



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA EMAIL

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August 26, 2021

Michael Bayes, Jason Torchinsky, & Timothy Kronquist
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2300 N Street NW, Suite 643A
Washington, DC 20037

RE: MUR 7923
Friends of David Schweikert and
Valerie Giramberg in her official
capacity as treasurer

Dear Messrs. Bayes, Torchinsky, and Kronquist:

On June 29, 2018, the Federal Election Commission received a joint *sua sponte* submission from your client, Friends of David Schweikert and Valerie Giramberg in her official capacity as treasurer, with Richard Oliver Schwab and Chartwell Associates LLC. On August 11, 2021, the Commission found reason to believe that your client knowingly and willingly violated 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R. § 104.3(b)(3) and (b)(4) by misreporting the purpose of disbursements, 52 U.S.C. § 30104(b)(5) and (b)(6) by misreporting payees, and 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law. Enclosed is a conciliation agreement for your consideration

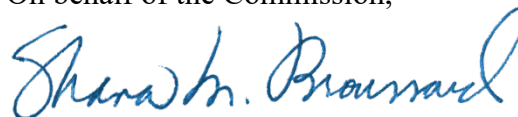
Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

If you are interested in engaging in pre-probable cause conciliation, please contact Nicholas Bamman, the attorney assigned to this matter, at (202) 694-1628 within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,



Shana M. Broussard
Chair

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

MUR 7923 (Friends of David Schweikert)

Page 3

Enclosures:

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Friends of David Schweikert and Valerie MUR 7923
Giramberk in her official capacity as treasurer¹

I. INTRODUCTION

This matter was generated by a *sua sponte* submission filed by Friends of David Schweikert and Valerie Giramberk in her official capacity as treasurer (“the Schweikert Committee”) with the Federal Election Commission (the “Commission”) identifying potential violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), resulting from disclosure reports the Schweikert Committee filed with the Commission containing insufficiently detailed purposes of disbursements and inaccurate payee information.² While this matter was pending before the Commission, on July 30, 2020, the Committee on Ethics of the U.S. House of Representatives (“Ethics Committee”) issued a report following an investigation into alleged ethical violations of Schweikert and his committees (“Ethics Committee’s Report”), including activity that was the subject of the *sua sponte* submission and other activity subject to the Act and Commission regulations.³

Based on the available information, the Commission finds reason to believe that Friends of David Schweikert and Valerie Giramberk in her official capacity as treasurer knowingly and

¹ Friends of David Schweikert was formed on January 10, 2013 with Julia Miller as treasurer. On June 9, 2017, Keith A. Davis was named as treasurer; on December 20, 2017, William G. Martin was named as treasurer; and on April 13, 2018, the current treasurer assumed the position.

² *Sua Sponte* Submission (June 29, 2018); First Supp. *Sua Sponte* Submission (Feb. 7, 2019) (“First Supp.”); Second Supp. *Sua Sponte* Submission (Apr. 23, 2019) (“Second Supp.”); Third Supp. *Sua Sponte* Submission (Oct. 18, 2019) (“Third Supp.”).

³ Committee on Ethics, 116th Cong., In The Matter of Allegations Relating to Representative David Schweikert, Report of the Committee on Ethics (July 30, 2020), https://ethics.house.gov/sites/ethics.house.gov/files/documents/Committee%20Report_19.pdf; Investigative Subcommittee of the Ethics Committee of the U.S. House of Representatives, 116th Cong., In The Matter of

willfully violated: (1) 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R. § 104.3 (b)(3) and (b)(4) by misreporting the purpose of disbursements; (2) 52 U.S.C. § 30104(b)(5) and (b)(6) by misreporting the payees of disbursements; and (3) 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use.

II. FACTS

David Schweikert has been the U.S. Representative for Arizona's 5th or 6th District from 2011 through the present. The Schweikert Committee was Schweikert's principal campaign committee from January 11, 2013 through the present.⁴ Richard Oliver Schwab was Schweikert's Campaign Manager and Chief of Staff in his House of Representatives office from approximately 2010 until July 2018 when Schwab resigned.⁵ Chartwell Associates LLC ("Chartwell") is Schwab's single member LLC consulting firm formed under Virginia law.⁶

Allegations Relating to Representative David Schweikert Report at 40 (Jun. 20, 2020) ("Invest. Subcomm. Rpt."), <https://ethics.house.gov/sites/ethics.house.gov/files/documents/ISC%20Report%20-%20Schweikert%20-%20final.pdf>.

⁴ Friends of David Schweikert, Statement of Organization (Jan. 11, 2013). During the 2012 election, Schweikert for Congress was Schweikert's principal campaign committee. Schweikert for Congress, Statement of Organization (Jan. 20, 2011). The Commission approved the termination of David Schweikert for Congress on November 5, 2013. Schweikert for Congress, Termination Approval 2013 (Nov. 5, 2013). During the 2010 election, David Schweikert for Congress was Schweikert's principal campaign committee. David Schweikert for Congress, Statement of Organization (Sept. 8, 2008).

