



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA EMAIL

eberke@berkefarah.com

August 26, 2021

Elliot S. Berke
Berke Farah LLP
701 8th Street NW, Suite 620
Washington, DC 20001

RE: MUR 7923
Richard Oliver Schwab

Dear Mr. Berke:

On June 29, 2018, the Federal Election Commission received a joint *sua sponte* submission from your clients, Richard Oliver Schwab and Chartwell Associates LLC, with Friends of David Schweikert and Valerie Giramberg in her official capacity as treasurer. On August 11, 2021, the Commission found reason to believe that your client, Richard Oliver Schwab, violated 52 U.S.C. § 30102(c)(5) by failing to maintain records. The Factual and Legal Analysis, which formed a basis for the Commission's finding, 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,

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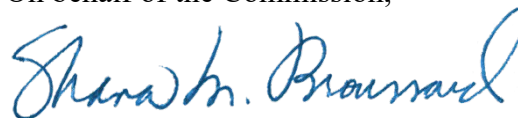
although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

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

Enclosures:
Factual and Legal Analysis

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).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4
5 RESPONDENT: Richard Oliver Schwab

MUR 7923

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7 **I. INTRODUCTION**

8 This matter was generated by a *sua sponte* submission filed by Richard Oliver Schwab,
9 the former chief of staff and campaign manager for Representative David Schweikert, and
10 Chartwell Associates LLC (“Chartwell”), Schwab’s single-member LLC, (collectively,
11 “Respondents”) with the Federal Election Commission (the “Commission”) identifying potential
12 violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), resulting from
13 disclosure reports Friends of David Schweikert and Valerie Giramberk in her official capacity as
14 treasurer (the “Schweikert Committee”) filed with the Commission containing insufficiently
15 detailed purposes of disbursements and inaccurate payee information.¹ While this matter was
16 pending before the Commission, on July 30, 2020, the Committee on Ethics of the U.S. House of
17 Representatives (“Ethics Committee”) issued a report following an investigation into alleged
18 ethical violations of Schweikert and his committees (“Ethics Committee’s Report”), including
19 activity that was the subject of the *sua sponte* submission and other activity subject to the Act
20 and Commission regulations.² Based on the available information, the Commission finds reason
21 to believe that Schwab violated 52 U.S.C. § 30102(c) by falsifying campaign records.

¹ *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.”). The Schweikert Committee joined with Schwab and Chartwell in the submissions to the Commission.

² 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 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>.

II. FACTUAL BACKGROUND

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.³ 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.⁴ Chartwell is Schwab’s single-member LLC consulting firm formed under Virginia law.⁵

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.⁶ Following the publication of this article, Schweikert directed an internal review of the subject

³ 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).

⁴ 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.*

⁵ 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”).

⁶ 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.

1 matter of the article, including engaging counsel, retaining a new treasurer, and hiring a
2 compliance firm.⁷

3 The review discovered two types of reporting violations, which form the basis for
4 Respondent's Submission: insufficiently detailed purposes for disbursements and a failure to list
5 the correct payee for certain disbursements first made by Schwab, Chartwell or another
6 employee and reimbursed by the Schweikert Committee. First, out of \$148,760.48 in total
7 reimbursements to Schwab or Chartwell from 2014-2017, the Submission identified \$77,867 in
8 insufficiently detailed purpose of disbursement entries such as "Strategic/Fundraising
9 Consulting," when the actual expenses related to disbursements such as "Direct Mailing, General
10 Office Supplies, Membership Dues, [and] Email Marketing."⁸

11 Second, the Submission identified \$50,863 in disbursements with misreported payees.⁹
12 The Committee disclosed these payments as disbursements to Chartwell, Schwab, or other
13 staffers in Schweikert's House office, who served as intermediaries in a transaction, as opposed
14 to the vendor that actually provided the services to the Committee.¹⁰ The Committee planned to
15 unwind the transactions and pay the vendor directly.¹¹ For those transactions in which Chartwell
16 or Schwab was the intermediary, the Committee sought refunds from the vendor to Chartwell or
17 Schwab and from Chartwell or Schwab to the Committee, and then the Committee made direct

⁷ Submission at 1, Second Supp., Attach. (Email from Emily Hoover to Mike Bayes (Oct. 17, 2019)).

⁸ Submission, Attach. A; Third Supp.

⁹ 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.

¹⁰ *Id.*

¹¹ *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.

