

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5 **MUR 8034**

6 DATE COMPLAINT FILED: July 18, 2022
7 DATE OF NOTIFICATIONS: July 25, 2022
8 LAST RESPONSE RECEIVED: August 4, 2022
9 DATE ACTIVATED: November 11, 2022

10
11 ELECTION CYCLE: 2020 – 2022
12 EXPIRATION OF SOL: June 14, 2026 –
13 October 4, 2026
14

15 **COMPLAINANT:** Cristov Dosev

16
17 **RESPONDENTS:** Friends of Matt Gaetz and Steven G. Martin in his
18 official capacity as treasurer
19 Matt Gaetz
20

21 **RELEVANT STATUTES
22 AND REGULATIONS:**

23 52 U.S.C. § 30114(b)
24 11 C.F.R. § 113.1(g)
25 11 C.F.R. § 113.2(e)

26 **INTERNAL REPORTS CHECKED:** Disclosure Reports

27
28 **FEDERAL AGENCIES CHECKED:** None
29

30 **I. INTRODUCTION**

31 The Complaint in this matter alleges that Representative Matt Gaetz and his authorized
32 committee, Friends of Matt Gaetz and Steven G. Martin in his official capacity as treasurer (the
33 “Committee”), converted campaign funds to personal use, in violation of the Federal Election
34 Campaign Act of 1971, as amended (the “Act”), by paying various law firms for services that the
35 Complaint alleges were in connection with an investigation into Gaetz’s personal activities. The
36 Committee’s Response contends that the payments to the law firms in question were for legal
37 services performed for or on behalf of the Committee itself, not Gaetz personally.

1 The available information does not show that the Committee's payments for legal
2 expenses went to legal representation of Gaetz personally. It appears that Gaetz was the subject
3 of a federal investigation involving allegations related to campaign activity, among other things.
4 According to the available information, Gaetz and the Committee hired separate counsel in
5 connection with this investigation. As such, it does not appear that the attorneys paid by the
6 Committee provided legal services to Gaetz personally, rather than the Committee, as the
7 Complaint alleges. But even if that were the case, the Committee would have been permitted to
8 spend campaign funds on Gaetz's legal expenses in connection with the portion of the
9 investigation that related to alleged campaign activities. Accordingly, we recommend that the
10 Commission find no reason to believe that Matt Gaetz and Friends of Matt Gaetz and Steven G.
11 Martin in his official capacity as treasurer violated 52 U.S.C. § 30114(b) by converting campaign
12 funds to personal use.

13 **II. FACTUAL BACKGROUND**

14 Friends of Matt Gaetz is the authorized campaign committee of Representative Matt
15 Gaetz; its treasurer is Steven G. Martin.¹

16 The Complaint in this matter alleges that the Committee and Gaetz converted campaign
17 funds to personal use by paying for legal expenses in connection with an investigation into
18 alleged violations of “sex trafficking laws or obstruct[ion of] justice.”² The Complaint bases
19 this allegation on the fact that the Committee reported “nearly \$200,000 on legal fees between

¹ Friends of Matt Gaetz, Amended Statement of Organization (May 21, 2021).

² Compl. at 1 (July 18, 2022) (quoting Michael Lee, *Gaetz's Ex-Girlfriend Granted Immunity Before Testifying in Sex Trafficking Investigation: Report*, FOXNEWS.COM (Jan. 18, 2022) <https://www.foxnews.com/politics/gaetzs-ex-girlfriend-granted-immunity-before-testifying-in-sex-trafficking-investigation-report>).

1 November 2020 and October 2021 – a timeframe which coincides with the beginning of the
 2 reported investigation into Mr. Gaetz's personal activities.”³ The Complaint points to three
 3 reported disbursements in particular: two payments to the law offices of Marc Fernich of
 4 \$50,000 on October 4, 2021, and \$25,000 on June 28, 2021; and a payment of \$25,000 to
 5 Zuckerman Spaeder LLP on June 14, 2021.⁴ The Complaint notes that Fernich is a defense
 6 attorney who states that his practice ““centers on criminal defense.””⁵

7 The Response on behalf of the Committee, and signed by Fernich, states: “Any payments
 8 my office received from Friends were for legal services performed for and on behalf of Friends
 9 itself, not Rep. Gaetz personally. To my knowledge, the same is true of payments to Friends’
 10 predecessor counsel, Venable, LLP and Zuckerman Spaeder LLP.”⁶

11 The following chart summarizes the Committee's total reported disbursements related to
 12 legal expenses by election cycle, which indicates a significant increase in the 2020 and 2022
 13 cycles as compared to the prior cycles:⁷

Election Cycle	Total Legal Fee Disbursements
2016	\$7,113
2018	\$2,000
2020	\$64,402
2022	\$134,534

³ *Id.* at 2.

