlowski2016.com, October Quarterly Rpt. at 31 (Oct. 15, 2015).

<sup>13</sup> See Request for Additional Information, Pawlowski2016.com (Dec. 21, 2015).

1 payee's CEO who is estranged from committee and whereabouts unknown."<sup>14</sup> In a cover letter  
2 to the report, the Committee further noted that on or about July 2, 2015, H Street stopped doing  
3 business and abandoned its offices.<sup>15</sup>

4 On March 15, 2016, the Committee's counsel contacted RAD about the unauthorized  
5 disbursement and was advised that the Committee should amend its reports to disclose the  
6 transaction as unauthorized and provide additional information for the public record.<sup>16</sup> RAD also  
7 indicated that the matter would be referred to another Commission office.<sup>17</sup>

8 On May 26, 2016, the Committee filed a Miscellaneous Text form, which reiterated that  
9 the payment was unauthorized, identified Fleck as H Street's CEO and co-owner and the  
10 Committee's former campaign manager, and stated that Fleck had left the Allentown area  
11 without providing contact information.<sup>18</sup> The Committee explained that Fleck, who had check-  
12 signing authority on the campaign account, had written "April thru August [2015] consulting,  
13 rent and travel" on the check's memo line.<sup>19</sup> However, the Committee stated that it had no  
14 documents from H Street regarding the payment, and that the Committee did not have a contract  
15 with H Street or Fleck regarding compensation for campaign consulting services, office rent, or  
16 travel reimbursement procedures.<sup>20</sup> The Committee also stated that on the first business day  
17 after it learned that the unauthorized check had cleared the Committee's bank account, the

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<sup>14</sup> See Pawlowski2016.com, Amended October Quarterly Rpt., Memo Text (Jan. 22, 2016).

<sup>15</sup> Letter from Committee Treasurer to RAD (Jan. 22, 2016).

<sup>16</sup> Referral at 2.

<sup>17</sup> The Committee previously requested Commission guidance as to whether it could submit a supplemental RFAI response that would not be placed on the public record. The Committee later withdrew the request.

<sup>18</sup> Pawlowski2016.com, Miscellaneous Text form (May 26, 2016).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

1 treasurer closed the account, as well as other Committee accounts to which Fleck had access.<sup>21</sup>  
2 The Committee and its treasurer concluded that Fleck had unlawfully converted campaign funds  
3 to personal use.<sup>22</sup>

4 On June 6, 2016, RAD referred this matter to OGC, and OGC notified the Committee. In  
5 response, the Committee explained that Fleck, without the Pawlowskis' knowledge or  
6 authorization,<sup>23</sup> wrote a \$76,500 check to H Street and deposited it into a bank account Fleck  
7 controlled.<sup>24</sup> The Committee stated that, after learning of the deposit, the treasurer took prompt  
8 remedial action as set forth in the Commission's Safe Harbor Policy for Misreporting Due to  
9 Embezzlement.<sup>25</sup>

10 The Committee denies that it, Pawlowski, or its treasurer was negligent.<sup>26</sup> The  
11 Committee acknowledges that Fleck had check-signing authority, but maintains that Fleck still  
12 had to obtain the treasurer's advance authorization to pay campaign expenses.<sup>27</sup> Other than this  
13 statement, however, the Committee does not address what internal controls it had in place at the  
14 time of the disbursement.

15 The Committee also contends that the Pawlowskis have had a professional and social  
16 relationship with Fleck and his wife for over 10 years, and that Fleck has provided consulting  
17 and campaign management services to Pawlowski in all of his past campaigns for public office,

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> The Committee's treasurer, Lisa Pawlowski, is the candidate's wife.

<sup>24</sup> Committee Resp. at 1-3 (June 30, 2016).

<sup>25</sup> *Id.* at 2, 3 (citing Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("Safe Harbor Policy").

<sup>26</sup> Committee Resp. at 1.

<sup>27</sup> *Id.* at 2.