⁵ Press Release, Rep. David Schweikert, Congressman David Schweikert Announces Chief of Staff Transition (July 9, 2018), <https://schweikert.house.gov/media-center/press-releases/congressman-david-schweikert-announces-chief-staff-transition>. Specifically, Schwab was Campaign Manager from 2010 until early 2012 and resumed a campaign management role from January 2013 until July 2018. Invest. Subcomm. Rpt. at 6. He was Chief of Staff from January 2011 to June 2012, Senior Adviser from September 2012 to May 2013, and Chief of Staff from May 2013 to July 2018. *Id.*

⁶ Virginia State Corporation Commission, Clerk's Information System, <https://cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=552953&source=FromEntityResult&isSeries=False> (Chartwell is now known as "The Oxford Group, LLC").

A. Respondent's Submissions

On November 2, 2017, the Washington Examiner published an “opinion” article that alleged that the Committee and several other Schweikert-related entities or accounts including his Members’ Representational Allowance (“MRA”), his official officeholder account, made “lavish” disbursements and reimbursements to Schwab both personally and through Chartwell.⁷ Following the publication of this article, Schweikert directed an internal review of the subject matter of the article, including engaging counsel, retaining a new treasurer, and hiring a compliance firm.⁸

The review discovered two types of reporting violations, which form the basis for Respondent’s Submission: insufficiently detailed purposes for disbursements and a failure to list the correct payee for certain disbursements first made by Schwab, Chartwell or another employee and reimbursed by the Schweikert Committee. First, out of \$148,760.48 in total reimbursements to Schwab or Chartwell from 2014-2017, the Submission identified \$77,867 in insufficiently detailed purpose of disbursement entries such as “Strategic/Fundraising Consulting,” when the actual expenses related to disbursements such as “Direct Mailing, General Office Supplies, Membership Dues, [and] Email Marketing.”⁹ Respondent submitted a “clarified reporting description” that provided more detail about each disbursement.¹⁰ While the

⁷ Philip Wegman, *A Lot of Cash is Flowing to David Schweikert’s Chief of Staff Oliver Schwab*, WASHINGTONEXAMINER.COM, Nov. 2, 2017, <https://www.washingtonexaminer.com/a-lot-of-cash-is-flowing-to-david-schweikerts-chief-of-staff-oliver-schwab>. Many of the allegations in the article concern committees or accounts not at issue in this matter, including Schweikert’s MRA.

⁸ Submission at 1, Third Supp., Attach. (Email from Emily Hoover to Mike Bayes (Oct. 17, 2019)).

⁹ Submission, Attach. A; Third Supp.

¹⁰ Submission, Attach. A.

Schweikert Committee has not amended disclosure reports to address the purposes of disbursements, it has expressed a willingness to do so in connection with resolving this matter.¹¹

Second, the Submission identified \$50,863 in disbursements with misreported payees.¹² The Committee disclosed these payments as disbursements to Chartwell, Schwab, or other staffers in Schweikert's House office, who served as intermediaries in a transaction, as opposed to the vendor that actually provided the services to the Committee.¹³ The Committee unwound the transactions and paid the vendor directly.¹⁴ For those transactions in which Chartwell or Schwab was the intermediary, the Committee sought refunds from the vendor to Chartwell or Schwab and from Chartwell or Schwab to the Committee, and then the Committee made direct payments to the previously undisclosed vendors, which accounted for \$50,372 of the original \$50,863.¹⁵ The Schweikert Committee's disclosure reports show that Schwab repaid \$50,372 to the Committee on March 31, 2018, labeling his contributions as "repayment[s] for erroneous reimbursements" from the Committee.¹⁶ Other staffers reimbursed the Committee for the remaining \$491.¹⁷

¹¹ *Id.* at 2-3; Second Supp. Attach., Jason Torchinsky Email (Apr. 23, 2019).

¹² Submission, Attachs. B-C. Attachments B and C contain the same type of violation. Attachment B contains the reimbursements from Chartwell and Attachment C identifies approximately \$500 of other staffers' advances that were reimbursed by the Committee. Those staffers repaid the amounts that the Committee originally reimbursed.

¹³ *Id.*

¹⁴ *Id.* at 2-3. It appears that this process was necessary to attempt to avoid liability under House Ethics rules, not to comply with the Act or Commission regulations.

¹⁵ *Id.*; *see also* First Supp. at 3.

¹⁶ *See* Committee, Contributions, 2018-19, Contributor "Oliver Schwab," https://www.fec.gov/data/receipts/?two_year_transaction_period=2018&data_type=processed&committee_id=C00540617&contributor_name=schwab%2C+oliver&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018 (containing the memo entry "OFFSET - Repayment of Erroneous Reimbursement").

¹⁷ Submission, Attach. C.

