



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 14, 2023

VIA ELECTRONIC MAIL

Marc Fernich
800 Third Ave, Floor 20
New York, NY 10022
maf@fernichlaw.com

RE: MUR 8034

Dear Mr. Fernich:

On July 25, 2022, the Federal Election Commission notified your client, Friends of Matt Gaetz and Steven G. Martin in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

On August 8, 2023, based upon the information contained in the complaint and information provided by you, the Commission voted to find no reason to believe that Friends of Matt Gaetz and Steven G. Martin in his official capacity as treasurer violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use and closed the file in this matter. A copy of the Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

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 me at (202) 694-1476 or arabinowitz@fec.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aaron Rabinowitz".

Aaron Rabinowitz
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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6 RESPONDENTS: Friends of Matt Gaetz and MUR: 8034
7 Steven G. Martin in his
8 official capacity as treasurer
9 Matt Gaetz
10

I. INTRODUCTION

12 This matter was generated by a Complaint filed with the Federal Election Commission
13 (the “Commission”), which alleges violations of the Federal Election Campaign Act of 1971, as
14 amended (the “Act”), relating to allegations that Representative Matt Gaetz and his authorized
15 committee, Friends of Matt Gaetz and Steven G. Martin in his official capacity as treasurer (the
16 “Committee”), converted campaign funds to personal use by paying various law firms for
17 services that the Complaint alleges were in connection with an investigation into Gaetz’s
18 personal activities. The Committee’s Response contends that the payments to the law firms in
19 question were for legal services performed for or on behalf of the Committee itself, not Gaetz
20 personally.

21 The available information does not show that the Committee’s payments for legal
22 expenses went to legal representation of Gaetz personally. It appears that Gaetz was the subject
23 of a federal investigation involving allegations related to campaign activity, among other things.
24 According to the available information, Gaetz and the Committee hired separate counsel in
25 connection with this investigation. As such, it does not appear that the attorneys paid by the
26 Committee provided legal services to Gaetz personally, rather than the Committee, as the
27 Complaint alleges. But even if that were the case, the Committee would have been permitted to
28 spend campaign funds on Gaetz’s legal expenses in connection with the portion of the

1 investigation that related to alleged campaign activities. Accordingly, the Commission finds no
2 reason to believe that Matt Gaetz and Friends of Matt Gaetz and Steven G. Martin in his official
3 capacity as treasurer violated 52 U.S.C. § 30114(b) by converting campaign funds to personal
4 use.

5 **II. FACTUAL BACKGROUND**

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

8 The Complaint in this matter alleges that the Committee and Gaetz converted campaign
9 funds to personal use by paying for legal expenses in connection with an investigation into
10 alleged violations of law.² The Complaint bases this allegation on the fact that the Committee
11 reported “nearly \$200,000 on legal fees between November 2020 and October 2021 – a
12 timeframe which coincides with the beginning of the reported investigation into Mr. Gaetz’s
13 personal activities.”³ The Complaint points to three reported disbursements in particular: two
14 payments to the law offices of Marc Fernich of \$50,000 on October 4, 2021, and \$25,000 on
15 June 28, 2021; and a payment of \$25,000 to Zuckerman Spaeder LLP on June 14, 2021.⁴ The
16 Complaint states that Fernich is a defense attorney who states that his practice ““centers on
17 criminal defense.””⁵

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

² Compl. at 1 (July 18, 2022).

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)).

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

5 The following chart summarizes the Committee’s total reported disbursements related to
 6 legal expenses by election cycle, which indicates a significant increase in the 2020 and 2022
 7 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

8 The following chart reflects a detailed list of payments for legal expenses from the Committee
 9 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

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”).

⁸ *Id.*

August 6, 2021	VENABLE, LLP	\$10,338
October 4, 2021	MARC FERNICH LAW OFFICE	\$50,000
February 1, 2022	VENABLE, LLP	\$2,972

1 According to publicly available information, the investigation that forms the basis of the
 2 Complaint appears to be related in part to allegations regarding campaign activities. There is
 3 also public information indicating the existence of a parallel investigation by the House
 4 Committee on Ethics, which appears to involve the same allegations related to campaign activity.
 5 The Committee has not published a report on its investigation.

