



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

December 15, 2022

**Via Electronic Mail**

[rebecca.olson@millerpoliticallaw.com](mailto:rebecca.olson@millerpoliticallaw.com)

Rebecca J. Olson, Esq.  
Miller & Olson LLP  
400 Capitol Mall Ste 1545  
Sacramento, CA 95814

RE: MUR 7947  
Swalwell for Congress, *et al.*

Dear Ms. Olson:

On December 7, 2021, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and the information supplied by your clients, the Commission, on October 18, 2022, voted to (1) dismiss the allegations that your clients violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use, except to extent that the allegations relate to childcare expenses; (2) dismiss pursuant to *Heckler v. Chaney* the allegations that your clients converted campaign funds to personal use in violation of 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by spending campaign funds on childcare expenses; (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. § 30102(h)(1) or 11 C.F.R. § 102.10 by disbursing campaign funds outside of its depository; and (4) 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) or 11 C.F.R. § 104.3(b)(4) by failing to adequately report disbursements. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

On December 13, 2022, the Commission approved the enclosed Factual and Legal Analysis, which more fully explains the Commission's decision. In addition, the Commission voted to close the file in this matter and to issue the appropriate letters. Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Crystal Liu, the attorney assigned to this matter, at (202) 694-1273.

Sincerely,

*Mark Shonkwiler*

Mark Shonkwiler  
Assistant General Counsel

Enclosure:  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Swalwell for Congress and **MUR 7947**  
 4 Jerome C. Pandell in his official capacity as treasurer  
 5 Eric Michael Swalwell

6 **I. INTRODUCTION**

7 The Complaint alleges that Swalwell for Congress and Jerome C. Pandell in his official  
 8 capacity as treasurer (the “Committee”) and Eric Michael Swalwell (collectively, the  
 9 “Respondents”) converted campaign funds to personal use in violation of the Federal Election  
 10 Campaign Act of 1971, as amended (the “Act”). The Complaint relies on news reports and the  
 11 Committee’s disclosure reports indicating that Respondents spent thousands of dollars in  
 12 campaign funds on travel, entertainment, food and beverages, and childcare.<sup>1</sup> Additionally, the  
 13 Complaint alleges that the Committee failed to disburse campaign funds from its depository  
 14 account by pre-loading a Starbucks card and failed to properly report those disbursements.<sup>2</sup>

15 Respondents filed a joint response (“Response”) denying the allegations and asserting  
 16 that, except for an inadvertent \$19.38 payment to Uber Eats, they did not use campaign funds to

---

<sup>1</sup> 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.

<sup>2</sup> Compl. at 6-7.

1 pay for personal expenses.<sup>3</sup> Respondents acknowledge using campaign funds to pre-load a  
2 Starbucks card used to purchase coffee for Swalwell and campaign workers but do not otherwise  
3 address the allegations regarding the campaign depository or reporting requirements.<sup>4</sup>

4 Overall, the Complaint, the Response, and other available information indicate that,  
5 except for the \$19.38 charge to Uber Eats and an unknown portion of the disbursements for  
6 childcare that were incurred while Swalwell was attending campaign events for other candidates  
7 or committees, the alleged disbursements were either related to Swalwell's own election  
8 campaigns or his official position as a congressman. In addition, there is no information that the  
9 Committee did anything improper in disbursing campaign funds from its depository to pre-pay  
10 charges made to its Starbucks account, or in reporting those disbursements. Accordingly, the  
11 Commission: (1) dismisses the allegations that Respondents violated 52 U.S.C. § 30114(b) and  
12 11 C.F.R. § 113.1(g) by converting campaign funds to personal use, except to the extent that the  
13 allegations relate to childcare expenses; (2) dismisses the allegations that Respondents violated  
14 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g) by spending campaign funds on childcare  
15 expenses pursuant to *Heckler v. Chaney*; (3) finds no reason to believe that the Committee  
16 violated 52 U.S.C. § 30102(h)(1) or 11 C.F.R. § 102.10, by disbursing campaign funds outside of  
17 its depository; and (4) finds no reason to believe that the Committee violated 52 U.S.C.  
18 § 30104(b)(5) or 11 C.F.R. § 104.3(b)(4) by failing to adequately report disbursements.

---

<sup>3</sup> Resp. at 2-5 (Dec. 22, 2021).

<sup>4</sup> *Id.* at 5.