Respondent provided spreadsheets from its compliance firm indicating that \$31,522 of these two categories of reporting violations overlap, resulting in entries that both lacked a sufficient purpose of disbursement and the correct payee.¹⁸

B. The Ethics Committee's Investigation and Report

Shortly after the publication of the Washington Examiner article on November 2, 2017, the Office of Congressional Ethics began to investigate payments made to Schwab and Chartwell, and after receiving a complaint dated January 29, 2018, the Office of Congressional Ethics extended its investigation to allegations that Schweikert and Schwab violated House Ethics rules related to, *inter alia*, Schwab making contributions to the Schweikert Committee, earning excessive outside income, and filing inaccurate financial disclosures.¹⁹ On June 8, 2018, the Ethics Committee advised Schweikert to amend any erroneous reports filed with the Commission of which it knew, and encouraged Schweikert to file a *sua sponte* submission.²⁰ The Office of Congressional Ethics referred the matter to the Ethics Committee and, on June 28, 2018, the Ethics Committee formed the Investigative Subcommittee ("ISC") to investigate the allegations.²¹ Respondent filed this *sua sponte* with the Commission the following day.

¹⁸ Second Supp., Attach.; Third Supp. at 1, Attachs.

¹⁹ Office of Congressional Ethics ("OCE") Compl., https://images.phoenixnewtimes.com/media/pdf/ethics_complaint.pdf. The Complaint is erroneously dated "January 29, 2017." On April 16, 2018, OCE referred the matter to the Committee on Ethics of the U.S. House of Representatives ("Ethics Committee") to investigate, *inter alia*, whether the Committee received contributions from an employee and whether Schweikert authorized impermissible expenditures from his MRA, in violation of House Ethics rules. <https://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-davi-0>.

²⁰ Invest. Subcomm. Rpt., Ex A. ¶ 51.

²¹ See CHAIRWOMAN SUSAN W. BROOKS, 115TH CONG., Statement of the Chairwoman and Ranking Member of the Committee on Ethics Regarding Representative David Schweikert and Richard Oliver Schwab at 1 (June 28, 2018), <https://ethics.house.gov/press-release/statement-chairwoman-and-ranking-member-committee-ethics-regarding-representative-19>; <https://ethics.house.gov/sites/ethics.house.gov/files/Report%20-%20OCE%20Review%20No.%2017-4790.pdf> ("OCE Referral").

On September 5, 2018, the Office of Congressional Ethics sent Schweikert a second referral, which included a 50-page report with Findings of Facts and Citations to Law, analyzing potential reporting violations in detail, including a previously unreported loan from Metro Phoenix Bank among other misreported loans to Schweikert’s campaign committees.²² During its investigation, counsel for Schweikert informed the Ethics Committee by email on October 3, 2018, that they had “engaged with FEC staff to work cooperatively to resolve any issues.”²³ But the Schweikert Committee did not initially advise the Commission of any reporting issues with loans. In response to multiple inquiries regarding the scope of the Ethics Committee’s investigation, the Schweikert Committee represented that it produced to the Commission all “FECA-related material” that the Schweikert Committee produced to “Ethics.”²⁴ However, according to the Statement of Alleged Violations to which Schweikert agreed as part of his settlement with the Ethics Committee: “Respondent did not work to cure or engage with any FEC staff regarding the [misreported Metro Phoenix Bank loan] . . . at that time.”²⁵ On January 6, 2020, Schweikert informed the Ethics Committee that he “inadvertently” failed to disclose certain loans.²⁶ On January 27, 2020, approximately 18 months after the filing of the initial Submission, counsel for the Schweikert Committee informed the Commission for the first time

²² Invest. Subcomm. Rpt. at 4-5, 37, Appx. B. The Ethics Committee also found several violations unrelated to Schweikert’s campaigns including the misuse of Schweikert’s official funds, pressuring official staff to do campaign work, failing to exercise “due diligence” in responding to the Ethics Committee’s investigation, and a “lack of candor” to the Ethics Committee.

²³ *Id.* at 27, Ex. A ¶ 79 (quoting Respondent’s email regarding the Metro Phoenix Bank loan); *id.*, Ex. A ¶ 55 (quoting Respondent’s email regarding the “falsely” disclosed \$100,000 loan).

²⁴ Third Supp. at 1.

²⁵ *Id.*, Ex. A ¶ 80 (failure to advise the Commission concerning the Phoenix Metro Loan); *id.*, Ex. A ¶ 54 (failure to advise the Commission concerning the “falsely” disclosed \$100,000 loan).

²⁶ *Id.*, Ex. A ¶ 84 (quoting Respondent’s email).

by email that it “had come across information” that was “well beyond the statute of limitations” showing “reporting discrepancies” with respect to three loans.²⁷

On July 30, 2020, the Ethics Committee adopted its Investigative Subcommittee’s Report and recommended that the full House vote to adopt the report.²⁸ The Ethics Committee’s Report is based on a voluminous record, including interviews, deposition testimony, and 200,000 pages of documents.²⁹ Following the issuance of the Ethics Committee’s Report and its several findings that Respondent had violated the Act, Respondent declined to amend its submissions. The Commission considered the following information in connection with its review of Respondent’s submission.