⁴ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00612432&recipient_name=fernich&recipient_name=zuckerman (last visited Nov. 18, 2022) (reflecting disbursements by the Committee to Marc Fernich Law Office and Zuckerman Spaeder LLP).

⁵ Compl. at 2 (quoting Law Office of Marc Fernich, *Firm Overview*, FERNICHLAW.COM, <https://fernichlaw.com/> (last visited Nov. 28, 2022)).

⁶ Committee Resp. at 1 (Aug. 4, 2022). Gaetz did not join in the Response or separately respond.

⁷ *See Reported Disbursements*, FEC.gov, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00612432&disbursement_description=legal (showing all disbursements for “legal”).

1 The following chart reflects a detailed list of payments for legal expenses from the Committee
 2 from 2020 to the present:⁸

Date	Recipient	Disbursement Amount
July 27, 2020	VENABLE, LLP	\$38,458
September 4, 2020	VENABLE, LLP	\$3,786
October 6, 2020	VENABLE, LLP	\$12,448
November 23, 2020	VENABLE, LLP	\$2,670
December 17, 2020	VENABLE, LLP	\$7,040
February 8, 2021	VENABLE, LLP	\$21,224
June 14, 2021	ZUCKERMAN SPAEDER LLP	\$25,000
June 28, 2021	MARC FERNICH LAW OFFICE	\$25,000
August 6, 2021	VENABLE, LLP	\$10,338
October 4, 2021	MARC FERNICH LAW OFFICE	\$50,000
February 1, 2022	VENABLE, LLP	\$2,972

3 According to publicly available information, the investigation that forms the basis of the
 4 Complaint appears to be related in part to allegations regarding campaign activities.
 5 Specifically, a CNN article claimed that “[f]ederal investigators looking into Rep. Matt Gaetz’s
 6 relationships with young women have examined whether any federal campaign money was
 7 involved in paying for travel and expenses for the women.”⁹ There is also public information
 8 indicating the existence of a parallel investigation by the House Committee on Ethics, which
 9 appears to also involve the same allegations related to campaign activity. On April 9, 2021, the
 10 then-chairman of the House Committee on Ethics issued a statement indicating that it was
 11 investigating public allegations that Gaetz “may have engaged in sexual misconduct and/or illicit

⁸ *Id.*

⁹ Evan Perez, *et al.*, *Feds’ Investigation of Matt Gaetz Includes Whether Campaign Funds were Used to Pay for Travel and Expenses*, CNN (Apr. 21, 2021), <https://www.cnn.com/2021/04/01/politics/matt-gaetz-campaign-funds-investigation/index.html>.

1 drug use, shared inappropriate images or videos on the House floor, misused state identification
2 records, *converted campaign funds to personal use*, and/or accepted a bribe, improper gratuity,
3 or impermissible gift, in violation of House Rules, laws, or other standards of conduct.”¹⁰ The
4 press release further represented that the Committee “has begun an investigation and will gather
5 additional information regarding the allegations.”¹¹ The Committee has not published a report
6 on its investigation.

7 Several articles have reported that a public relations firm hired by Gaetz represented that
8 his personal legal defense team in connection with the investigation was “led by Marc Mukasey
9 and Isabelle Kirshner.”¹² Fernich does not claim to have campaign finance experience on his
10 website, but he does list the Committee as one of his “notable clients.”¹³ There are no other
11 reported disbursements by other committees to Fernich in Commission reports.¹⁴ There is no
12 available public information establishing the purpose of the Committee’s payments to

¹⁰ *Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Matt Gaetz*, H.R. COMM. ON ETHICS (Apr. 9, 2021), available at <https://ethics.house.gov/press-releases/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-22> (emphasis added).

¹¹ *Id.*

¹² Dan Mangan, *Rep. Matt Gaetz Hires Defense Lawyer Marc Mukasey, Who Represents Trump Organization in Criminal Probe*, CNBC (Apr. 9, 2021), <https://www.cnbc.com/2021/04/09/matt-gaetz-hires-marc-mukasey-lawyer-for-trump-organization.html>; see also Adam Klasfeld, *Matt Gaetz Has Lawyered Up: What to Know About His Defense Team*, LAWANDCRIME.COM (Apr. 9, 2021), <https://lawandcrime.com/high-profile/matt-gaetz-has-lawyered-up-what-to-know-about-his-defense-team/> (also representing that Mukasey and Kirshner “confirmed” that they were “Gaetz’s new defense attorneys in emails to Law&Crime”).

