



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 14, 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Friends of Dave Joyce
c/o Benjamin L. Ginsberg
Jones Day
51 Louisiana Avenue
Washington, DC 20001

RE: MUR 7692
Scott E. Coleman

Dear Mr. Ginsburg:

This letter is in reference to the complaint you filed on February 5, 2020, with the Federal Election Commission on behalf of your client, Friends of Dave Joyce and Natalie Baur in her official capacity as treasurer, concerning Scott E. Coleman, former treasurer of Friends of Dave Joyce. On January 12, 2021, the Commission found reason to believe that Scott Coleman knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1), and 11 C.F.R. §§ 102.9, 104.3, 104.14(d) provisions of the Act and Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

On June 9, 2021, the Commission accepted the conciliation agreement signed by Scott E. Coleman and closed the file in this matter. A copy of the conciliation agreement is enclosed for your information. Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

Sincerely,

Kimberly D. Hart
Kimberly D. Hart
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 7692

RESPONDENT:

Scott E. Coleman

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (the “Commission”) in the normal course of carrying out its supervisory responsibilities, *see* 52 U.S.C. § 30109(a)(2), and by a Complaint filed by Friends of Dave Joyce and Natalie Baur in her official capacity as treasurer (“Committee”) alleging that Scott E. Coleman (“Coleman”), former treasurer of the Committee, embezzled \$174,952.40 from the Committee.¹ Coleman made \$88,769 in unauthorized withdrawals from the Committee’s bank account in the form of ATM withdrawals, counter withdrawals, and cash back from bank deposits, and \$86,273.40 in unauthorized personal charges on the Committee’s credit card.

Coleman pled guilty to one count of grand theft in the 4th degree in connection with embezzling \$174,952.40 between January 1, 2015 and November 30, 2018. On August 30, 2019, Coleman made full restitution to the Committee in the amount of \$341,983.06 to cover the embezzled amounts, the legal fees associated with the criminal investigation, and the internal review costs. He was sentenced to on October 2, 2019, to 30 days in jail, 2 years’ probation, and a \$5,000 fine.

¹ Compl. at 1, Attachs., MUR 7692 (Scott Coleman) (Feb. 5, 2020). The Complaint attached a supplement to the Committee’s *Sua Sponte* submission. Pre-MUR 623 (Friends of Dave Joyce (Oct. 25, 2019) (“Suppl. Submission”). That supplement attached documents associated with Coleman’s criminal court case, and it referenced the Committee’s initial submission in Pre-MUR 623, but did not attach it. Suppl. Submission at 1.

Based on this information, there is reason to believe that Scott E. Coleman (“Coleman”) knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1) and 11 C.F.R. §§ 102.9, and 104.3, 104.14(d) of the Federal Election Campaign Act of 1971, as amended (the “Act”) by converting Committee funds to personal use, failing to keep complete Committee financial records, and failing to file accurate disclosure reports.

II. FACTUAL AND LEGAL ANALYSIS

A. BACKGROUND

Information in the Commission’s possession indicates that Rep. Dave Joyce (“Joyce”) was elected in 2012 to succeed Rep. Steven LaTourette for the 14th Congressional District of Ohio and chose to retain LaTourette’s campaign treasurer, Scott Coleman, as the Committee’s treasurer. Coleman, in his capacity as treasurer, was responsible for preparing and filing campaign finance reports, processing incoming contributions, reviewing reimbursement requests, and issuing refunds and disbursements. Information in the Commission’s possession provides that during the relevant period, Coleman and Dino DiSanto, committee campaign manager, were the only two authorized signatories on the Committee’s bank account.

1. Events Leading to Discovery of Embezzlement

Information in the Commission’s possession indicates that, on or about November 20, 2018, Coleman informed Joyce that DiSanto made four reimbursement requests totaling \$64,000 in connection with consulting services provided to the Committee. Joyce, being concerned about the amount of the reimbursement requests, met with Coleman on November 26, 2018, to discuss the DiSanto requests, as well as the overall financial condition of the Committee.

