

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL’S REPORT

MUR: 7947

DATE COMPLAINT FILED: Dec. 2, 2021

DATE OF NOTIFICATIONS: Dec. 7, 2021

LAST RESPONSE RECEIVED: Dec. 22, 2021

DATE ACTIVATED: Apr. 14, 2022

EXPIRATION OF SOL: Oct. 25, 2018 – Sept. 17, 2026

ELECTION CYCLES: 2014, 2016, 2018, 2020, 2022

COMPLAINANTS:

American Accountability Foundation
Matthew Buckham

RESPONDENTS:

Swalwell for Congress and Jerome C. Pandell in his
official capacity as treasurer
Eric Michael Swalwell

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30102(h)(1)

52 U.S.C. § 30104(b)(5)

52 U.S.C. § 30114(b)

11 C.F.R. § 102.10

11 C.F.R. § 104.3(b)(4)

11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that Swalwell for Congress and Jerome C. Pandell in his official capacity as treasurer (the “Committee”) and Eric Michael Swalwell (collectively as the “Respondents”) converted campaign funds to personal use in violation of Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint relies on news reports and the Committee’s disclosure reports indicating that Respondents spent thousands of dollars in

campaign funds on travel, entertainment, food and beverages, and childcare.¹ Additionally, the Complaint alleges that the Committee failed to disburse campaign funds from its depository account by pre-loading a Starbucks card and failed to properly report those disbursements.²

Respondents filed a joint response ("Response") denying the allegations and asserting that, except for an inadvertent \$19.38 payment to Uber Eats, they did not use campaign funds to pay for personal expenses.³ Respondents acknowledge using campaign funds to pre-load a Starbucks card used to purchase coffee for Swalwell and campaign workers but do not otherwise address the allegations regarding the campaign depository or reporting requirements.⁴

Overall, the Complaint, the Response, and other available information indicate that, except for the \$19.38 charge to Uber Eats and an unknown portion of the disbursements for childcare that were incurred while Swalwell was attending campaign events for other candidates or committees, the alleged disbursements were either related to Swalwell's own election campaigns or his official position as a Congressman. In addition, there is no information that the Committee did anything improper in disbursing campaign funds from its depository to pre-pay

¹ Compl. at 1, 3-7 (Dec. 2, 2021) (citing Henry Rodgers, *FEC Records Show Eric Swalwell Spending Campaign Funds On Ritzy Steak Houses, Limos, Liquor Delivery App, Casino*, DAILYCALLER, Nov. 1, 2021, <https://dailycaller.com/2021/11/01/fec-records-eric-swallow-casino-steak-houses/>; Houston Keene, *Swallow Spent Thousands of Campaign Dollars on Booze and Limo Services, \$20K at Hotel Where His Wife Worked*, FOXNEWS, July 20, 2021, <https://www.foxnews.com/politics/swallow-campaign-dollars-booze-limos-hotels>; Greg Price, *Rep. Swalwell Spent Thousands Of Campaign Dollars On Alcohol, Limos, Fancy Restaurants And Luxury Hotels*, DAILYCALLER, July 20, 2021, <https://dailycaller.com/2021/07/20/swallow-thousands-campaign-dollars-alcohol-limos-hotels/>; Swalwell for Congress, *Committee Filings*, FEC.GOV, <https://www.fec.gov/data/committee/C00502294/?tab=filings>). Although the Complaint names Jerome C. Pandell as the current treasurer, the allegations address events that occurred beginning on October 25, 2013, when Shannon Fuller served as treasurer of the Committee. Swalwell For Congress, *Statement of Organization* (Apr. 14, 2013) at 3, <https://docquery.fec.gov/pdf/878/13961603878/13961603878.pdf>. However, the events that occurred when Shannon Fuller was treasurer are outside of the statute of limitations.

² Compl. at 6-7.

³ Resp. at 2-5 (Dec. 22, 2021).

⁴ *Id.* at 5.