1 including his 2016 senate campaign.<sup>28</sup> In a sworn declaration, Lisa Pawlowski stated that the  
2 retainer agreement with Fleck and H Street was informal, and that there was never a written  
3 contract with the campaign.<sup>29</sup> She further stated that Fleck and Pawlowski discussed a monthly  
4 campaign management fee in April or May 2015, but the parties never reached an agreement.<sup>30</sup>  
5 The response does not indicate, however, whether Fleck ever received any compensation for his  
6 services or was reimbursed for any campaign expenses. As evidence of Fleck's  
7 untrustworthiness, the Committee refers to his guilty plea and submits documents from his  
8 criminal proceedings.<sup>31</sup>

9 In mitigation, the Committee notes that it timely reported the \$76,500 disbursement on  
10 the next quarterly report after the disbursement, and that it disclosed the purpose of the  
11 disbursement in timely responses to an RFAI.<sup>32</sup> The Committee states it could not seek recovery  
12 of the funds or explain why Fleck may have thought that the payment was authorized because  
13 Fleck moved to an unknown location.<sup>33</sup> Fleck deposited the Committee's check, which appears

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<sup>28</sup> *Id.*

<sup>29</sup> Decl. of Lisa Pawlowski at ¶ 4.

<sup>30</sup> *Id.*

<sup>31</sup> Committee Resp. at 2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

1 to contain a memo entry: “April-Aug Consul + Rent + Travel,”<sup>34</sup> on July 2, 2015,<sup>35</sup> the same day  
2 that the FBI apparently raided Allentown City Hall.<sup>36</sup>

### 3 **III. LEGAL ANALYSIS**

#### 4 **A. Relevant Law**

5 Under the Act, a committee, through its treasurer, is required to keep an accurate account  
6 of and disclose its receipts, disbursements, and cash-on-hand balances.<sup>37</sup> Committees are  
7 required to file reports with the Commission through their treasurers disclosing, among other  
8 things, the amount of cash on hand at the beginning of the reporting period and the total amount  
9 of disbursements, including the name and address of each person to whom an expenditure  
10 exceeding \$200 is made together with the date, amount, and purpose of the expenditure.<sup>38</sup>

11 In 2007, the Commission established a safe harbor to benefit committees that file  
12 inaccurate reports because their funds were unknowingly misappropriated by committee  
13 fiduciaries and staff.<sup>39</sup> The Commission stated that it would not seek a monetary penalty from a  
14 committee for filing inaccurate reports due to embezzlement if the committee, among other

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<sup>34</sup> Committee Resp., Exhibit A.

<sup>35</sup> Pawlowski Decl. ¶ 3.

<sup>36</sup> According to news articles, the check was deposited on July 2, 2015, the same day that Fleck closed his political consulting business, and the FBI raided Allentown City Hall. Pawlowski ended his Senate run after the raid. See Emily Opilo and Scott Kraus, *Allentown mayor Ed Pawlowski Implicated in FBI Probe*, The Morning Call (Sept. 10, 2015).

<sup>37</sup> 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

<sup>38</sup> 52 U.S.C. § 30104(b)(1), (2), (4)(G), (5), (6)(A).

<sup>39</sup> See Safe Harbor Policy.

1 things, required written authorization for and/or two signatures on checks larger than \$1,000, and  
2 promptly alerted the Commission and other law enforcement authorities of misappropriations.<sup>40</sup>

3 **A. There is Reason to Believe that the Pawlowski Committee Improperly**  
4 **Disclosed the Purpose of the \$76,500 Disbursement**

5  
6 The available information indicates that the Committee did not provide complete and  
7 timely information about the disbursement when it disclosed the purpose for the \$76,500  
8 disbursement on its original 2015 October Quarterly Report as “unknown; documentation  
9 unavailable.” It was only in an amendment filed three months later that the Committee disclosed  
10 the disbursement as unauthorized and provided further information about the alleged  
11 misappropriation of committee funds.