1. The Schweikert Committee’s Reimbursements to Chartwell for Campaign Expenses

Out of \$148,760.48 in total reimbursements to Schwab or Chartwell from 2014-2017, the Submission identified \$77,867 in insufficiently detailed purpose of disbursement entries and \$50,863 in disbursements with misreported payees. The Ethics Committee’s investigation, for its part, identified approximately \$270,000 in reimbursements from Schweikert’s campaign committees to Schwab or Chartwell between 2011 and 2018.³⁰ The Ethics Committee’s Report divides the \$270,000 into three categories: (1) \$7,000 in reimbursements to Schwab directly; (2) \$65,000 in reimbursements to Schwab through Chartwell; and (3) \$200,000 in reimbursements to

²⁷ Email from Michael Bayes, Counsel for the Schweikert Committee, to Staff Attorney Nicholas Bamman (Jan. 27, 2020); Invest. Subcomm. Rpt., Ex. A ¶¶ 56, 85.

²⁸ This FGCR refers to the Investigative Subcommittee’s Report as the Ethics Committee’s Report, given that the Ethics Committee adopted the report.

²⁹ Invest. Subcomm. Rpt. at 5-6.

³⁰ The reimbursements themselves were deemed by the House as impermissible contributions from an employee of a House member to his or her employer in violation of 18 U.S.C. § 603. Invest. Subcomm. Rpt. at 41, Ex. A ¶¶ 108-09, 217.

Schwab’s personal credit card companies.³¹ Three other congressional staffers made smaller outlays totaling \$491.12 for campaign-related expenditures that were subsequently reimbursed.³² While the \$270,000 appears to describe the same types of violations raised in the Submissions, it is unclear the exact extent of the overlap.

The Ethics Committee’s Report, which was based on an extensive investigation that included depositions of the principals, provides a better understanding of the reasons behind the purpose and payee reporting failures. Schwab testified that Schweikert instructed Schwab to seek reimbursement through Chartwell as a consulting fee “to conceal” the purpose of the expenditure and Schwab’s involvement.³³ For example, Schwab testified that Schweikert was “very adamant that he did not want a whole bunch of dinners in D.C. showing up on his FECs.”³⁴ To conceal those disbursements, Schwab paid for the expense with his personal credit card and sought reimbursement from the Schweikert Committee, which disclosed the disbursements as consulting fees to Chartwell.³⁵ In another example, Schwab testified that he billed the campaign \$5,000 for “consulting services” in order to conceal the purchase of tickets on a charter airplane when Schweikert traveled to Lake Havasu City, Arizona, for a speech.³⁶ For some reimbursements, Schwab directed the Committee to make checks payable to his

³¹ *Id.* at 41, Ex. A ¶¶ 111-113.

³² *Id.*, Ex. A ¶ 129. This amount appears on Exhibit C of Respondent’s initial Submission.

³³ *Id.*, Ex. A ¶ 121 (“Mr. Schwab provided testimony to the ISC asserting that Respondent was aware Mr. Schwab was making expenditures on behalf of Respondent’s campaign using his personal funds, and that Respondent instructed Mr. Schwab to seek reimbursements through Chartwell or his credit card company in order to conceal the fact that Mr. Schwab was responsible for the underlying expenditure.”). The Ethics Committee also identifies an approximate \$5,000 outlay for Schweikert’s travel on a charter plane in 2014. *Id.* at 43.

³⁴ *Id.* at 42 (quoting Schwab interview).

³⁵ *Id.* at 42, Ex. A ¶ 121.

³⁶ *Id.* at 43. The Ethics Committee could not find documentary evidence of this disbursement; however, Schweikert did speak at an event in Lake Havasu City on February 7, 2014. *Id.* at 43-44. Schweikert’s campaign committees did not report any disbursements for travel around this time. *Id.* at 44.

1 personal credit card companies, such as “Chase Bank,” instead of himself personally, which was
2 disclosed in reports filed with the Commission as a disbursement to “Chase Bank,” further
3 concealing the true recipient of the Committee’s disbursement.³⁷ Schwab testified that the
4 Schweikert Committee’s treasurer was aware that disbursements labeled as consulting fees were
5 actually for campaign expenses.³⁸ Schweikert denies that he ever instructed Schwab to seek
6 reimbursement through Chartwell; however, the Ethics Committee noted that Schweikert’s
7 testimony was inconsistent and testimony from other witnesses indicated that Schweikert was
8 aware of the practice.³⁹

9 Although the Ethics Committee did not make a separate finding based on the Act with
10 respect to the \$270,000 in reimbursements, it found that in disclosure reports filed with the
11 Commission, the Schweikert Committee did not list the actual recipient of the disbursement,
12 instead listing Chartwell, and did not list the actual purpose of the disbursement, instead listing
13 “strategic consulting” or another vague description.⁴⁰ In some instances, at the direction of
14 Schweikert and with the treasurer’s knowledge, this obfuscation was intended to conceal

³⁷ *Id.* at 46, Ex. A ¶¶ 109-110. In addition to the reporting discrepancies related to these reimbursements, Schwab testified that Schweikert instructed him to wait until the next reporting quarter to seek reimbursement for certain disbursements to manipulate the Committee’s cash-on-hand and other quarterly financial figures. *Id.* at 44

³⁸ *Id.* at 44, Ex. A ¶ 126.