1 charges made to its Starbucks account, or in reporting those disbursements. Accordingly, we
2 recommend that the Commission: (1) dismiss the allegations that Respondents violated
3 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use;
4 (2) find no reason to believe that the Committee violated 52 U.S.C. § 30102(h)(1) or 11 C.F.R. §
5 102.10, by disbursing campaign funds outside of its depository; and (3) find no reason to believe
6 that the Committee violated 52 U.S.C. § 30104(b)(5) or 11 C.F.R. § 104.3(b)(4) by failing to
7 adequately report disbursements.

8 **II. FACTUAL BACKGROUND**

9 **A. Alleged Payments for Personal Use**

10 Eric Michael Swalwell is the Representative for California's 15th Congressional District
11 and has served in that position since January 2013. Swalwell for Congress is his principal
12 campaign committee.⁵

13 The Complaint asserts that numerous disbursements disclosed in the Committee's
14 disclosure reports were for personal use, including food and beverages, event tickets, purchases
15 from the U.S. House of Representatives Gift Shop, COVID-19 testing, and childcare payments to
16 family members.⁶ The Complaint also alleges that Swalwell either improperly accepted a gift or
17 used Committee funds to pay for recreational activities during a trip to Qatar, such as a camel
18 ride, but does not identify any specific disbursement that appeared in the Committee's reports.⁷

⁵ Swalwell For Congress, Amended Statement of Organization at 3 (Mar. 14, 2022), <https://docquery.fec.gov/pdf/285/202203149493775285/202203149493775285.pdf>.

⁶ Compl. at 3-6.

⁷ *Id.* at 3.

Respondents deny the allegations and assert that the disbursements were either related to Swalwell's campaign or his official position as a Congressman.⁸

The alleged improper payments reflected in the Committee's reports are summarized below:

Disbursement Dates	Description	Amount
10/8/2013-9/17/2021	Food and Beverage	\$4,835.56
10/7/2015-9/17/2021	Event Tickets	\$1,275
3/9/2018	House Gift Shop Purchases	\$238.50
8/31/2021	COVID-19 Testing	\$50.86
8/12/2019-9/1/2021	Child Care for Campaign Event	\$23,094.50 ⁹

1. Food and Beverage Expenses

The Complaint alleges that the eight disbursements to various food and beverage servicers, which aggregate to \$325.59, appear to be for personal use as their low individual cost suggest that it was for an individual meal, or that the timing of the disbursements suggest that they are not campaign-related.¹⁰ The Complaint also generally alleges that the \$4,509.97 in disbursements to Starbucks appear to be for personal use.¹¹ Respondents provide a campaign-related purpose for each of the expenses in question, indicating that funds were used to pay for

⁸ Resp. at 3-5.

⁹ The Complaint alleges that "over 17,000" was disbursed to Susan Reynolds from 2019 to 2021 for childcare purposes and that \$7,384.75 was disbursed to Eric Swalwell between 2019 to 2020 for childcare purposes. *Id.* at 6. Although we were able to confirm the amount that was allegedly paid to Reynolds through the Committee's reports, which show that \$17,630 was disbursed to her from 2019 to 2021, *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00502294&recipient_name=susan+reynolds (last visited Aug. 19, 2022) (reflecting the Committee's disbursements to Susan Reynolds), we were only able to confirm that the Committee paid Swalwell \$5,464.50 for childcare expenses from 2019 to 2020, see *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00502294&recipient_name=eric+swalwell&two_year_transaction_period=2020 (last visited Aug. 19, 2022) (reflecting the Committee's disbursements to Eric Swalwell from 2019 to 2020).

¹⁰ Compl. at 4-5.