12 In addition, the Committee does not appear to qualify for the safe harbor’s protections.  
13 The Committee’s Response does not describe the internal controls it had in place at the time of  
14 the misappropriation, other than a stating that Fleck was required to obtain the treasurer’s  
15 authorization to make a disbursement. Most notably, the response does not indicate whether the  
16 Committee required that checks larger than \$1,000, such as the disbursement at issue, be  
17 authorized in writing and/or signed by two individuals, as the Safe Harbor Policy provides. Nor  
18 did the Committee fully and timely notify the Commission after it discovered the embezzlement.  
19 The Committee learned of the unauthorized disbursement on July 6, 2015, but did not notify the  
20 Commission that the disbursement was unauthorized until January 22, 2016, over six months  
21 later, and only in response to an RFAI. Moreover, we have no information that the Committee

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<sup>40</sup> The other 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) instituting procedures for handling incoming receipts by someone other than the individuals with accounting or banking authority; and (4) 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 also promptly amend its reports. *Id.* at 16,695.

1 notified law enforcement authorities regarding the misappropriation. Thus, the Committee does  
2 not appear to qualify for the safe harbor's protections.

3 Further, the circumstances raise questions about the Committee's assertions that  
4 Pawlowski and his wife did not know about the disbursement. According to the Government's  
5 Plea Memorandum, Fleck conspired to trade campaign contributions for official favors with  
6 Public Official No. 3, who is reportedly Pawlowski, and Fleck tipped off others with the intent of  
7 warning Public Official No. 3 about the FBI's investigation.<sup>41</sup> Given that Fleck was also  
8 Pawlowski's campaign manager, had check-signing authority, and had access to campaign funds,  
9 the Committee's knowledge with respect to the disbursement in is unclear.

10 In addition, the available information casts doubts on the Committee's assertions  
11 regarding what it knew about the circumstances of the disbursement. Lisa Pawlowski avers that  
12 the Pawlowskis and the Flecks had a long professional and social relationship, and that Fleck  
13 performed campaign management services for all of Pawlowski's past campaigns, including his  
14 2016 senate campaign. Presumably, Fleck did not volunteer his services, yet except for a \$3,000  
15 disbursement for rent to H Street,<sup>42</sup> Fleck's consulting firm, the Committee's disclosure reports  
16 do not reflect any itemized disbursements to Fleck for consulting services or reimbursement for  
17 expenses, and the Committee has not fully explained whether or how Fleck received any  
18 compensation for such services.

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<sup>41</sup> Fleck Plea at 7 (stating that on March 11, 2015, Fleck falsely stated to the FBI that he had told no one agents had confronted him earlier in the day when Fleck knew he had disclosed the encounter to several others with the intent of warning Public Official No. 3 about the FBI's investigation into the scheme).

<sup>42</sup> See Pawlowski2016.com, Amended July Quarterly Rpt., at 95 (Aug. 19, 2015).

- 1           Therefore, the Commission finds reason to believe that Pawlowski2016.com and Lisa
- 2   Pawlowski in her official capacity as treasurer violated 52 U.S.C. § 30104(b) by improperly
- 3   disclosing the purpose for the disbursement.



1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**  
3

4 RESPONDENT: Michael Fleck

MUR: \_\_\_\_\_

5  
6  
7 **I. INTRODUCTION**

8 This matter was generated based on information ascertained by the Federal Election  
9 Commission (the “Commission”) in the normal course of carrying out its supervisory  
10 responsibilities.<sup>1</sup> The Reports Analysis Division referred Pawlowski2016.com and Lisa  
11 Pawlowski in her official capacity as treasurer (the “Committee”), the authorized committee for  
12 Edwin Pawlowski’s senate campaign, to the Office of General Counsel (“OGC”) for  
13 “unauthorized activity” in connection with the Committee’s 2015 October Quarterly Report,  
14 which disclosed a \$76,500 disbursement with the notation “Purpose(s) unknown; documentation  
15 unavailable.”<sup>2</sup> The Committee later amended the report and explained that Michael Fleck, the  
16 Committee’s former campaign manager, had written a \$76,500 check to H Street Consulting  
17 LLC (“H Street”), his consulting company, without authorization and had converted campaign  
18 funds to personal use. Fleck was also notified of the referral and denies any conversion and  
19 states that the Committee owed him and H Street the money for his services.

