

RUSSELL H. MILLER
ATTORNEY AT LAW
RUSS.MILLER@MILLERPOLITICALLAW.COM

REBECCA J. OLSON
ATTORNEY AT LAW
REBECCA.OLSON@MILLERPOLITICALLAW.COM

KIRK ALAN PESSNER
COO & SENIOR PARALEGAL
KIRK.PESSNER@MILLERPOLITICALLAW.COM

MILLER & OLSON, LLP
ATTORNEYS AT LAW

400 CAPITOL MALL, SUITE 1545
SACRAMENTO, CALIFORNIA 95814 4434

PHONE: (916) 254-5180
FAX: (916) 379-8531
E-MAIL: INFO@MILLERPOLITICALLAW.COM

RECEIVED

By OGC-CELA at 5:48 pm, Dec 23, 2021

BURLINGAME OFFICE

20 PARK ROAD, SUITE E
BURLINGAME, CALIFORNIA 94010 4443
PHONE: (650) 401-8735
FAX: (916) 379-8533

December 22, 2021

VIA EMAIL: CELA@FEC.GOV

Roy Q. Luckett
Acting General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington DC 20463

RE: MUR 7947

Dear Mr. Luckett:

This letter and its attachments serve as our formal response to MUR 7947 included in your letter of December 7, 2021. I have served as campaign counsel to Congressman Swalwell and Swalwell for Congress for almost three years, and will represent them in this matter as well. As such, all future correspondence should be directed to my attention.¹

No action should be taken against Swalwell for Congress, Congressman Eric Swalwell and Treasurer Jerome C. Pandell because no intentional violations of the Federal Election Campaign Act (FECA) have occurred.

The American Accountability Foundation (AAF), the complainant in this matter, is a recently-formed fringe conservative group whose main goal is to thwart the efforts of Democrats. According to Fox News, “[a] new conservative opposition research group is using unorthodox, and controversial, tactics to throw what it describes as ‘a big handful of sand’ in the gears of the Biden Administration — tactics it claims have been used effectively by the left for years. ‘I see the group right now as getting up every morning and with the goal of making it as difficult as possible for the Biden administration and their allies on the Hill to implement their agenda,’ Tom Jones, founder of the American Accountability Foundation (AAF), told Fox News in an interview.² Their goal chills free speech and forces campaigns and lawmakers to incur legal costs defending themselves against these frivolous complaints. Congressman Swalwell and Swalwell for Congress have done nothing wrong. Engaging AAF in this complaint rewards legal vandalism and harassment and detracts from real complaints containing substantive violations.

Congressman Swalwell is a Member of House Leadership and a former candidate for President. Because of his leadership role and his higher profile, the Congressman is expected to help his colleagues and other candidates in their campaigns. Over the past ten years, Eric has traveled to 96 cities outside of his own congressional district, for 98 candidates, contributing

¹ Attached also find the completed Statement of Designation of Counsel

² <https://www.foxnews.com/politics/new-conservative-group-unorthodox-tactics-biden-agenda-nominees> (April 13, 2021).

\$183,050 to other candidates along with \$1,077,250.00 to the Democratic Congressional Campaign Committee (DCCC) to help bolster their campaigns. A significant portion of excess funds that are available after campaign expenses are paid go immediately to assist other candidates, campaigns and the DCCC. Even while conducting all this activity, travel and permissible expenses, Swalwell for Congress has not had any issues or complaints from/with the Federal Election Commission.

Swalwell for Congress utilizes a professional well versed in campaign compliance and public disclosure as well as staff to monitor and review campaign expenses.³ At the end of each quarter, Congressman Swalwell asks his staff, treasurer and compliance professional to review expenses from the prior quarter and to identify any expenses that may need additional information or require reimbursement.⁴

Campaign Funds Were Not Used for Personal Expenses⁵

Congressman Swalwell and Swalwell for Congress have never knowingly used campaign funds for personal expenses. This letter will explain in greater detail why the expenses mentioned in the complaint were not personal use.

On Page 3 of the AAF's letter, Mr. Buckham indicates campaign funds were spent from the House Gift Shop on the same day Congressman Swalwell traveled to Qatar, and that is somehow impermissible because the payment was not for campaign purposes. What Mr. Buckham fails to add is that purchasing gifts using campaign funds for persons other than members of the candidate's family is permissible under FEC regulations.⁶ These particular nominal gifts were purchased from the House Gift Shop for constituents who visit the congressional office as well as officials in Qatar.

In the same section, the complaint lists a charge of \$19.38 to Uber Eats. This charge was in error. When using an app that saves credit cards for future charges, it saves the last card used as the default. Prior to this charge, Congressman Swalwell took an Uber for campaign purposes. Then, when ordering food with Uber Eats, the app defaulted to the campaign card instead of his personal card. The campaign has been reimbursed with personal funds by the Congressman.