³⁹ *Id.* at 42.

⁴⁰ *Id.*, Ex. A ¶ 115 (Statement of Violations) (stating “[w]hen reporting disbursements to Mr. Schwab’s personal credit card companies, the campaign did not always disclose the underlying vendor on FEC reports, nor did it disclose that Mr. Schwab had made the underlying disbursements”).

impermissible or embarrassing disbursements from public view.⁴¹ The Ethics Committee found substantial evidence that Schweikert knew about the reimbursements.⁴²

2. Personal Use

The Ethics Committee determined that Schweikert's staff paid for Schweikert's personal expenses, including meals, dry cleaning, and flight upgrades for personal travel, and then were sometimes repaid by Schweikert, but also sometimes repaid from Schweikert's campaign accounts.⁴³ Schwab testified that after the personal use expenses became too large, Schweikert "instructed Mr. Schwab to 'be creative' and bill the campaign for the expenses."⁴⁴

Because the Schweikert Committee did not retain adequate records, the only examples the Ethics Committee could specifically identify were disbursements of \$1,476.90 for the child care of Schweikert's daughter in 2017, disclosed as "petty cash" and "strategic campaign consulting" in reports filed with the Commission.⁴⁵ The Ethics Committee could not reliably calculate the total amount of funds that it concluded Schweikert converted to personal use.⁴⁶ However, Schwab testified that he incurred \$5,000 of personal use expenses on behalf of

⁴¹ *Id.* at 43-44; *id.*, Ex. A, ¶ 219 (concluding that the reimbursements "hid from public view the true amount of expenditures Mr. Schwab had made on behalf of his campaigns, and in other cases obscured the true nature, date, and underlying recipient of the disbursements"); *see also id.* at 52 ("The ISC further notes that the sheer breadth of this misconduct was obscured from the public, the FEC, and the Committee because Representative Schweikert's campaign committees reported the repayments to Mr. Schwab through various means, including by issuing reimbursements to Mr. Schwab directly, to his single-member LLC, Chartwell Associates, and through payments to his personal credit card companies.").

⁴² *Id.* at 51-52; *id.*, Ex. A ¶¶ 121 ("Mr. Schwab provided testimony to the ISC asserting that Respondent was aware Mr. Schwab was making expenditures on behalf of Respondent's campaign using his personal funds, and that Respondent instructed Mr. Schwab to seek reimbursements through Chartwell or his credit card company in order to conceal the fact that Mr. Schwab was responsible for the underlying expenditure."); *id.* ¶ 122 ("Respondent knew or should have known that Mr. Schwab made substantial non-travel expenditures on behalf of the campaign.").

⁴³ *Id.* at 53.

⁴⁴ *Id.*, Ex. A ¶ 137.

⁴⁵ *Id.* at 60, Ex. A ¶ 133.

⁴⁶ *Id.*

Schweikert, and provided the campaign with “false invoices or instructed the campaign’s treasurers to make disbursements for campaign services.”⁴⁷

Schweikert denied using campaign funds for babysitting or any other personal use.⁴⁸ However, the Ethics Committee found Schweikert’s denials unconvincing in light of “several members of his staff who testified otherwise, as well as documents obtained in the course of its investigation, including an email from staff expressing concern at Representative Schweikert’s attempt to find an ‘unemployed female intern type person’ to serve as his daughter’s nanny.”⁴⁹

III. LEGAL ANALYSIS

A. Schweikert Committee Violations

The Act and Commission regulations require political committees to report the name and address of each person to whom they make expenditures or other disbursements aggregating more than \$200 per calendar year, or per election cycle for authorized committees, as well as the date, amount, and purpose of such payments.⁵⁰

1. Purpose of Disbursements

Commission regulations define “purpose” as a “brief statement or description of why the disbursement was made.”⁵¹ “The ‘purpose of disbursement’ entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of

⁴⁷ *Id.*, Ex. A ¶ 138.

⁴⁸ *Id.* at 55-56, Ex. A ¶¶ 139-40.

⁴⁹ *Id.* at 59.

⁵⁰ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(4)(i), (vi); Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013) (addressing disclosure of ultimate payees with respect to credit card payments).