## II. FACTUAL BACKGROUND

### A. Alleged Payments for Personal Use

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

The Complaint asserts that numerous disbursements disclosed in the Committee's disclosure reports were for personal use, including food and beverages, event tickets, purchases from the U.S. House of Representatives Gift Shop, COVID-19 testing, and childcare payments to family members.<sup>6</sup> The Complaint also alleges that Swalwell either improperly accepted a gift or used Committee funds to pay for recreational activities during a trip to Qatar, such as a camel ride, but does not identify any specific disbursement that appeared in the Committee's reports.<sup>7</sup> Respondents deny the allegations and assert that the disbursements were either related to Swalwell's campaign or his official position as a congressman.<sup>8</sup>

#### 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.<sup>9</sup> The Complaint also generally alleges that the \$4,509.97 in

---

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

<sup>6</sup> Compl. at 3-6.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Resp. at 3-5.

<sup>9</sup> Compl. at 4-5.

disbursements to Starbucks appear to be for personal use.<sup>10</sup> Respondents provide a campaign-related purpose for each of the expenses in question, indicating that funds were used to pay for fundraising meetings and support for campaign staff and volunteers.<sup>11</sup> 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.<sup>12</sup>

## 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.<sup>13</sup> 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."<sup>14</sup> Respondents state that

---

<sup>10</sup> *Id.* at 1, 7 n.49. Since the Complaint was filed on December 2, 2021, the Commission addresses only the Committee's disbursements to Starbucks as reported by that date.

<sup>11</sup> 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).

<sup>12</sup> *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>.

<sup>13</sup> Compl. at 5.

<sup>14</sup> *Id.* at 4.

the ticket purchases were related to either campaign or officeholder activity.<sup>15</sup> Specifically, Respondents assert that the Beach Blanket Babylon tickets and the Wizard tickets, the latter purchased through Vivid Seats, were for fundraising events, and the tickets to the Washington Nationals were for staff for the Congressional Baseball Game.<sup>16</sup>

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

The Complaint alleges that the disbursement of \$238.50 to the House of Representatives Gift Shop for “Constituent Supplies” on March 29, 2021, “raises questions on whether the campaign paid for gifts not related to campaign activities” as the date of the disbursement is when Swalwell departed to Qatar for an educational international seminar.<sup>17</sup> Respondents state that the disbursement was for “nominal gifts . . . for constituents who visit the congressional office as well as officials in Qatar.”<sup>18</sup>

### 4. *COVID-19 Testing*

The Complaint alleges that the \$50.86 disbursement for COVID-19 testing is personal use, arguing that the expense was “irrespective” of Swalwell’s campaign or officeholder responsibilities.<sup>19</sup> Respondents assert that the tests were “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.”<sup>20</sup>

---

<sup>15</sup> Resp. at 4.

<sup>16</sup> *Id.*

<sup>17</sup> Compl. at 3.

<sup>18</sup> Resp. at 3.

<sup>19</sup> Compl. at 4.

<sup>20</sup> Resp. at 3.

## 5. *Camel Ride in Qatar*

The Complaint alleges that while Swalwell was attending the seminar in Qatar, which the Complaint asserts was paid by the United States Qatar Business Council, he improperly “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.<sup>21</sup> 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.<sup>22</sup>

## 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,<sup>23</sup> were for personal use.<sup>24</sup> 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

---

<sup>21</sup> Compl. at 3.

<sup>22</sup> 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-swalwell-ride-camel-during-qatar-trip-funded-by-special-interest-group>.

<sup>23</sup> 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 the Committee’s FEC filings confirm that \$17,630 was disbursed to Reynolds 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](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), the Committee only reported paying 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](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).

<sup>24</sup> Disclosure reports indicate that the Committee disbursed approximately \$122,000 for childcare between August 12, 2019, and September 26, 2022. *FEC Disbursements: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00502294&disbursement\\_description=child+care](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00502294&disbursement_description=child+care) (last visited Nov. 2, 2022) (reflecting disbursements by the Committee for “child care”).