The complaint seems to indicate campaign activities cease when Congressman Swalwell is out of town. That is not the case. The Drizly disbursement for \$124.86 was not linked to a campaign event. It was a gift of wine for campaign staff acknowledging them for all their hard work raising funds during the prior quarter.

Payment for COVID tests used to ensure Congressman Swalwell and his wife Brittany were COVID negative after attending a campaign event where they came in contact with a potentially COVID positive person is directly related to campaign activity, and is not payment for personal healthcare.

³ Jerome C. Pandell is not a professional treasurer, although he serves as the named Treasurer of Swalwell for Congress and is familiar with campaign reporting requirements and procedures. Swalwell for Congress has hired an experienced campaign finance professional to prepare and review reports since its inception.

⁴ Staff has occasionally discovered non-campaign expenses. For instance, on March 19, 2021, staff discovered an Uber Eats charge of \$19.95 that was reimbursed by the Congressman. Having multiple cards saved in the app can lead to an occasional mistake. Attached are examples of the email inquiries at the end of quarter.

⁵ This letter will not respond to any allegations of violations of House Ethics Rules since only the House Committee on Ethics can enforce their own rules.

⁶ Federal Election Commission Regulation Section 113.1(g).

All event tickets were for either tickets for staff for the legislative baseball game, meetings with campaign contributors or fundraising events as follows:

<u>Date</u>	<u>Amount</u>	<u>Vendor</u>	<u>Purpose of Expense</u>
10/7/2015	\$317.00	Beach Blanket Babylon	Fundraising Event
3/9/2018	\$261.00	Vivid Seats (Wizards Tickets)	Fundraising Event
12/16/2018	\$272.00	Beach Blanket Babylon	Fundraising Event
9/10/2021	\$272.00	Washington Nationals	Congressional Baseball Game
9/17/2021	\$153.00	Washington Nationals	Congressional Baseball Game
9/17/2021	\$36.70	Sonoma Restaurant & Wine Bar	Meeting with Contributor by fundraising staff

All food and beverage costs mentioned in the complaint are also permissible uses of campaign funds.

<u>Date</u>	<u>Amount</u>	<u>Vendor</u>	<u>Purpose of Expense</u>
8/16/2021	\$9.10	Bluejacket Yards	Meal with MPDC Officer Michael Fenone regarding campaign ⁷
8/16/2021	\$22.25	Bluejacket Yards	Meal with MPDC Officer Michael Fenone regarding campaign
8/16/2021	\$18.90	Bluejacket Yards	Meal with MPDC Officer Michael Fenone regarding campaign
8/12/2021	\$79.40	Charlie Palmer's	Fundraising meeting with contributor
7/2/2021	\$15.00	Charlie Palmer's	Fundraising meeting with contributor

Childcare Expenses

Just like 46 percent of two parent households in the United States, Congressman Swalwell and Brittany both work full time jobs. With three young children (all still in diapers), childcare is often needed to ensure their children are well-cared for while they are working to support their family. The FEC has issued advisory opinions concluding that committees may use campaign funds to pay for childcare expenses that are a direct result of campaign activity.⁸

Congressman Swalwell and Brittany have used both family⁹ and trained childcare professionals to care for their children. For a significant period of time, Brittany's aunt was paid much less than the market rate. But after realizing the non-family member was receiving a significantly higher hourly rate, the Swalwells raised her rate to be commensurate with the fair market value. Both individuals are paid a fair market value of childcare services in the DC area.

At the end of each month, campaign staff reviews the Congressman's schedule to determine how much of the babysitter's time was spent watching the children when the Congressman was at a campaign event. The staffer then prepares an excel spreadsheet with the applicable hours and multiplies those hours by the applicable hourly rate. The spreadsheet is reviewed and approved by an additional staff member.

If Congressman Swalwell is listed as receiving funds related to childcare, it would be a reimbursement of payments made by the Congressman prior to determining the payments were for campaign events. That would be clear by looking at the subvendor reported as memo entries on the report.

⁷ All of the charges were on the same day during the same meal. The restaurant requires payment for each order and all food and drink is ordered and paid for via mobile device.

⁸ Advisory Opinions 2018-06, 1995-42 and 2019-13.

⁹ Susan Reynolds is Brittany Swalwell's aunt. She is not a member of the immediate family or a member of the household.

The payment of childcare on April 1, 2021 was not for childcare on that day, just the date of disbursement. The payment covered all childcare costs directly related to campaign events/time spent during the month of March 2021. A log was kept for each hour spent on campaign activities. In March 2021, a total of 35.5 hours were determined to be for campaign events, planning or fundraising. At \$35 per hour, the total was \$1,242.50.