20 Meanwhile, Fleck has pled guilty to one count of conspiracy to commit extortion and  
21 bribery offenses in connection with a scheme to trade campaign contributions — apparently to  
22 Pawlowski, the current mayor of Allentown, Pennsylvania — in exchange for city contracts and

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<sup>1</sup> See 52 U.S.C. § 30109(a)(2).

<sup>2</sup> Reports Analysis Division (“RAD”), Referral of Pawlowski2016.com, 16L-10 (June 6, 2016) (“Referral”), incorporated herein by reference.

1 services.<sup>3</sup> Further, there is information that Pawlowski is under investigation regarding this  
2 scheme.

3 Based on the referral, response, and publicly available information, the Commission finds  
4 reason to believe that Michael Fleck knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3)  
5 and 30114(b) by converting Committee funds to personal use and commingling those funds with  
6 his personal funds.

## 7 **II. FACTUAL BACKGROUND**

8 The Committee is the authorized committee of Pawlowski, the current mayor of  
9 Allentown, Pennsylvania, who was a candidate for the U.S. Senate from Pennsylvania during the  
10 2016 election cycle.<sup>4</sup> His wife, Lisa Pawlowski, is the Committee's treasurer. Pawlowski has  
11 been Allentown's mayor since 2006.

12 Fleck, the Committee's former campaign manager, is the principal and co-owner of  
13 H Street, an Allentown-based consulting firm.<sup>5</sup> Fleck pled guilty to federal criminal violations  
14 arising out of a scheme to trade Allentown city contracts and services in exchange for campaign  
15 contributions to "Public Official No. 3," who news reports have identified as Pawlowski.<sup>6</sup> Fleck  
16 and others who have pled guilty in connection with the scheme have implicated Public Official  
17 No. 3 as the person who orchestrated it.<sup>7</sup> These individuals are scheduled to be sentenced early

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<sup>3</sup> Government's Guilty Plea Mem., *United States v. Fleck*, No. 5:16-cr-00171 (E.D. Pa. Apr. 26, 2016) ("Fleck Plea"). Fleck also pled guilty to a separate count of tax evasion, which is apparently unrelated to the scheme. *Id.* at 7-8.

<sup>4</sup> Pawlowski withdrew his candidacy in 2015.

<sup>5</sup> Fleck Plea at 4.

<sup>6</sup> See Emily Opilo and Scott Kraus, *Allentown mayor Ed Pawlowski Implicated in FBI Probe*, *The Morning Call* (Sept. 10, 2015).

<sup>7</sup> Fleck Plea 4-6 and *see infra* note 8.

1 in 2017.<sup>8</sup> The federal corruption investigation appears to be ongoing, although Pawlowski has  
 2 not been charged to date.<sup>9</sup> Pawlowski suspended his campaign in July 2015.<sup>10</sup>

3 The Committee's 2015 October Quarterly Report disclosed a \$76,500 disbursement to  
 4 H Street made on July 2, 2015, with the notation "Purpose(s) unknown; documentation  
 5 unavailable."<sup>11</sup> On December 21, 2015, RAD sent the Committee a Request for Additional  
 6 Information ("RFAI") asking it to clarify the disbursement's purpose.<sup>12</sup> On January 22, 2016,  
 7 the Committee filed an Amended 2015 October Quarterly Report, which included this  
 8 explanation: "Payment never authorized by treasurer of committee; purpose(s) known only to  
 9 payee's CEO who is estranged from committee and whereabouts unknown."<sup>13</sup> In a cover letter  
 10 to the report, the Committee further noted that on or about July 2, 2015, H Street stopped doing  
 11 business and abandoned its offices.<sup>14</sup>