¹¹ *Id.* at 1, 7 n.49. Since the Complaint was filed on December 2, 2021, we address only the Committee's disbursements to Starbucks as reported by that date.

fundraising meetings and support for campaign staff and volunteers.¹² With respect to the \$19.38 Uber Eats charge, Respondents assert that the disbursement of campaign funds was inadvertent and reimbursed to the Committee prior to the Complaint's filing.¹³

2. *Event Tickets*

The Complaint alleges that the five disbursements for event tickets totaling \$1,275 may have been for personal use as the low cost of each individual disbursement indicates that the tickets were purchased for one person or a small group.¹⁴ In addition, the Complaint states that the musical revue tickets are unlikely to be related to campaigning as the Committee did not identify the purpose as such in its filings and that "it strains the imagination that any campaign activity could take place during the course of a musical performance."¹⁵ Respondents state that the ticket purchases were related to either campaign or officeholder activity.¹⁶ Specifically, Respondents assert that the Beach Blanket Babylon tickets and the Wizard tickets, the latter

¹² Resp. at 3-5 (explaining that the disbursement to Drizly "was a gift of wine for campaign staff acknowledging them for all their hard work raising funds during the prior quarter," the disbursement to Sonoma Restaurant & Wine Bar was for a "[m]eeting with Contributor by fundr[a]ising staff;" the disbursements to Bluejacket Yards were for a meal was with an MPDC Officer regarding Swalwell's campaign; the disbursements to Charlie Palmer's was for a "[f]undraising meeting with contributor;" and the Committee "loads a Starbucks card with campaign funds" to provide Swalwell and volunteers coffee during campaign activity).

¹³ *Id.* at 3 (explaining that the Uber application saves the previously used credit card information, which caused Swalwell to inadvertently use the campaign's credit card for his personal Uber Eats purchase). In addition, the Committee's 2021 Year-End Report states that, on October 28, 2021, and November 1, 2021, Swalwell transferred \$409.51 and \$111.46 respectively to the Committee with the memo "Mistaken Purchase – Offset." Swalwell for Congress, 2021 Year-End Report at 268 (Jan. 31, 2022), <https://docquery.fec.gov/pdf/022/202201319486370022/202201319486370022.pdf>.

¹⁴ Compl. at 5.

¹⁵ *Id.* at 4.

¹⁶ Resp. at 4.

1 purchased through Vivid Seats, were for fundraising events, and the tickets to the Washington
 2 Nationals were for staff for the Congressional Baseball Game.¹⁷

3 ***3. House of Representatives Gift Shop***

4 The Complaint alleges that the disbursement of \$238.50 to the House of Representatives
 5 Gift Shop for “Constituent Supplies” on March 29, 2021, “raises questions on whether the
 6 campaign paid for gifts not related to campaign activities” as the date of the disbursement is
 7 when Swalwell departed to Qatar for an educational international seminar.¹⁸ Respondents state
 8 that the disbursement was for “nominal gifts . . . for constituents who visit the congressional
 9 office as well as officials in Qatar.”¹⁹

10 ***4. COVID-19 Testing***

11 The Complaint alleges that the \$50.86 disbursement for COVID-19 testing is personal
 12 use, arguing that the expense was “irrespective” of Swalwell’s campaign or officeholder
 13 responsibilities.²⁰ Respondents assert that the tests were “to ensure Congressman Swalwell and
 14 his wife Brittany were COVID negative after attending a campaign event where they came in
 15 contact with a potentially COVID positive person.”²¹

16 ***5. Camel Ride in Qatar***

17 The Complaint alleges that while Swalwell was attending the seminar in Qatar, which the
 18 Complaint asserts was paid by the United States Qatar Business Council, he improperly

17 *Id.*

18 Compl. at 3.

19 Resp. at 3.

20 Compl. at 4.

21 Resp. at 3.

“engage[d] in seemingly personal entertainment with his wife” as pictures posted on social media reveal that he and his wife rode camels during the trip.²² The Complaint does not identify any specific disbursement from the Committee’s reports that is connected to this entertainment expense, and the Response does not address this allegation.²³