⁵¹ 11 C.F.R. § 104.3(b)(3)(i)(A)-(B), (b)(4)(i)(A).

the disbursement clear.”⁵² The Commission has determined that the description of purpose should be sufficient to allow “a person not associated with the committee [to] easily discern why the disbursement was made when reading the name of the recipient and the purpose.”⁵³ Examples of sufficient statements of purpose include, but are not limited to, dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs.⁵⁴

Although committees may not merely label a disbursement as “consulting,” they may specify a type of consulting service to ensure that the purpose provided in their reports is considered “adequate” by the Commission, including descriptions such as “strategy consulting” or “fundraising consulting.”⁵⁵ For example, the Commission has provided guidance that a description of purpose such as “Consultant-Legal” is sufficient for a disbursement to a consultant; the sufficiency of the description is read in context with the name of the payee.⁵⁶

Here, in Respondent’s Submission, the Schweikert Committee acknowledged that disbursements with generic labels such as “strategic consulting” were actually for purposes such as “advertising,” “website design,” “lodging,” and “food & beverage.”⁵⁷ For instance, the Schweikert Committee originally described a disbursement for \$8,119.32 to Chartwell on

⁵² See Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007) (“Purpose Statement of Policy”) (citing 11 C.F.R. §§ 104.3(b)(3)(i)(B), (b)(4)(i)(A)).

⁵³ Purpose Statement of Policy, 72 Fed. Reg. at 888.

⁵⁴ 11 C.F.R. § 104.3(b)(3)(i)(B), (b)(4)(i)(A).

⁵⁵ *Purposes of Disbursement*, FEDERAL ELECTION COMMISSION, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursement> (last visited Jun. 14, 2021) (noting that the lists of inadequate and adequate purposes are not exhaustive and were revised on August 21, 2018).

⁵⁶ Purpose Statement of Policy, 72 Fed. Reg. at 888; see also FEC Campaign Guide for Congressional Candidates at 103 (June 2014) (the description of purpose must be sufficiently specific such that it makes clear the reason for the disbursement when considered in conjunction with the payee’s identity).

⁵⁷ Submission, Attach. A.

February 25, 2016 as “Strategic Consulting/Travel;” however, the Committee proposes to amend the description to “General Office Supplies, Travel, Advertising, Printing, Postage, Web Hosting, Gifts & Mementos, Catering.”⁵⁸ Respondent asserts that there is approximately \$78,000 in violation for inadequate purposes of disbursements.

The Ethics Committee, however, found that the improper purpose statements were not just inadequately vague descriptions of campaign expenses, but intentional misstatements designed to conceal the real purpose of disbursements and Schwab’s involvement in the transaction.⁵⁹ Schwab testified that Schweikert instructed him to purposely conceal the purpose of certain disbursements, such as dinners in D.C., so that they would not appear on the Schweikert Committee’s “FECs.”⁶⁰ Schwab further testified that Schweikert owed him so much money that Schweikert instructed him to “be creative,” and that he submitted false consulting invoices and instructed the campaign’s treasurer to make disbursements for “consulting services.”⁶¹ The Ethics Committee did not find a written record of Schweikert instructing Schwab to bill this way, although Schwab also testified that Schweikert purposely conducted business over the phone to avoid a “paper trail.”⁶²

Because the Schweikert Committee inadequately described the purpose of certain disbursements, the Commission finds reason to believe that Friends of David Schweikert and

⁵⁸ *Id.*

⁵⁹ Invest. Subcomm. Rpt., Ex. A ¶ 114.

⁶⁰ *Id.* at 42 (Schweikert was “very adamant that he did not want a whole bunch of dinners in D.C. showing up on his FECs.”) (quoting Schwab interview).

⁶¹ *Id.* at 55, Ex. A ¶¶ 123, 137, 138.

⁶² *Id.*

Valerie Giramberk in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R. § 104.3(b)(3) and (b)(4) by misreporting the purpose of disbursements.

2. Ultimate Payees

Neither the Act nor the Commission’s relevant implementing regulations address the concepts of ultimate payees, vendors, agents, contractors, or subcontractors in the context of payee reporting.⁶³ The Commission has determined, however, that merely reporting the immediate recipient of a committee’s payment will not satisfy the requirements of Section 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds.⁶⁴

The Commission has made reason to believe findings in ultimate payee matters where it had information that a committee undertook efforts to actively conceal the ultimate payee.⁶⁵ For example, in MUR 6724 (Bachmann for President), the Bachmann committee paid a consultant through an intermediary in order to conceal the true payee because it believed that state ethics rules prohibited the ultimate payee from receiving the funds.⁶⁶ The Commission found reason to believe that the Bachmann committee misreported the ultimate payee because the disclosed

⁶³ Advisory Op. 1983-25 (Mondale for President) at 2; 78 Fed. Reg. at 40,626 (clarifying a committee’s obligation to report “ultimate payees” in three specific scenarios not articulated in the Act or regulations: reimbursements to individuals who advance personal funds to pay committee expenses; payments to credit card companies; and reimbursements to candidates who use personal funds to pay committee expenses).