12 On May 26, 2016, the Committee filed a Miscellaneous Text form, which reiterated that  
 13 the payment was unauthorized, identified Fleck as H Street's CEO and co-owner and the

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<sup>8</sup> See *United States v. Wiles*, No. 2:15-cr-00561 (E.D. Pa. Oct. 19, 2016) (sentencing, Jan. 30, 2017); Order, *United States v. Fleck*, No. 5:16-cr-00171 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 6, 2017); Order, *United States v. Koval*, No. 2:16-cr-00009 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 6, 2017); Order, *United States v. Strathearn*, No. 5:16-cr-00179 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 7, 2017); Order, *United States v. McTish*, No. 5:16-cr-00179 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 9, 2017); Order, *United States v. Haddad*, No. 5:15-cr-00414 (E.D. Pa. Oct. 19, 2016) (sentencing, Feb. 9, 2017).

<sup>9</sup> On July 2, 2015, the FBI raided Allentown City Hall, seizing documents and serving subpoenas. Pawlowski's two campaign accounts have been frozen pursuant to federal civil forfeiture relating to a separate investigation. See Peter Hall, *Judge Rejects Pawlowski's Request to Release Seized Bank Accounts*, *The Morning Call* (Sept. 29, 2016).

<sup>10</sup> See, e.g., Emily Opilo, Scott Kraus and Matt Assad, *Allentown Mayor Ed Pawlowski's Consultant Recorded Conversations in FBI Probe, Sources Say*, *The Morning Call* (July 13, 2015), <http://www.mcall.com/news/nationworld/pennsylvania/>.

<sup>11</sup> See Pawlowski2016.com, October Quarterly Rpt. at 31 (Oct. 15, 2015).

<sup>12</sup> See Request for Additional Information, Pawlowski2016.com (Dec. 21, 2015).

<sup>13</sup> See Pawlowski2016.com, Amended October Quarterly Rpt., Memo Text (Jan. 22, 2016).

<sup>14</sup> Letter from Committee Treasurer to RAD (Jan. 22, 2016).

1 Committee's former campaign manager, and stated that Fleck had left the Allentown area  
2 without providing contact information.<sup>15</sup> The Committee explained that Fleck, who had check-  
3 signing authority on the campaign account, had written "April thru August [2015] consulting,  
4 rent and travel" on the check's memo line.<sup>16</sup> However, the Committee stated that it had no  
5 documents from H Street regarding the payment, and that the Committee did not have a contract  
6 with H Street or Fleck regarding compensation for campaign consulting services, office rent, or  
7 travel reimbursement procedures.<sup>17</sup> The Committee also stated that on the first business day  
8 after it learned that the unauthorized check had cleared the Committee's bank account, the  
9 treasurer closed the account, as well as other Committee accounts to which Fleck had access.<sup>18</sup>  
10 The Committee and its treasurer concluded that Fleck had unlawfully converted campaign funds  
11 to personal use.<sup>19</sup> On June 6, 2016, RAD referred this matter to OGC and Fleck was notified.<sup>20</sup>

12 Fleck's counsel submitted an email to OGC asking for additional time to file a formal  
13 response,<sup>21</sup> and stating that Fleck no longer lived near Allentown and is difficult to reach. In that  
14 same email, counsel asserted that Fleck "categorically denies that he converted campaign funds  
15 from the Pawlowski campaign" and that "payment was for obligations owed and due, and for

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<sup>15</sup> Pawlowski2016.com, Miscellaneous Text form (May 26, 2016).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *See Referral.*

<sup>21</sup> Fleck did not file a formal response.