6. *Childcare Payments to “Family Members”*

The Complaint alleges that the disbursements to Susan Reynolds and Eric Swalwell for childcare services, which total \$23,094.50, were for personal use.²⁴ The Complaint further alleges that Susan Reynolds is Swalwell’s wife’s aunt, the “Eric Swalwell” named in the Committee’s reports may be the Swalwell’s father, and the rates being paid exceeded the fair market price.²⁵ The Complaint also questions whether the Committee only paid for the childcare services that were incurred as a direct result of campaign activity, stating that the Committee disbursed childcare payments to Susan Reynolds when both Swalwell and his wife attended an educational international seminar in Qatar from March 29 to April 3, 2021.²⁶

Respondents explain that Swalwell and his wife work full time jobs; that they have three young children; and that they use family and professional childcare providers, who are paid at a fair market rate, to care for their children.²⁷ Respondents state that campaign funds were only

²² Compl. at 3.

²³ In a press article, “[t]he U.S.-Qatar Business Council denied funding the camel ride.” Daniel Chaitin, *Eric Swalwell and Fellow Shirtless Democrat Ride Camels During Qatar Trip Funded by Special Interest Group*, WASHINGTON EXAMINER, July 9, 2021, <https://www.washingtonexaminer.com/news/eric-swallow-ride-camel-during-qatar-trip-funded-by-special-interest-group>.

²⁴ Compl. at 6.

²⁵ *Id.* at 6.

²⁶ *Id.* at 3-4, 6 n.40 (citing Advisory Opinion 2018-06 (Liuba For Congress) (“AO 2018-06”).

²⁷ Resp. at 4.

1 used to pay for childcare services while Swalwell was at “campaign events.”²⁸ Given the
2 Response’s statement that Swalwell travels extensively to campaign for other candidates as a
3 “Member of House Leadership,”²⁹ it is unclear whether these “campaign events” refer
4 exclusively to those of his own campaign or also to the campaigns of others.

5 While Respondents confirm that Susan Reynolds is the aunt of Swalwell’s wife, they
6 state that she was paid the same market rate as the professional childcare providers employed by
7 Swalwell.³⁰ Respondents also state that the disbursements to “Eric Swalwell” were to reimburse
8 Swalwell for childcare expenses while Swalwell was at campaign events.³¹ Respondents explain
9 that a campaign staff member reviews Swalwell’s schedule to ensure that campaign funds are
10 only used to pay for the childcare services incurred while Swalwell attended campaign events,
11 and this is reviewed by a second staff member.³² Respondents also explain that the April 1, 2021
12 disbursement to Susan Reynolds was for childcare costs related to campaign events in March
13 2021, and not during the time period while Swalwell was traveling in Qatar.³³

²⁸ *Id.* at 4-5.

²⁹ *Id.* at 2-3 (stating that “Over the past ten years, Eric has traveled to 96 cities outside of his own congressional district, for 98 candidates, contributing \$183,050 to other candidates along with \$1,077,250.00 to the Democratic Congressional Campaign Committee (DCCC) to help bolster their campaigns.”).

³⁰ *Id.* at 4.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 5.

B. Committee's Disbursements to a Starbucks Card

Finally, the Complaint alleges that by disbursing \$2,870 to a Starbucks card,³⁴ the Committee circumvented the requirement that it must make disbursements from a campaign depository and failed to report those disbursements properly.³⁵ The Response admits that “[t]he campaign loads a Starbucks card with campaign funds for use for campaign purposes,”³⁶ but otherwise does not address these allegations.

III. LEGAL ANALYSIS

A. The Commission Should Dismiss the Allegation That the Committee and Swalwell Converted Campaign Funds to 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,” and for “any other lawful purpose” not otherwise prohibited under the Act.³⁷ However, the Act prohibits the conversion of campaign funds by any person to “personal use.”³⁸

“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

³⁴ The Complaint alleges that the “charges with round numbers indicat[es] the possibility of gift card purchases or the preloading of an individual Starbucks Account.” Compl. at 7. As of the date of the Complaint, the Committee reported \$2,870 in round number disbursements to Starbucks. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00502294&recipient_name=starbucks (last visited Aug. 19, 2022) (reflecting Swalwell for Congress’ disbursements to Starbucks).