1 market price.<sup>25</sup> The Complaint also questions whether the Committee only paid for the childcare  
 2 services that were incurred as a direct result of campaign activity, stating that the Committee  
 3 disbursed childcare payments to Susan Reynolds when both Swalwell and his wife attended an  
 4 educational international seminar in Qatar from March 29 to April 3, 2021.<sup>26</sup>

5 Respondents explain that Swalwell and his wife work full time jobs; that they have three  
 6 young children; and that they use family and professional childcare providers, who are paid at a  
 7 fair market rate, to care for their children.<sup>27</sup> Respondents state that campaign funds were only  
 8 used to pay for childcare services while Swalwell was at “campaign events.”<sup>28</sup> Given the  
 9 Response’s statement that Swalwell travels extensively to campaign for other candidates as a  
 10 “Member of House Leadership,”<sup>29</sup> it is unclear whether these “campaign events” refer  
 11 exclusively to those of his own campaign or also to the campaigns of others.

12 While Respondents confirm that Susan Reynolds is the aunt of Swalwell’s wife, they  
 13 state that she was paid the same market rate as the professional childcare providers employed by  
 14 Swalwell.<sup>30</sup> Respondents also state that the disbursements to “Eric Swalwell” were to reimburse  
 15 Swalwell for childcare expenses while Swalwell was at campaign events.<sup>31</sup> Respondents explain

---

<sup>25</sup> *Id.* at 6.

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

<sup>27</sup> Resp. at 4.

<sup>28</sup> *Id.* at 4-5.

<sup>29</sup> *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.”).

<sup>30</sup> *Id.* at 4.

<sup>31</sup> *Id.*

1 that a campaign staff member reviews Swalwell’s schedule to ensure that campaign funds are  
 2 only used to pay for the childcare services incurred while Swalwell attended campaign events,  
 3 and this is reviewed by a second staff member.<sup>32</sup> Respondents also explain that the April 1, 2021  
 4 disbursement to Susan Reynolds was for childcare costs related to campaign events in March  
 5 2021, and not during the time period while Swalwell was traveling in Qatar.<sup>33</sup>

### 6 **B. Committee’s Disbursements to a Starbucks Card**

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

## 12 **III. LEGAL ANALYSIS**

### 13 **A. The Commission Dismisses the Allegations That the Committee and Swalwell** 14 **Converted Campaign Funds to Personal Use**

15 Under the Act, a contribution accepted by a candidate may be used for, *inter alia*,  
 16 “otherwise authorized expenditures in connection with the campaign for Federal office of the  
 17 candidate,” “for ordinary and necessary expenses incurred in connection with duties of the

---

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 5.

<sup>34</sup> 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](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).

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

<sup>36</sup> Resp. at 5.

individual as a holder of Federal office,” and for “any other lawful purpose” not otherwise prohibited under the Act.<sup>37</sup> However, the Act prohibits the conversion of campaign funds by any person to “personal use.”<sup>38</sup>

“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.”<sup>39</sup> The Act and Commission regulations list certain uses of campaign funds that constitute *per se* conversion to personal use.<sup>40</sup> 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.”<sup>41</sup>

Commission regulations provide that purchasing tickets for admission to an event may be permissible if “part of a specific campaign or officeholder activity.”<sup>42</sup> However, Commission regulations deem “[s]alary payments to a member of the candidate’s family, unless the family

---

<sup>37</sup> 52 U.S.C. § 30114(a).

<sup>38</sup> *Id.* § 30114(b)(1).

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

<sup>40</sup> 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)

<sup>41</sup> 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”).

<sup>42</sup> *See* 11 C.F.R. § 113.1(g)(1)(i)(F).

1 member is providing *bona fide* services to the campaign,” to be *per se* personal use.<sup>43</sup> An aunt of  
 2 the candidate or the candidate’s spouse is not a “family member” unless she shares a residence  
 3 with the candidate.<sup>44</sup>

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

10 The available information does not support a finding of reason to believe that Swalwell or  
 11 the Committee converted campaign funds to personal use. Except for the \$19.38 charge to Uber  
 12 Eats, Respondents have provided information that the alleged food and beverage expenses, event  
 13 tickets, and COVID-19 testing were related to Swalwell’s campaign or his official duties as a  
 14 congressman. The available information also does not suggest that the \$238.50 U.S. House of  
 15 Representatives Gift Shop purchase exceeded a nominal value,<sup>47</sup> or was provided to a family  
 16 member of Swalwell, or that the camel ride in Qatar was paid with campaign funds.

---

<sup>43</sup> 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.*

<sup>44</sup> 11 C.F.R. § 113.1(g)(7).

<sup>45</sup> 11 C.F.R. § 113.1(g)(4).

<sup>46</sup> 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”).