⁶⁴ Factual and Legal Analysis at 9, MUR 6724 (Bachmann for President, *et al.*) (citing Conciliation Agreement at 3, MUR 4872 (Jenkins)).

⁶⁵ *See, e.g.*, F&LA at 10-11, MUR 6724 (Bachmann for President) (finding reason to believe where a committee used an intermediary to disguise the “true, intended recipient of the disbursements”); Conciliation Agreement at 2-4, MUR 4872 (Jenkins for Senate) (finding reason to believe where a vendor’s only role was “to serve as a conduit for payment . . . so as to conceal the transaction”).

⁶⁶ F&LA at 3, MUR 6724 (Bachmann for President).

1 payee was merely a conduit, “thereby concealing the true, intended recipient of the
 2 disbursements.”⁶⁷

3 Here, the Ethics Committee determined that the Schweikert Committee purposely
 4 disclosed erroneous payees both to obscure that Schwab was making large outlays on behalf of
 5 the campaign and to obscure “the true nature, date, and underlying recipient of the
 6 disbursements.”⁶⁸ In some instances Schwab submitted receipts for reimbursement made on a
 7 personal credit card, but instructed the treasurer to make the checks payable to “Chase Bank,”
 8 which was the payee reflected on disclosure reports filed with the Commission.⁶⁹ In many
 9 instances, Schwab concealed the true campaign vendor with false consulting invoices payable to
 10 Chartwell.⁷⁰ The type of activity at issue here, payments for reimbursements to campaign staff
 11 and payments to credit card companies, are the types of disbursements where the Commission
 12 has required more specific reporting.⁷¹

13 Although Respondent identified a violation for misreporting payees in its Submission,
 14 Respondent also states that it did not believe that it violated any regulation.⁷² Given the chance
 15 to amend the Submission in light of the Ethics Committee Report, the Schweikert Committee
 16 declined to do so. Respondent identifies approximately \$50,000 in disbursements with erroneous

⁶⁷ *Id.* at 10.

⁶⁸ Invest. Subcomm. Rpt. at 43-44. “Mr. Schwab testified that Respondent had preferred reimbursements be reported as payments to Chartwell because it appeared as an arm’s length transaction to a vendor on FEC reports, rather than a payment to his staffer.” *Id.*, Ex. A ¶ 114.

⁶⁹ *Id.* at 46, Ex. A ¶¶ 127-28.

⁷⁰ *Id.* at 55, Ex. A ¶¶ 123, 138.

⁷¹ In the Ultimate Payee Interpretive Rule, the Commission clarified a committee’s obligation to report “ultimate payees” in three specific scenarios not articulated in the Act or Commission regulations: (1) reimbursements to individuals who advance personal funds to pay committee expenses; (2) payments to credit card companies; and (3) candidates who use personal funds to pay committee expenses without reimbursement. Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626.

⁷² Submission at 2.

payees.⁷³ Accordingly, the Commission finds reason to believe that Friends of David Schweikert and Valerie Giramberk in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(5) and (b)(6) by misreporting the payees of disbursements.

3. Personal Use

Under the Act, a contribution accepted by a candidate may be used for, *inter alia*, “otherwise authorized expenditures in connection with the campaign for Federal office of the candidate,” “for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office,” as well as for “any other lawful purpose” not otherwise prohibited under the Act.⁷⁴ However, the Act prohibits the conversion of campaign funds by any person to “personal use.”⁷⁵ “Personal use” is the use of funds in a campaign account “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.”⁷⁶ The Act and Commission regulations list certain uses of campaign funds that constitute *per se* conversion to personal use.⁷⁷ For other payments, the “Commission will determine, on a case-by-case basis, whether other uses” of campaign funds constitute personal use by applying the “irrespective test,” that is, whether the

⁷³ *Id.*, Attachs. B-C.

⁷⁴ 52 U.S.C. § 30114(a).

⁷⁵ *Id.* § 30114(b).

⁷⁶ 11 C.F.R. § 113.1(g); *see* 52 U.S.C. § 30114(b).

⁷⁷ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

1 payment fulfills a commitment, obligation, or expense that would exist irrespective of the
 2 candidate's campaign or duties as a federal officeholder.⁷⁸

3 Here, the Ethics Committee identified a number of disbursements for personal use;
 4 however, the only disbursements for which it could identify an amount in violation was
 5 \$1,476.90 for child care for Schweikert's daughter.⁷⁹ The Commission has addressed childcare
 6 in a number of advisory opinions, finding that such expenses are not personal use where the
 7 childcare was a direct result of campaign activity.⁸⁰ There is no record evidence to suggest that
 8 the childcare at issue in this matter resulted from campaign activity. Indeed, the expenses
 9 occurred between June and October of 2017, a non-election year, and they were reimbursed, in
 10 part, with the memo "strategic campaign consulting" on disclosure reports, suggesting that the
 11 Schweikert Committee concealed the disbursement because it knew it was impermissible.