1 monies earned by the recipient.”<sup>22</sup> Counsel notes that the FBI, IRS and/or DOJ possess most of  
 2 Fleck’s personal and business records.<sup>23</sup>

### 3 III. LEGAL ANALYSIS

4 The Act prohibits any person from converting contributions to a federal candidate to  
 5 personal use,<sup>24</sup> and requires that all funds of a political committee “be segregated from, and may  
 6 not be commingled with, the personal funds of any individual.”<sup>25</sup> The Act prescribes additional  
 7 monetary penalties for violations that are knowing and willful.<sup>26</sup> A violation of the Act is  
 8 knowing and willful if the “acts were committed with full knowledge of all the relevant facts and  
 9 a recognition that the action is prohibited by law.”<sup>27</sup> This does not require proving knowledge of  
 10 the specific statute or regulation the respondent allegedly violated.<sup>28</sup> Rather, it is sufficient to  
 11 demonstrate that a respondent “acted voluntarily and was aware that his conduct was

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<sup>22</sup> See Fleck Resp.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* § 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).

<sup>25</sup> *Id.* § 30102(b)(3).

<sup>26</sup> See 52 U.S.C. §§ 30109(a)(5)(B), (d).

<sup>27</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>28</sup> *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)).

1 unlawful.”<sup>29</sup> This awareness may be shown through circumstantial evidence from which the  
2 respondent’s unlawful intent reasonably may be inferred.<sup>30</sup>

3 Fleck denies that he converted campaign funds from the Pawlowski campaign, claiming  
4 that the \$76,500 payment was for campaign services and expenses.<sup>31</sup> However, Fleck has not  
5 provided documents to support his claim — although this may be due to the fact that other  
6 federal agencies have Fleck’s records. But it is undisputed that Fleck deposited the \$76,500 in  
7 Committee funds into an account that he controlled. And while we do not know what Fleck has  
8 done with these funds, according to his criminal plea agreement, Fleck has previously “made  
9 cash withdrawals of company funds in order to knowingly pay certain expenses with company  
10 funds.”<sup>32</sup> It is notable that Fleck made the disbursement the same day the FBI raided  
11 Pawlowski’s offices. Accordingly, the available information supports a reasonable inference that  
12 Fleck may have converted the Committee’s funds to personal use.<sup>33</sup> In so doing, he may have

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<sup>29</sup> *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)).

<sup>30</sup> *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.

<sup>31</sup> *See* Email from Counsel for Fleck to CELA (Sept. 7, 2016).

<sup>32</sup> According to the Plea Agreement, Fleck made those withdrawals from his company account between April 2012 and October 6, 2014. Fleck Plea at 7-8.

<sup>33</sup> 52 U.S.C. § 30114; *see* MUR 6761 (Kenneth A. Barfield) (finding reason to believe that Respondent violated section 439a(b) (now 52 U.S.C. § 30114(b)) where he made unauthorized disbursements from an authorized campaign committee’s account and used the funds for personal expenses).

MUR (Michael Fleck)  
Factual and Legal Analysis  
Page 7 of 7

1 commingled the “funds of a political committee . . . with [] the personal funds of any individual”  
2 in violation of the Act.<sup>34</sup>

3       There is also information that Fleck acted knowingly and willfully in misappropriating  
4 Committee funds. The Committee has stated that the disbursement was not authorized by the  
5 treasurer. Fleck’s short response says only that the disbursement represented money he was due,  
6 not that he informed the Committee he was making it. Consequently, Fleck’s conduct suggests  
7 that he sought to conceal his withdrawal of committee funds. Therefore, the Commission finds  
8 reason to believe that Fleck knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and  
9 30114(b) by converting funds to personal use and commingling Committee funds with his  
10 personal funds.

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<sup>34</sup> 52 U.S.C. § 30102(b)(3); *see* MUR 6526 (Cora Carper) (finding reason to believe that Respondent violated section 432(b)(3) (now 52 U.S.C. § 30102(b)(3)) where she deposited cash into personal accounts after cashing committee checks that she had issued to herself without authorization).