<sup>47</sup> 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)

1 With respect to childcare, the Commission has advised that candidates could use  
 2 campaign funds for the fair market value of childcare expenses that are ““a direct result of  
 3 campaign activity,’ because such expenses would not exist irrespective of the campaign.”<sup>48</sup>  
 4 Recently, in Advisory Opinion 2022-07 (Swalwell), the Commission determined that childcare  
 5 expenses incurred as a direct result of the candidate’s own election campaign may be reimbursed  
 6 using campaign funds.<sup>49</sup> However, there was an insufficient number of votes to provide a  
 7 response as to whether campaign funds may be used to pay for childcare expenses incurred as a  
 8 result of the candidate’s attendance at campaign events for other candidates or committees or in  
 9 his capacity as an officeholder.<sup>50</sup>

10 It is unclear on this record whether the Committee’s disbursements of \$122,000 for  
 11 childcare expenses over the last three years were attributable solely to Swalwell’s own campaign  
 12 events or whether the Committee paid fair market value to the childcare providers.<sup>51</sup> However,  
 13 even if the Commission could clarify the factual record through an investigation, it would not

---

(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.”).

<sup>48</sup> 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).

<sup>49</sup> Advisory Opinion 2022-07 at 3-4 (Swalwell) (“AO 2022-07”). This advisory opinion only addressed future conduct and did not reference this matter.

<sup>50</sup> *Id.* at 4. Susan Reynolds is not a “family member” under the Commission’s regulations; therefore, the regulation governing salary payments to family members does not apply. 11 C.F.R. § 113.1(g)(1)(i)(H).

<sup>51</sup> Respondents state that Susan Reynolds was paid at \$35 per hour, while the Complaint suggests that a fair market rate for babysitting services in the D.C. area would be \$14-19 per hour. Resp. at 5; Compl. at 6. Neither discusses factors that may impact that rate, like the number of children or overnight care.

1 resolve the Commission's split in AO 2022-07 (Swalwell), and the Commission thus declines to  
 2 devote further resources to the matter.

3 Therefore, the Commission dismisses the allegations that Respondents violated 52 U.S.C.  
 4 § 30114(b) and 11 C.F.R. § 113.1(g) by converting campaign funds to personal use, except to the  
 5 extent that the allegations relate to childcare expenses, and dismisses pursuant to *Heckler v.*  
 6 *Chaney*<sup>52</sup> the allegations that Respondents violated 52 U.S.C. § 30114(b) and 11 C.F.R.  
 7 § 113.1(g) by spending campaign funds on childcare expenses.

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

10 The Act and Commission regulations require committees to make disbursements from a  
 11 campaign depository or depositories.<sup>53</sup> The Complaint alleges pre-loading a Starbucks gift card  
 12 is a violation of the Act, which requires each transaction to be drawn from the campaign account.  
 13 However, the Complaint does not allege, nor does the available information indicate, that the  
 14 disbursements to Starbucks were not drawn from the Committee's campaign depository, given  
 15 that these disbursements appeared in the Committee's reports, which reflect activity of the  
 16 Committee's depository account.<sup>54</sup> Under these circumstances, the Commission finds no reason  
 17 to believe that the Committee violated 52 U.S.C. § 30102(h)(1) or 11 C.F.R. § 102.10.

---

<sup>52</sup> 470 U.S. 821 (1985).

<sup>53</sup> 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 102.10.

<sup>54</sup> See *FEC Disbursements: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00502294&recipient\\_name=starbucks](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).

**C. The Commission Finds 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.<sup>55</sup> 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.<sup>56</sup> “[P]urpose means a brief statement or description of why the disbursement was made.”<sup>57</sup> The Commission’s website provides that an adequate description of the purpose of a disbursement includes “Food and/or Beverage(s).”<sup>58</sup>

The Committee reported the amounts that it disbursed to Starbucks with the date and purpose of each disbursement.<sup>59</sup> 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.<sup>60</sup> Respondents also confirmed that the disbursements to Starbucks were used for coffee.<sup>61</sup> Under these circumstances, the Commission finds 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).

---

<sup>55</sup> Compl. at 7.

<sup>56</sup> 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.3(b)(4)(i).

<sup>57</sup> 11 C.F.R. § 104.3(b)(4)(i)(A).

<sup>58</sup> *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last revised Aug. 21, 2018).

<sup>59</sup> *Id.*

<sup>60</sup> Compare *id.* with *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last revised Aug. 21, 2018).

<sup>61</sup> Resp. at 5.