³⁵ Compl. at 6-7 (citing 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 102.10).

³⁶ Resp. at 5.

³⁷ 52 U.S.C. § 30114(a).

³⁸ *Id.* § 30114(b)(1).

duties as a Federal officeholder.”³⁹ The Act and Commission regulations list certain uses of campaign funds that constitute *per se* conversion to personal use.⁴⁰ 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 payment fulfills a commitment, obligation, or expense that would exist “irrespective of the candidate’s campaign or duties as a Federal officeholder.”⁴¹

Commission regulations provide that purchasing tickets for admission to an event may be permissible if “part of a specific campaign or officeholder activity.”⁴² However, Commission regulations deem “[s]alary payments to a member of the candidate’s family, unless the family member is providing *bona fide* services to the campaign,” to be *per se* personal use.⁴³ An aunt of the candidate or the candidate’s spouse is not a “family member” unless she shares a residence with the candidate.⁴⁴

³⁹ 11 C.F.R. § 113.1(g); *see* 52 U.S.C. § 30114(b)(2).

⁴⁰ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i). Examples of *per se* personal use include a mortgage, rent, or utility payment for the personal residence of a candidate, a vacation or other noncampaign-related trip, and household food items or supplies. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i)

⁴¹ 11 C.F.R. § 113.1(g); *see also* 52 U.S.C. § 30114(a)(2) (permitting federal officeholders to use campaign funds to defray “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office.”); 11 C.F.R. § 113.2 (permitting an officeholder to use campaign funds to pay the “costs of travel by the recipient Federal officeholder and an accompanying spouse to participate in a function directly connected to bona fide official responsibilities, such as a fact-finding meeting or an event at which the officeholder’s services are provided through a speech or appearance in an official capacity”).

⁴² *See* 11 C.F.R. § 113.1(g)(1)(i)(F).

⁴³ 11 C.F.R. § 113.1(g)(1)(i)(H). If a member of the candidate’s family is providing *bona fide* services to the candidate’s campaign, he or she must be paid the fair market value for such services at the time, as any payment in excess of the fair market value is personal use. *Id.*

⁴⁴ 11 C.F.R. § 113.1(g)(7).

Commission regulations also provide that “gifts of nominal value . . . are not personal use, unless made to a member of the candidate’s family.”⁴⁵ The Commission has previously approved the use of campaign funds to purchase gifts that “are low in cost and have little monetary value” for constituents, noting that paying for such gifts with campaign funds would be problematic only if the gift went “beyond an honorific purpose” and “confer[red] a significant personal benefit on the recipient.”⁴⁶

With respect to childcare, the Commission has advised that candidates could use campaign funds for childcare expenses that are “‘a direct result of campaign activity,’ because such expenses would not exist irrespective of the campaign.”⁴⁷ Recently, in Advisory Opinion 2022-07 (Swalwell), the Commission determined that childcare expenses incurred as a direct result of the candidate’s own election campaign may be reimbursed using campaign funds.⁴⁸ However, there was an insufficient number of votes to provide a response as to whether campaign funds may be used to pay for childcare expenses incurred as a result of the candidate’s attendance at campaign events for other candidates or committees.⁴⁹

⁴⁵ 11 C.F.R. § 113.1(g)(4).

⁴⁶ Advisory Opinion 2000-37 at 3 (Udall) (“AO 2000-37”) (finding that use of campaign funds to purchase \$17 replica medals to honor military veterans would not constitute personal use because “the replica medals are low in cost and have little monetary value, and the benefit to the veteran is the recognition of his service by a Member of Congress”).

⁴⁷ Advisory Opinion 2019-13 at 3 (MJ for Texas) (“AO 2019-13”) (quoting Advisory Opinion 2018-06 (Liuba for Congress); *see also* Advisory Opinion 1995-42 at 2 (McCrery) (“AO 1995-42”) (advising that campaign funds may be used to pay for childcare expenses that are a result of the candidate and his wife’s simultaneous participation in his campaign).