Information in the Commission’s possession indicates that during this same meeting, Joyce informed Coleman that his services were no longer required and requested that Coleman

turn over the Committee's books and records to the new treasurer, Natalie Baur. The same information in the Commission's possession indicates that Coleman resisted the request and offered to continue to serve as treasurer at no compensation. Coleman's resistance to the transition and delay in turning over the Committee's records and books for several weeks concerned both Joyce and Baur.² On December 12, 2018, Coleman produced an incomplete set of financial records to Baur, which failed to include the Committee's bank statements. On the same day, Joyce requested that the state prosecutor subpoena all of the Committee's bank records since he and Baur were not authorized to obtain them directly from the bank.

Information in the Commission's possession indicates that on or about January 23, 2019, Baur received the subpoenaed bank records showing that Coleman signed bank withdrawal slips totaling approximately \$4,000 from the Committee's account, and received cash back when depositing checks on several occasions.³ Baur's review of the bank records and video surveillance confirmed that between May 2015 and November 16, 2018, Coleman made regular, small, unauthorized ATM withdrawals that totaled approximately \$82,000.

2. Results of Criminal Investigation and Internal Review

On August 29, 2019, Coleman was charged with one count of grand theft in the 4th degree under Ohio Revised Code 2913.02(A)(1).⁴ Coleman pled guilty and was sentenced on

² Information in the Commission's possession indicates that as a result of Coleman's resistance, Joyce, on or about December 7, 2018, contacted the Geauga County Prosecutor's Office to report his suspicions about potential issues with the Committee's account. The prosecutor's office began its investigation by obtaining information regarding the Committee's bank account balance. Baur was able to confirm that the account balance matched the cash-on-hand figure last reported to the Commission in its disclosure report.

³ Information in the Commission's possession indicates that the criminal investigator ultimately did not subpoena Coleman's personal banking records or the credit card statements.

⁴ Suppl. Submission at 1.

October 2, 2019, to 30 days in jail, 2 years' probation, and a \$5,000 fine.⁵ On the same date, the Committee filed a Form 99 with the Commission detailing the results of the Committee's internal review.⁶ On August 30, 2019, Coleman made full restitution to the Committee in the amount of \$341,983.06 to cover the embezzled amounts, the legal fees associated with the criminal investigation, and the internal review costs.⁷

On October 25, 2019, the Committee filed a supplemental submission detailing the results of the criminal investigation, internal review, terms of Coleman's plea agreement, and steps taken to assist in the criminal investigation.⁸ The internal review of its financial records and disclosure reports covered the time period of January 1, 2015, through November 30, 2018.⁹ The internal review determined that Coleman embezzled \$174,952.40 from the Committee.¹⁰

According to the Committee, Coleman made \$88,769 in unauthorized withdrawals from the Committee's bank account in the form of ATM withdrawals, counter withdrawals, and cash back from bank deposits.¹¹ In addition, unbeknownst to Joyce, Coleman obtained a Committee credit card in his own name and incurred numerous expenses on it, both personal and campaign-

⁵ *Id.*

⁶ *See* Form 99, Friends of Dave Joyce (Aug. 29, 2019).

⁷ *Id.* The restitution payment is reflected on the Committee's 2019 October Quarterly Report. *See* 2019 October Quarterly Report, Friends of Dave Joyce (Oct. 15, 2019).

⁸ Suppl. Submission at 1.

⁹ *Id.*

¹⁰ *Id.* at 1-2. The Committee indicates that Coleman also reimbursed the campaign for \$6,675.85 for some additional expenses. *Id.* at 1. Information in the Commission's possession indicates that that the Committee did not have access to the underlying credit card statements—because the prosecutor's office did not subpoena them and Coleman did not produce them—so they used information gathered from its internal review in discussions with Coleman during the criminal investigation, and Coleman attested to its substantial accuracy before pleading guilty.