12 The Ethics Committee Report identifies other categories of disbursements that also
 13 constitute personal use under the Act, including disbursements for dry cleaning and flight
 14 upgrades for personal travel.⁸¹

⁷⁸ 11 C.F.R. § 113.1(g)(1)(ii).

⁷⁹ Invest. Subcomm. Rpt. at 60 ("The ISC was unable to calculate the precise amount of campaign funds that were misused for personal purposes because many of these expenses were characterized by Mr. Schwab as consulting expenses or petty cash, and underlying records were not preserved or provided to the campaign.").

⁸⁰ See, e.g., Advisory Op. 2019-13 (MJ for Texas) at 3 (child care expenses must be "a direct result from campaign activity") (quoting Advisory Op. 2018-06 (Liuba for Congress)).

⁸¹ See Factual and Legal Analysis at 4, 14, MUR 6766 (Jesse Jackson, Jr.) (finding knowing and willful personal use violations for various categories of disbursements, including travel and dry cleaning, that were purposely concealed on disclosure reports). The Ethics Report does not identify the specific amount of disbursements in these categories.

Accordingly, the Commission finds reason to believe that the Schweikert Committee violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use.⁸²

4. The Schweikert Committee's Violations Were Knowing and Willful

The Act prescribes additional penalties for violations of the Act that are knowing and willful.⁸³ A violation of the Act is knowing and willful when the respondent acts “with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.”⁸⁴ This standard does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.⁸⁵ Rather, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.”⁸⁶ This awareness may be shown through circumstantial evidence, such as a “defendant’s elaborate scheme for disguising” her actions, or other “facts and circumstances from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized and illegal.”⁸⁷

⁸² The Commission does not make findings as to Schweikert because he is not a Respondent in this matter.

⁸³ See 52 U.S.C. § 30109(a)(5)(B), (d).

⁸⁴ 122 Cong. Rec. 12197, 12199 (daily ed. May 3, 1976) (defining phrase “knowing and willful”); see also *FEC v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Tex. 2010) (granting Commission’s motion for summary judgment where there were no genuine issues of material fact as to the knowing and willful allegations). The Commission has made knowing and willful findings against respondents who have admitted to criminal violations related to the same activity at issue in the enforcement matter. See, e.g., MUR 7225 (Jack Wu); MUR 7132 (Michael David Pitts); MUR 6597 (Kinde Durkee); MUR 6475 (Andrew McCrosson), MUR 6179 (Christopher Ward), MUR 5971 (Jennifer Adams), MURs 5721/5772 (Kenneth Phelps); MUR 5610 (Earl Allen Haywood).

⁸⁵ See *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated)).

⁸⁶ *Id.* (internal quotation marks omitted).

⁸⁷ *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 Here, the Statement of Alleged Violations, to which Schweikert admitted as part of the
2 resolution with the Ethics Committee, provides ample support for knowing and willful findings.
3 The Ethics Committee noted in particular the “sheer breadth” of the reporting misconduct, which
4 obscured from the Commission and the public the scope of the violations.⁸⁸

5 As to the activities that form the basis of the Committee’s initial *sua sponte* submission,
6 the Ethics Committee found that the Committee intentionally misreported the purposes of
7 expenses to conceal the actual purpose and to hide the actual recipient of the payments. Schwab
8 testified that he falsified consulting invoices to conceal the true underlying transaction and that
9 Schweikert “preferred reimbursements be reported as payments to Chartwell because it appeared
10 as an arm’s length transaction to a vendor on FEC reports, rather than a payment to his staffer.”⁸⁹
11 Moreover, with respect to the personal use violation, Schwab stated that, after accumulating
12 many expenses, Schweikert directed him to be “creative” in billing the campaign.⁹⁰ Schwab
13 further testified that he created approximately \$5,000 of false consulting invoices to conceal
14 personal use expenditures he made on behalf of Schweikert.⁹¹ Indeed, Schweikert admitted in
15 the Statement of Alleged Violations to a violation for a “lack of candor and diligence,” including
16 “delays in informing the FEC of inaccurate reporting” and written submissions to the
17 Commission that “lacked credibility or coherence.”⁹²

⁸⁸ Invest. Subcomm. Rpt. at 52.

⁸⁹ *Id.*, Ex. A ¶¶ 114.

⁹⁰ *Id.* at 55, Ex. A ¶ 138.

⁹¹ *Id.*, Ex. A ¶ 138.

⁹² *Id.*, Ex. A ¶¶ 250-51.

MUR 7923 (Friends of David Schweikert)
Factual and Legal Analysis
Page 20 of 20

1 Accordingly, the Commission finds reason to believe that the Schweikert Committee's
2 violations of 52 U.S.C. §§ 30104(b)(5) and (b)(6), 30114 and 11 C.F.R. §§ 104.3(b)(3) and
3 (b)(4), and 113.1(g) were knowing and willful.