¹³ Law Office of Marc Fernich, *Clients*, FERNICHLAW.COM, <https://fernichlaw.com/clients> (last visited Nov. 28, 2022).

¹⁴ See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=fernich (last visited Mar 8, 2023) (reflecting disbursements by all committees to “Fernich”).

1 Zuckerman Spaeder LLP on June 14, 2021, but the firm has previously represented other
2 campaigns and committees, according to Commission reports.¹⁵

3 III. LEGAL ANALYSIS

4 Candidates and their authorized committees are permitted to use campaign funds for a
5 variety of specified purposes, including otherwise-authorized expenditures in connection with
6 the candidate's campaign for federal office, ordinary and necessary expenses incurred in
7 connection with the duties of a federal officeholder, and "any other lawful purpose," but the Act
8 prohibits any person from converting campaign funds to "personal use."¹⁶ Conversion to
9 personal use occurs when campaign funds are used to fulfill any commitment, obligation, or
10 expense of any person "that would exist irrespective of the candidate's election campaign or
11 individual's duties as a holder of Federal office."¹⁷ The Act and Commission regulations
12 provide a non-exhaustive list of uses of campaign funds that are *per se* personal use, including
13 rent, home mortgage, household food items, and tuition.¹⁸ For other uses of campaign funds,
14 including payments for legal expenses, the Commission determines on a "case-by-case basis"
15 whether the use is a prohibited personal use, that is, whether the expenses would exist
16 irrespective of the candidate's campaign or federal officeholder duties.¹⁹

¹⁵ See *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=Zuckerman+Spaeder (last visited Mar. 8, 2023) (reflecting disbursements by all committees to "Zuckerman Spaeder").

¹⁶ 52 U.S.C. § 30114(a)-(b); 11 C.F.R. §§ 113.1(g), 113.2(e); see also Expenditures; Reports by Political Committees; Personal Use of Campaign Funds ("Personal Use E&J"), 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (explaining that "candidates have wide discretion over the use of campaign funds").

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

¹⁸ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J).

¹⁹ 11 C.F.R. § 113.1(g)(1)(ii)(A); Advisory Op. 2018-09 (Clements) at 2-3 ("AO 2018-09").

1 The Commission has explained that “campaign funds may be used to pay for legal
2 expenses incurred in proceedings that directly relate to the candidate’s campaign activities or
3 officeholder duties.”²⁰ “Legal fees and expenses, however, ‘will not be treated as though they
4 are campaign or officeholder related merely because the underlying proceedings have some
5 impact on the campaign or the officeholder’s status.’”²¹ In a number of advisory opinions, the
6 Commission has addressed legal fees incurred by candidates in criminal and congressional
7 investigations and concluded that the use of campaign funds for such legal fees and expenses
8 does not constitute personal use when the legal proceedings involve allegations directly relating
9 to the candidate’s campaign activities or duties as a Federal officeholder.²² The Commission has
10 previously made clear that when a legal proceeding arises in part due to campaign activity or
11 officeholder duties and in part for other reasons the campaign must limit its payments for legal
12 expenses to a percentage of the cost of the proceeding associated with the campaign activity or
13 officeholder duties.²³

14 The Complaint in this matter does not provide sufficient information to indicate that the
15 legal payments made by the Committee in fact were used to pay for legal services provided to
16 Gaetz personally, rather than for legal services provided to the Committee. The only factual

²⁰ Factual and Legal Analysis at 6, MUR 7390 (Donald J. Trump, *et al.*) (quoting AO 2018-09 at 3) (quotation marks omitted).

²¹ *Id.* (quoting Personal Use E&J, 60 Fed. Reg. at 7868) ; *see also* *FEC v. Craig for US Senate*, 933 F. Supp. 2d 111, 119 (D.D.C. 2013) (finding that the Commission plausibly alleged that legal expenses related to “actions undertaken in the privacy and anonymity of a restroom stall” while traveling from the defendant’s home state to Washington, D.C., did not implicate defendant’s officeholder duties).

²² *Id.* (citing among others Advisory Op. 2009-20 (Visclosky for Congress); Advisory Op. 2009-12 (Coleman); Advisory Op. 2009-10 (Visclosky I); Advisory Op. 2008-07 (Vitter); Advisory Op. 2003-17 (Treffinger)).