⁴⁸ Advisory Opinion 2022-07 at 3-4 (Swalwell) (“AO 2022-07”). This advisory opinion only addressed future conduct and did not reference this matter.

⁴⁹ *Id.* at 4.

1 The available information does not support a finding of reason to believe that Swalwell or
 2 the Committee converted campaign funds to personal use. Except for the \$19.38 charge to Uber
 3 Eats, Respondents have provided information that the alleged food and beverage expenses, event
 4 tickets, and COVID-19 testing were related to Swalwell's campaign or his official duties as a
 5 Congressman. The available information also does not suggest that the \$238.50 U.S. House of
 6 Representatives Gift Shop purchase exceeded a nominal value,⁵⁰ or was provided to a family
 7 member of Swalwell, or that the camel ride in Qatar was paid with campaign funds.

8 Regarding the allegations concerning the childcare payments, Susan Reynolds is not a
 9 "family member" under the Commission's regulations;⁵¹ therefore, payments to her for childcare
 10 expenses incurred as a direct result of Swalwell's own campaign activities would not be
 11 considered "personal use."⁵² Similarly, payments made to reimburse Swalwell for childcare
 12 expenses resulting from his own campaign are permissible.⁵³

13 Although there is a question as to whether the Committee could have used campaign
 14 funds to pay for the childcare services incurred while Swalwell attended campaign events for
 15 other candidates as a member of House Leadership, the Commission had not squarely addressed

⁵⁰ The Commission has dismissed allegations of personal use where the amount spent on the gifts were higher than the amount alleged here. Factual & Legal Analysis ("F&LA") at 6 n.24, MUR 7494 (John Culberson) (dismissing the allegation that the Committee converted campaign funds to personal use where the Committee made twenty-one expenditures, totaling \$5,238.17, described as "gifts.").

⁵¹ We also considered whether Susan Reynolds was paid in excess of the fair market rate. Although the Complaint suggests that a fair market rate for babysitting services in the D.C. area would be \$14-19 per hour, it does not explain whether this rate applies to babysitting services for two children that are under the age of five. At the time of the Complaint, the Committee's FEC filings revealed childcare disbursements to Susan Reynolds when Rep. Swalwell had two children. See Courtney Teague, *Tri-Valley Congressman Eric Swalwell Welcomes New Baby*, MSN.COM, Nov. 4, 2021, <https://www.msn.com/en-us/news/us/tri-valley-congressman-eric-swallow-welcomes-new-baby/ar-AAQk3lz> (reporting that Rep. Swalwell had a child in 2017, 2018, and in November 2021). Respondents state that Susan Reynolds was paid at \$35 per hour. Resp. at 5.

⁵² See 11 C.F.R. § 113.1(g)(1)(i)(H).

⁵³ AO 2022-07 at 3-4.

1 this issue at the time of the disbursements in question, and there was an insufficient number of
 2 votes to provide a response as to the issue in AO 2022-07.⁵⁴ Moreover, even if such payments
 3 were deemed impermissible, we do not have information on the amount of childcare expenses
 4 that Respondents incurred while Swalwell attended other candidates' campaign events — which
 5 would only be a subset of the \$23,094.50 in childcare expenses alleged by the Complaint.⁵⁵
 6 Under these circumstances, we recommend that the Commission dismiss the allegations that
 7 Respondents violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) pursuant to *Heckler v.*
 8 *Cheney*.⁵⁶

9 **B. The Commission Should Find No Reason to Believe That Disbursements to**
 10 **Pre-Load the Committee's Starbucks Account Violated the Act**

11 The Act and Commission regulations require committees to make disbursements from a
 12 campaign depository or depositories.⁵⁷ The Complaint alleges pre-loading a Starbucks gift card
 13 is a violation of the Act, which requires each transaction to be drawn from the campaign account.
 14 However, the Complaint does not allege, nor does the available information indicate, that the
 15 disbursements to Starbucks were not drawn from the Committee's campaign depository, given
 16 that these disbursements appeared in the Committee's reports, which reflect activity of the

⁵⁴ *Id.* at 4.