¹¹ Suppl. Submission at 2.

related.¹² Coleman paid the credit card balances by authorizing checks from the Committee's bank account.¹³ He then reported the campaign-related expenses as direct payments to the recipients rather than as payments to the credit card company with the expenses further itemized.¹⁴ In its supplemental submission, the Committee assumed that expenses on the Committee's disclosure reports that could not be reconciled with the underlying financial records had to have been paid with the credit card.¹⁵ Thus, the Committee concluded that the unauthorized expenses equal \$86,273.40, which is the difference between the amounts reported to the Commission and amounts paid to the credit card company, minus expenses that appeared to be campaign-related.¹⁶

B. 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.¹⁷ The Act prohibits any person

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* Information in the Commission's possession indicates that the Committee identified numerous likely legitimate expenses reported to the FEC that were most likely paid by credit card but could not be matched with a specific payment from the Committee's bank account. Since these expenses could not be matched with a particular payment to the credit card company, but would have accounted for a portion of the excessive amounts paid to the credit card company identified in other transactions, the prosecutor agreed with the Committee that the total amount of such expenses (\$26,246.98) should be deducted from the total amount of underreported payments (\$113,511.88). This yielded a total amount of \$87,264.90 in fraudulent expenses. During the criminal investigation, Coleman agreed to both the accuracy of this methodology and the amounts. There are slight discrepancies between the amount of fraudulent credit card expenses shown on the Committee's supplemental submission, \$86,273.40, the amount shown on the documents used in the criminal investigation, \$87,264.90, and the amount on the Form 99 filed by the Committee, \$87,802.84. *See* Suppl. Submission at 1; Form 99. However, as the differences are relatively minor, we will assume that the lowest figure (\$86,273.40) is correct.

¹⁷ 52 U.S.C. § 30104(a), (b).

from converting contributions to a federal candidate to personal use.¹⁸ The Act prescribes additional monetary penalties for violations that are knowing and willful.¹⁹ A violation of the Act is knowing and willful if the “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.”²⁰ This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.²¹ Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.”²² This awareness may be shown through circumstantial evidence from which the respondent’s unlawful intent reasonably may be inferred.²³

The available information, including the Committee’s internal audit, the criminal investigation, and the plea agreement, confirms that Coleman converted campaign funds to personal use. Coleman pleaded guilty to embezzling \$174,952.40 from the Committee by making \$88,679 in unauthorized ATM withdrawals from its bank account and by incurring

¹⁸ *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).

¹⁹ *Id.* §§ 30109(a)(5)(B), 30109(d).

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

²¹ *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)).

²² *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)).

²³ *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.

numerous personal expenses totaling \$86,273.40 on the Committee's credit card, which Coleman had paid with the Committee's funds.²⁴

In addition, the information supports a knowing and willful finding. Coleman, without informing Joyce or any other Committee employee, obtained a committee credit card in his own name, incurred numerous personal expenses totaling \$86,273.40, and paid for them with Committee funds.²⁵ In an effort to conceal his embezzlement, Coleman also failed to disclose \$84,160 in contributions, timely refund \$5,200 in corporate contributions, and report \$22,109.61 in refunds to vendors as offsets to operating expenditures.²⁶ Coleman's actions, which caused the Committee to underreport and misreport its receipts, disbursements and cash-on-hand balances, indicate an intent to conceal the embezzlement.²⁷

Therefore, the Commission finds reason to believe that Scott E. Coleman knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1), and 11 C.F.R. §§ 102.9, 104.3, 104.14(d) by converting Committee funds to personal use, failing to keep complete Committee financial records, and failing to file accurate disclosure reports.

²⁴ See Resp., Attach (Coleman Sentencing Memorandum), MUR 7692 (Coleman) (Apr. 3, 2020).

²⁵ Suppl. Submission at 2.

²⁶ See Form 99.

²⁷ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Scott E. Coleman

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MUR 7692

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (the "Commission"), pursuant to a signed, sworn and notarized complaint by Friends of Dave Joyce and Natalie Baur in her official capacity as treasurer. The Commission found reason to believe that Scott E. Coleman ("Respondent") knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1), and 11 C.F.R. § 102.9, 104.3, 104.14(d).

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 1. Friends of Dave Joyce and Natalie Baur in her official capacity as treasurer (the "Committee") is a political committee within the meaning of 52 U.S.C. § 30101(4).
 2. Respondent was the treasurer of the Committee from 2012 to 2018.