1 payments to the previously undisclosed vendors, which accounted for \$50,372 of the original
 2 \$50,863.¹² The Schweikert Committee’s disclosure reports show that Schwab repaid \$50,372 to
 3 the Committee on March 31, 2018, labeling his contributions as “repayment[s] for erroneous
 4 reimbursements” from the Committee.¹³

5 The Committee provided spreadsheets from the Committee’s compliance firm indicating
 6 that \$31,522 of these two categories of reporting violations overlap, resulting in entries that both
 7 lacked a sufficient purpose of disbursement and the correct payee.¹⁴

8 **B. The Ethics Committee’s Investigation and Report**

9 Shortly after the publication of the Washington Examiner article on November 2, 2017,
 10 the Office of Congressional Ethics began to investigate payments made to Schwab and
 11 Chartwell, and after receiving a complaint dated January 29, 2018, the Office of Congressional
 12 Ethics extended its investigation to allegations that Schweikert and Schwab violated House
 13 Ethics rules related to, *inter alia*, Schwab making contributions to the Schweikert Committee,
 14 earning excessive outside income, and filing inaccurate financial disclosures.¹⁵ On June 8, 2018,

¹² *Id.*; see also First Supp. at 3.

¹³ 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”).

¹⁴ Second Supp., Attach.; Third Supp. at 1, Attachs.

¹⁵ 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>. On June 12, 2019, OCE released its full referral report dated April 5, 2018, stating that Schwab “may have” violated House Ethics rules pertaining to outside employment income, the use of the MRA account and contributions to his employing member, and recommended the issuance of subpoenas because many individuals did not voluntarily comply with the investigation, including Schwab and Schweikert. OCE Referral Regarding Mr. Oliver Schwab, OCE, Apr. 5, 2018,
<https://oce.house.gov/sites/congressionalethics.house.gov/files/documents/Referral%20OCE%20Rev.%202017->

1 the Ethics Committee advised Schweikert to amend any erroneous reports filed with the
 2 Commission of which it knew, and encouraged Schweikert to file a *sua sponte* submission.¹⁶
 3 The Office of Congressional Ethics referred the matter to the Ethics Committee and, on June 28,
 4 2018, the Ethics Committee formed the Investigative Subcommittee (“ISC”) to investigate the
 5 allegations.¹⁷ Respondents filed this *sua sponte* with the Commission the following day.

6 On July 30, 2020, the Ethics Committee adopted its Investigative Subcommittee’s Report
 7 and recommended that the full House vote to adopt the report.¹⁸ The Ethics Committee’s Report
 8 is based on a voluminous record, including interviews, deposition testimony, and 200,000 pages
 9 of documents.¹⁹ Following the issuance of the Ethics Committee’s Report Schwab and
 10 Chartwell filed an additional submission on January 28, 2021, arguing that Schweikert’s
 11 campaign committees were ultimately responsible for any reporting errors, the Ethics Committee
 12 found that Schweikert “facilitated” the reimbursements, Schwab did not initially know that the
 13 reimbursements violated any applicable law, and a compliance firm approved all of the
 14 reimbursements.²⁰

[4789%20Oliver%20Schwab.pdf](#). The report does not contain any findings pursuant to the Act or Commission regulations.

¹⁶ Invest. Subcomm. Rpt., Ex A. ¶ 51.

¹⁷ 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”). Following the announcement of the investigation, Schwab resigned as Schweikert’s Chief of Staff. Ronald J. Hansen, *Oliver Schwab, Schweikert’s Chief of Staff, Quits Amid Ethics Probe*, AZCENTRAL.COM, July 9, 2018, <https://www.azcentral.com/story/news/politics/arizona/2018/07/09/arizona-rep-david-schweikert-chief-staff-oliver-schwab-quits-amid-ethics-probe/769669002/>.

¹⁸ This FGCR refers to the Investigative Subcommittee’s Report as the Ethics Committee’s Report, given that the Ethics Committee adopted the report.

¹⁹ Invest. Subcomm. Rpt. at 5-6.

²⁰ Schwab and Chartwell Supp. Submission at 2-4.

C. Schwab's Role in the Schweikert Committee's Reports

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 investigation, for its part, identified approximately \$270,000 in reimbursements from Schweikert's campaign committees to Schwab or Chartwell between 2011 and 2018.²¹ 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 Schwab's personal credit card companies (indirectly benefiting Schwab).²² 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.²³ 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

²¹ 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.

²² *Id.* at 41, Ex. A ¶¶ 111-113.

²³ *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.