Starbucks Charges

The Committee did make charges for Starbucks. The campaign loads a Starbucks card with campaign funds for use for campaign purposes. Campaign staff then uses the Starbucks card to pay for coffee for campaign events, staff and/or volunteers. Congressman Swalwell also uses the funds to pay for his coffees for campaign activity to ensure he is not receiving gifts from contributors.

As you can see, there is no routine use of campaign funds for personal use as alleged in the complaint. Because of Congressman Swalwell's high profile and leadership role, he spends a lot of time on campaign events, fundraising and travel for his campaign as well as on behalf of other candidates. He often needs childcare for his young children during campaign events. All these expenses are permissible uses of campaign funds. When a few inadvertent expenses have been made with campaign funds, he quickly reimburses them. Because he has systems in place to review expenditures and calculate the proper campaign event childcare, those inadvertent expenses are kept to a minimum and reimbursed quickly.

There is no reason to investigate this politically-motivated, baseless complaint. We request you close this matter. However, if you need any additional information, please do not hesitate to contact me.

Sincerely,

Rebecca J. Olson



Affidavit of Congressman Eric Swalwell

I, Congressman Eric Swalwell, affirm that I have never knowingly used campaign funds for personal purposes. Whenever inadvertant personal expenses are made using campaign funds, I reimburse them with personal funds as soon as I as am made aware of them. I direct staff to notify me as soon as possible at the end of each reportable quarter if there are any expenses that were inadvertently paid by the campaign, so I can reimburse them.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 22 day of December 2021.



Congressman Eric Swalwell

Affidavit of Martin Nelson

I, Martin Nelson, affirm that I review the expenses of Swalwell for Congress. Whenever inadvertant personal expenses are made using campaign funds, I notify Congressman Swalwell so he can reimburse them with personal funds as soon as possible.

20 I declare under penalty of perjury that the foregoing is true and correct. Executed on this day of December 2021.



Martin Nelson

Affidavit of Jerome C. Pandell

I, Jerome C. Pandell, Treasurer of Swalwell for Congress, affirm that I review the campaign reports of the committee on a quarterly basis. I request additional information on expenses and ask questions about transactions on the report.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this
22nd day of December 2021.



Jerome C. Pandell

EXHIBIT A

Rebecca Olson

Subject: FW: FEC report Q2

----- Forwarded message -----

From: Eric Swalwell <

Date: Tue, Jul 6, 2021 at 12:40 PM

Subject: FEC report Q2

To: Yardena Wolf

Cc: Lisa Tucker <Lisa@tuckerpolitics.com>, Marty Nelson <mnelson@email.ericswalwell.com>

Please review the last three months of expenditures to make sure that there was nothing that inadvertently should be paid for personally by me. If there is, flag it and send it over. Thank you!

Eric

Rebecca Olson

Subject: FW: Q4 SFC charges

----- Forwarded message -----

From: Eric Swalwell <eric@ericswalwell.com>
Date: Mon, Jan 4, 2021 at 1:10 PM
Subject: Q4 SFC charges
To: Ryan DeJoy
Cc: Lisa Tucker <Lisa@tuckerpolitics.com>

As we wrap up Q4, please scrutinize the disbursements I've made on the SFC card to make sure they are all appropriate. If you have any questions, please ask me. Also, let's make sure we are not doing SFC for anything that qualifies for remedy. Let's try and put as much on remedy as we can if it qualifies as such.

Eric

Rebecca Olson

Subject: FW: Q3 report

----- Forwarded message -----

From: Eric Swalwell ·

Date: Thu, Oct 8, 2020 at 8:40 AM

Subject: Q3 report

To: Lisa Tucker <Lisa@tuckerpolitics.com>

Cc: Ryan DeJoy <rdejoy@ericswalwell.com>

Please be sure to inspect report for any expenses that may be personal in nature and unintentionally put on sfc or need clarification.



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

E-MAIL: cela@fec.gov

AR/MUR/RR/P-MUR# 7947

Name of Counsel: Rebecca J. Olson

Firm: Miller & Olson LLP

Address: 400 Capitol Mall Ste 1545
Sacramento CA 95814

Office#: 916 254 5180 Fax#: 916 880-5622

Mobile#: _____

E-mail: rebecca.olson@millerpolicallaw.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

12/20/21
Date

[Signature]
(Signature - Respondent/Agent/Treasurer)

Congressman
Title

Eric Swalwell
(Name - Please Print)

RESPONDENT: Jerome C. Pandell / Swalwell for Congress / Congressm
(Please print Committee Name/ Company Name/Individual Named in Notification Letter) Eric Swalwe.

Mailing Address: PO Box 2847
(Please Print) Dublin CA 94568

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: info@ericswalwell.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

Rev. 2021