⁵⁵ While the Complaint only addresses the Committee's \$23,094.50 in childcare payments to Susan Reynolds and Eric Swalwell, at the time of the Complaint's filing, the Committee reported an additional \$24,031.81 in disbursements for childcare purposes, primarily to professional childcare providers, and there is no information as to the type of campaign event Swalwell attended when he incurred these childcare costs. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00502294&disbursement_description=child&disbursement_description=childcare (last visited Aug. 19, 2022) (reflecting Swalwell for Congress' disbursements for childcare).

⁵⁶ 470 U.S. 821 (1985).

⁵⁷ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 102.10.

Committee's depository account.⁵⁸ Under these circumstances, we recommend that Commission find that there is no reason to believe that the Committee violated 52 U.S.C. § 30102(h)(1) or 11 C.F.R. § 102.10.

C. The Commission Should Find No Reason to Believe That Disbursements to Starbucks Violated the Reporting Requirements of the Act

The Complaint also alleges reporting violations regarding the use of the Starbucks gift cards.⁵⁹ The Act and Commission regulations require committees to report the name and address of each person who receives a disbursement in excess of \$200, along with the date, amount, and purpose of such disbursement.⁶⁰ "[P]urpose means a brief statement or description of why the disbursement was made."⁶¹ The Commission's website provides that an adequate description of the purpose of a disbursement includes "Food and/or Beverage(s)."⁶²

The Committee reported the amounts that it disbursed to Starbucks with the date and purpose of each disbursement.⁶³ The Committee described the purpose of each disbursement as "Food," "Food and Beverage," "Food and Beverages," "Food & Beverage," which is similar to the above-referenced example of an adequate purpose of disbursement.⁶⁴ Respondents also

⁵⁸ See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00502294&recipient_name=starbucks (reflecting Swalwell for Congress' disbursements to Starbucks) (last visited Aug. 19, 2022).

⁵⁹ Compl. at 7.

⁶⁰ 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.3(b)(4)(i).

⁶¹ 11 C.F.R. § 104.3(b)(4)(i)(A).

⁶² *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last revised Aug. 21, 2018).

⁶³ *Id.*

⁶⁴ Compare *id.* with *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last revised Aug. 21, 2018).

confirmed that the disbursements to Starbucks were used for coffee.⁶⁵ Under these circumstances, we recommend that Commission find that there is no reason to believe that the Committee violated 52 U.S.C. § 30104(b)(5)(A) or 11 C.F.R. §104.3(b)(4).

III. RECOMMENDATIONS

1. Dismiss the allegation that Eric Michael Swalwell and Swalwell for Congress and Jerome C. Pandell in his official capacity as treasurer violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use;
2. Find no reason to believe that Swalwell for Congress and Jerome C. Pandell in his official capacity as treasurer violated 52 U.S.C. § 30102(h)(1) or 11 C.F.R. § 102.10 by failing to draw on a campaign depository for disbursements;
3. Find no reason to believe that Swalwell for Congress and Jerome C. Pandell in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(5)(A) or 11 C.F.R. § 104.3(b)(4) by failing to adequately report disbursements;
4. Approve the attached Factual and Legal Analysis;
5. Approve the appropriate letters; and

⁶⁵ Resp. at 5.

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1 6. Close the file.

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Lisa J. Stevenson
Acting General Counsel

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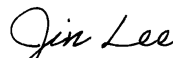
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Charles Kitcher
Associate General Counsel for Enforcement

7 August 22, 2022

8 Date

9




Jin Lee
Deputy Associate General Counsel for Enforcement

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Mark Shonkwiler
Assistant General Counsel

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Crystal Liu
Attorney

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