1 FECs.”²⁴ To conceal those disbursements, Schwab paid for the expense with his personal credit
 2 card and sought reimbursement from the Schweikert Committee, which disclosed the
 3 disbursements as consulting fees to Chartwell.²⁵ In another example, Schwab testified that he
 4 billed the campaign \$5,000 for “consulting services” in order to conceal the purchase of tickets
 5 on a charter airplane when Schweikert traveled to Lake Havasu City, Arizona, for a speech.²⁶
 6 For some reimbursements, Schwab directed the Committee to make checks payable to his
 7 personal credit card companies, such as “Chase Bank,” instead of himself personally, which was
 8 disclosed in reports filed with the Commission as a disbursement to “Chase Bank,” further
 9 concealing the true recipient of the Committee’s disbursement.²⁷ Schwab testified that the
 10 Schweikert Committee’s treasurer was aware that disbursements labeled as consulting fees were
 11 actually for campaign expenses. Schweikert denies that he ever instructed Schwab to seek
 12 reimbursement through Chartwell; however, the Ethics Committee noted that Schweikert’s
 13 testimony was inconsistent and testimony from other witnesses indicated that Schweikert was
 14 aware of the practice.²⁸

15 Although the Ethics Committee did not make a separate finding based on the Act with
 16 respect to the \$270,000 in reimbursements, it found that in disclosure reports filed with the

²⁴ *Id.* at 42 (quoting Schwab interview).

²⁵ *Id.* at 42, 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.”).

²⁶ *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.

²⁷ *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

²⁸ *Id.* at 42.

Commission, the Schweikert Committee did not list the actual recipient of the disbursement, instead listing Chartwell, and did not list the actual purpose of the disbursement, instead listing “strategic consulting” or another vague description.²⁹ In some instances, this obfuscation was intended to conceal impermissible or embarrassing disbursements from public view.³⁰

III. LEGAL ANALYSIS

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.³¹

Commission regulations define “purpose” as a “brief statement or description of why the disbursement was made.”³² “The ‘purpose of disbursement’ entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear.”³³ 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

²⁹ *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”).

³⁰ *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.”)..

³¹ 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).

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

³³ *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)).

the disbursement was made when reading the name of the recipient and the purpose.”³⁴

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.³⁵

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.”³⁶ 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.³⁷

Here, in Respondents’ Submission, Respondents acknowledged that disbursements with generic labels such as “strategic consulting” were actually for purposes such as “advertising,” “website design,” “lodging,” and “food & beverage.”³⁸ For instance, the Schweikert Committee originally described a disbursement for \$8,119.32 to Chartwell on 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 &

³⁴ Purpose Statement of Policy, 72 Fed. Reg. at 888.

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

³⁶ *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).

³⁷ 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).

³⁸ Submission, Attach. A.

Mementos, Catering.”³⁹ 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.⁴⁰ 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.”⁴¹ 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.”⁴² 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.”⁴³

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.⁴⁴ The Commission has determined, however, that merely reporting the

³⁹ *Id.*

⁴⁰ Invest. Subcomm. Rpt., Ex. A ¶ 114.

⁴¹ *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).

⁴² *Id.* at 55, Ex. A ¶¶ 123, 137, 138.

⁴³ *Id.*

⁴⁴ 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).

1 immediate recipient of a committee’s payment will not satisfy the requirements of Section
 2 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the
 3 intended recipient of the funds.⁴⁵

4 Here, the Ethics Committee determined that the Schweikert Committee purposely
 5 disclosed erroneous payees both to obscure that Schwab was making large outlays on behalf of
 6 the campaign and to obscure “the true nature, date, and underlying recipient of the
 7 disbursements.”⁴⁶ In some instances Schwab submitted receipts for reimbursement made on a
 8 personal credit card, but instructed the treasurer to make the checks payable to “Chase Bank,”
 9 which was the payee reflected on disclosure reports filed with the Commission.⁴⁷ In many
 10 instances, Schwab concealed the true campaign vendor with false consulting invoices payable to
 11 Chartwell.⁴⁸ The type of activity at issue here, payments for reimbursements to campaign staff
 12 and payments to credit card companies, are the types of disbursements where the Commission
 13 has required more specific reporting.⁴⁹

14 Under the Act and Commission regulations, a committee must maintain an accurate
 15 account of its disbursements and must accurately report those amounts in its public filings with

⁴⁵ Factual and Legal Analysis at 9, MUR 6724 (Bachmann for President, *et al.*) (citing Conciliation Agreement at 3, MUR 4872 (Jenkins)).

⁴⁶ 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.

⁴⁷ *Id.* at 46, Ex. A ¶¶ 127-28.

⁴⁸ *Id.* at 55, Ex. A ¶¶ 123, 138.