3. The Federal Election Campaign Act of 1971, as amended (the "Act") prohibits any person from converting contributions to a federal candidate to personal use. 52 U.S.C. § 30114(b)(1). "Personal use" means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

4. The Act and Commission regulations require treasurers to accurately keep a record of and report receipts and disbursements. 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 102.9(b), 104.3(a)-(b), 104.14(d). Committee treasurers and any other person required to file any report or statement under the Act and the Commission's regulations are also personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d).

5. A knowing and willful violation of the Act requires full knowledge of all of the relevant facts and a recognition that the action is prohibited by law.

6. From 2015 to 2018, Coleman, in his capacity as treasurer of the Committee, made \$88,679 in unauthorized ATM withdrawals from the Committee's bank account, incurred \$86,273.40 in personal expenses on a Committee credit card obtained in his own name, and authorized payment of the credit card charges with the Committee's funds.

7. Coleman, in an effort to conceal the misappropriation of funds, failed to disclose \$84,160 in contributions as well as the source of those contributions on the Committee's disclosure reports, failed to timely refund \$5,200 in corporate contributions, and failed to report \$22,109.61 in refunds to vendors as offsets to operating expenditures. These actions also caused the Committee to report its cash-on-hand inaccurately on the same disclosure reports.

8. In connection with his embezzlement of Committee funds, Coleman pleaded guilty to one count of grand theft in the 4th degree under the Ohio Revised Code 2913.02(A)(1). On October 2, 2019, Coleman was sentenced to 30 days in jail, 2 years' probation, and a \$5,000 fine. He also made restitution in the amount of \$341,983.06 to cover the embezzled amounts, the legal fees associated with the criminal investigation, and the internal review costs.

9. Respondent's actions, including his concealment of the unlawful withdrawals and disbursements by intentionally failing to maintain accurate records and his filing of false disclosure reports, demonstrate he acted in knowing and willful disregard of his legal obligations as the treasurer of the Committee.

V. Respondent committed the following violations:

1. Respondent knowingly and willfully violated 52 U.S.C. § 30114(b)(1) by converting campaign funds to personal use.

2. Respondent knowingly and willfully violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 102.9 by failing to keep an account of receipts and disbursements made from the Committee's funds.

3. Respondent knowingly and willfully violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to file accurate reports with the Commission.

VI. Respondent will take the following actions:

1. Respondent will cease and desist from violating 52 U.S.C. §§ 30102(c), 30104(b), 30114(b)(1) and 11 C.F.R. §§ 102.9, 104.3 and 104.14(d).

2. Respondent will pay a civil penalty of Twenty Thousand Five Hundred Twenty-Eight dollars (\$20,528) pursuant to 52 U.S.C. § 30109(a)(5)(B).

3. Respondent agrees not to volunteer or engage in work for any federal political committee or any federal campaign in a capacity involving finances or disclosure reports for a period of ten (10) years from the date of this agreement.

4. Respondent, Scott Coleman, through the submission of financial documentation to the Commission and additional representations, has indicated that although financial hardship prevents him from paying the full civil penalty to the Commission, he is able to pay a substantially reduced civil penalty of Twenty Thousand Five Hundred and Twenty-Eight dollars (\$20,528). The Commission regards these submissions and representations as material representations. Due to Coleman's financial condition, the Commission agrees to depart from the civil penalty that it would normally seek for the violations at issue, and the Commission agrees that the reduced civil penalty of \$20,528 shall be due. If evidence is uncovered indicating Respondent's financial condition is not as stated, a remaining civil penalty of One Hundred Ninety-Six Thousand Four Hundred and Seventy-Two Dollars (\$196,472) shall be immediately due, pursuant to 52 U.S.C. § 30109(a)(5)(B).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

MUR 7692 (Scott Coleman)
Conciliation Agreement
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IX. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: Charles Kitcher
Charles Kitcher
Acting Associate General Counsel
for Enforcement

6/11/21
Date

Scott E. Coleman
Scott E. Coleman
Respondent

5/3/2021
Date