²³ Advisory Op. 2003-17 at 7 (Treffinger) (determining that nine out of twenty counts in a federal candidate’s indictment “relate directly to the Federal campaign” and thus the candidate “may pay up to 45% (9/20) of the legal expenses incurred in his defense of this indictment using campaign funds”).

1 information in support of the Complaint's allegation is that the Committee's legal expenses
2 increased starting around the time of the start of the investigation and, around the time of the
3 payments at issue, there appears to have been an investigation into Gaetz that focused on alleged
4 activities that were unrelated to his congressional campaign or officeholder duties.²⁴ Based on
5 this information alone, the Complaint's allegation is speculative and lacks specific information to
6 support it. Moreover, as explained above, the investigation in question appears to have involved
7 issues related to the campaign such that it is logical for the Committee's overall legal expenses to
8 have increased during this time period to respond to the investigation on its own behalf. The
9 Response on behalf of the Committee does not go into detail regarding the actual purpose of the
10 payments, but it denies that they personally benefited Gaetz.²⁵ Fernich states affirmatively in the
11 Response that he represented the Committee, rather than Gaetz personally, and he further states
12 that, to his knowledge, the same is true of Zuckerman Spaeder and Venable.²⁶

13 In addition to Fernich's statement, the most plausible interpretation of the available
14 information is that the Committee hired Fernich to represent the Committee itself in the
15 investigation. Fernich's legal work appears to focus primarily on criminal defense and
16 investigations, and there is no indication that he has previously worked on campaign finance-
17 related matters.²⁷ It therefore appears likely that he represented the Committee in connection
18 with the investigation, which — according to a press release from the House Committee on
19 Ethics and news articles — included allegations of misuse of campaign funds.²⁸ While we have

²⁴ Compl. at 1-3.

²⁵ Resp. at 1.

²⁶ *Id.*

²⁷ *Supra* notes 5, 14 and accompanying text.

²⁸ *Supra* notes 9-11 and accompanying text.

1 less information regarding the payment to Zuckerman Spaeder, there is also no information to
2 indicate that the payment was for Gaetz's own legal expenses, rather than the campaign's, or that
3 this payment otherwise was a conversion of campaign funds to personal use.²⁹ Moreover, even
4 if it was the case that the Committee paid for Gaetz's legal expenses, this would not be a
5 conversion to personal use as long as the legal expenses arose from campaign activity,³⁰ which
6 appears to be the case as to a portion of the investigation. Given that available information
7 indicates that Gaetz separately hired counsel in connection with the investigation,³¹ there is no
8 information in the record to indicate that the Committee's payment of legal expenses would have
9 exceeded the portion of the investigation that arose from campaign activity.

10 Because the Complaint fails to state facts sufficient to establish a violation and the
11 available information indicates that the legal payments at issue were to represent the Committee
12 in connection with campaign-related activities, we recommend that the Commission find no
13 reason to believe that Friends of Matt Gaetz and Steven G. Martin in his official capacity as
14 treasurer and Matt Gaetz violated 52 U.S.C. § 30114(b) by converting campaign funds to
15 personal use.

²⁹ The Committee also made legal payments to Venable, LLC, both before and during the timeframe at issue in the Complaint. *Supra* note 8. There are no allegations regarding these payments and no reason to believe they were a conversion of campaign funds to personal use.

³⁰ *Supra* notes 21-23 and accompanying text.

³¹ *Supra* note 12 and accompanying text. There is no information indicating that any leadership PAC associated with Gaetz or legal defense fund made payments to Gaetz's individual counsel. *See FEC Disbursements: Filtered Results*, FEC.GOV https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=clayman+rosenberg&recipient_name=mukasey (last visited Feb 27, 2023) (reflecting reported disbursements to the law firms of Gaetz's individual counsel).

1 **IV. RECOMMENDATIONS**

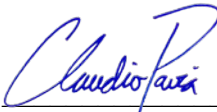
- 2 1. Find no reason to believe that Friends of Matt Gaetz and Steven G. Martin as
- 3 treasurer and Matt Gaetz violated 52 U.S.C. § 30114(b) by converting campaign
- 4 funds to personal use;
- 5 2. Approve the attached Factual and Legal Analysis;
- 6 3. Approve the appropriate letters; and
- 7 4. Close the file.

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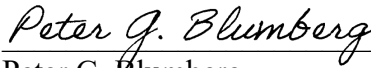
Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for
Enforcement

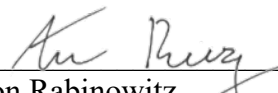
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