⁴⁹ 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.

the Commission.⁵⁰ The Commission has further recognized that these obligations apply to the treasurer of the committee “or an agent authorized by the treasurer to receive contributions and make expenditures.”⁵¹ These reporting requirements are intended to ensure public disclosure of “where political campaign money comes from and how it is spent.”⁵² For example, in MUR 6761 (Barfield), the Commission found that a campaign manager who had embezzled funds and falsified records to conceal his embezzlement violated Section 30102(c) by preventing accurate recordkeeping, although the campaign manager did not violate Section 30104(b) requiring the filing of accurate reports because he did not have legal responsibility for filing disclosure reports on behalf of the committee.⁵³

As Campaign Manager, Schwab had the authority to receive contributions and make disbursements on behalf of the Schweikert Committee.⁵⁴ Schwab testified that he submitted to the Committee false consulting invoices for Chartwell in order to conceal the true purpose of certain disbursements.⁵⁵ He further concealed his own involvement by routing payments through Chartwell.⁵⁶ Schwab testified that Schweikert was aware of the arrangement, and

⁵⁰ See 52 U.S.C. §§ 30102(c)(5), 30104(b)(4), (b)(5); 11 C.F.R. §§104.3, 104.14(d).

⁵¹ 11 C.F.R. § 102.9.

⁵² *Buckley v. Valeo*, 424 U.S. 1, 66 (1976); see also *Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing the importance of disclosure requirements to serve informational interests, because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

⁵³ See, e.g., Factual and Legal Analysis at 9, MUR 6761 (Barfield).

⁵⁴ See generally Invest. Subcomm. Rpt. (detailing 10-year course of conduct of Schwab’s receipts and disbursements on behalf of Schweikert’s campaign committees); see also Factual and Legal Analysis, MUR 6761 (Barfield) (analyzing a Section 30102(c) violation: “In his capacity as campaign manager for the Committee, Barfield was authorized to receive contributions and make expenditures.”).

⁵⁵ Invest. Subcomm. Rpt. at 55, Ex. A ¶ 138 (“Mr. Schwab sent Respondent’s campaign false invoices or instructed the campaign’s treasurers to make disbursements for campaign services. Mr. Schwab testified that he sought approximately \$5,000 worth of reimbursements for personal expenses he incurred on behalf of Respondent in this manner.”).

⁵⁶ *Id.* at 55, Ex. A ¶ 114.

1 instructed him to “be creative” in seeking reimbursement for personal use expenditures.⁵⁷
2 Schwab’s falsification of records, including submitting false purpose of disbursement and payee
3 records to the treasurer, undermined the Committee’s ability to file accurate reports with the
4 Commission.

5 Despite this testimony to the Ethics Committee, Schwab argues in his response that
6 although it is undisputed that he made outlays on behalf of Schweikert’s campaign committees,
7 he believed them to comply with all relevant laws and that they “were made with the approval of
8 Representative Schweikert and vendors for Friends of David Schweikert.”⁵⁸ However, Schwab’s
9 testimony indicates that he knew that he was providing the campaign with false invoices for
10 consulting services in an effort to obscure the underlying transaction, such as “dinners in D.C.”
11 and disbursements for Schweikert’s personal use.⁵⁹ Schweikert’s alleged approval of unlawful
12 activity is not a valid defense to Schwab’s failure to maintain records.

13 Schwab made statements to the campaign treasurer that should have alerted the treasurer
14 to the violations at least in part. Schwab emailed the treasurer, “I have as many as like [\$7,000
15 in reimbursements], but will do whatever the right amount i[s] (does this need to be done to [Mr.
16 Schwab’s spouse] instead of me? Should it be billed as a vendor invoice?).”⁶⁰ In another email
17 to the treasurer, Schwab stated: “Let’s proceed first of the month with the \$15,000 transfer to the
18 Schweikert’s [debt repayment]. I’ve got 2 big mail pieces in the works right now. I put \$7,000 on
19 my card to get these out which I’ll hold for reimbursement well down the road.”⁶¹ The treasurer

⁵⁷ *Id.*, Ex. A ¶ 137.

⁵⁸ Schwab & Chartwell Resp. at 2.

⁵⁹ Invest. Subcomm. Rpt., Ex. A ¶ 138.

⁶⁰ *Id.* at 44.

⁶¹ *Id.* at 47.

1 reimbursed Schwab on several occasions by making reimbursement checks payable to “Chase
2 Bank,” and disclosing the expenditure as “Chase Bank” on reports with the Commission instead
3 of disclosing Schwab as the recipient.⁶² According to the Ethics Committee’s Report, delaying
4 reimbursements to Schwab allowed the campaign to report higher fundraising and cash-on-hand
5 totals for quarterly reports.⁶³

6 Accordingly, the Commission finds reason to believe that Schwab failed to maintain
7 records in violation of 52 U.S.C. § 30102(c)(5) by falsifying records relating to the Schweikert
8 Committee’s disbursements.

⁶² *Id.* at 46-47.

⁶³ *Id.* at 44 (identifying a March 11, 2016 expenditure paid for by Schwab that the Committee did not reimburse to Chartwell until April 25, 2016); *id.*, Ex. A ¶ 125.