6 Fernich does not claim to have campaign finance experience on his website, but he does
 7 list the Committee as one of his “notable clients.”⁹ There are no other reported disbursements by
 8 other committees to Fernich in Commission reports.¹⁰ The purpose of the Committee’s
 9 payments to Zuckerman Spaeder LLP on June 14, 2021, as reported to the Commission, is for
 10 “legal consulting,” and the firm has previously represented other campaigns and committees,
 11 according to Commission reports.¹¹

12 **III. LEGAL ANALYSIS**

13 Candidates and their authorized committees are permitted to use campaign funds for a
 14 variety of specified purposes, including otherwise-authorized expenditures in connection with
 15 the candidate’s campaign for federal office, ordinary and necessary expenses incurred in

⁹ Law Office of Marc Fernich, *Clients*, FERNICHLAW.COM, <https://fernichlaw.com/clients> (last visited Nov. 28, 2022).

¹⁰ *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”).

¹¹ *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”).

1 connection with the duties of a federal officeholder, and “any other lawful purpose,” but the Act
2 prohibits any person from converting campaign funds to “personal use.”¹² Conversion to
3 personal use occurs when campaign funds are used to fulfill any commitment, obligation, or
4 expense of any person “that would exist irrespective of the candidate’s election campaign or
5 individual’s duties as a holder of Federal office.”¹³ The Act and Commission regulations
6 provide a non-exhaustive list of uses of campaign funds that are *per se* personal use, including
7 rent, home mortgage, household food items, and tuition.¹⁴ For other uses of campaign funds,
8 including payments for legal expenses, the Commission determines on a “case-by-case basis”
9 whether the use is a prohibited personal use, that is, whether the expenses would exist
10 irrespective of the candidate’s campaign or federal officeholder duties.¹⁵

11 The Commission has explained that “campaign funds may be used to pay for legal
12 expenses incurred in proceedings that directly relate to the candidate’s campaign activities or
13 officeholder duties.”¹⁶ “Legal fees and expenses, however, ‘will not be treated as though they
14 are campaign or officeholder related merely because the underlying proceedings have some
15 impact on the campaign or the officeholder’s status.’”¹⁷ In a number of advisory opinions, the
16 Commission has addressed legal fees incurred by candidates in criminal and congressional

¹² 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”).

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

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

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

¹⁶ Factual and Legal Analysis at 6, MUR 7390 (Donald J. Trump, *et al.*) (quoting AO 2018-09 at 3) (quotation marks omitted).

¹⁷ *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).

1 investigations and concluded that the use of campaign funds for such legal fees and expenses
2 does not constitute personal use when the legal proceedings involve allegations directly relating
3 to the candidate's campaign activities or duties as a Federal officeholder.¹⁸ The Commission has
4 previously made clear that when a legal proceeding arises in part due to campaign activity or
5 officeholder duties and in part for other reasons the campaign must limit its payments for legal
6 expenses to a percentage of the cost of the proceeding associated with the campaign activity or
7 officeholder duties.¹⁹

8 The Complaint in this matter does not provide sufficient information to indicate that the
9 legal payments made by the Committee in fact were used to pay for legal services provided to
10 Gaetz personally, rather than for legal services provided to the Committee. The only factual
11 information in support of the Complaint's allegation is that the Committee's legal expenses
12 increased starting around the time of the start of the investigation and, around the time of the
13 payments at issue, there appears to have been an investigation into Gaetz that focused on alleged
14 activities that were unrelated to his congressional campaign or officeholder duties.²⁰ Based on
15 this information alone, the Complaint's allegation is speculative and lacks specific information to
16 support it. Moreover, the investigation in question appears to have involved issues related to the
17 campaign such that it is logical for the Committee's overall legal expenses to have increased
18 during this time period to respond to the investigation on its own behalf. The Response on

¹⁸ *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)).

¹⁹ 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").

²⁰ Compl. at 1-3.

1 behalf of the Committee does not go into detail regarding the purpose of the payments, but it
2 denies that they personally benefited Gaetz.²¹ Fernich states affirmatively in the Response that
3 he represented the Committee, rather than Gaetz personally, and he further states that, to his
4 knowledge, the same is true of Zuckerman Spaeder and Venable.²²

5 In addition to Fernich's statement, the most plausible interpretation of the available
6 information is that the Committee hired Fernich to represent the Committee itself in the
7 investigation. Fernich's legal work appears to focus primarily on criminal defense and
8 investigations.²³ It therefore appears likely that he represented the Committee in connection with
9 the investigation, which — according to a press release from the House Committee on Ethics and
10 news articles — included allegations of misuse of campaign funds.²⁴ While there is less
11 information regarding the payment to Zuckerman Spaeder, there is also no information to
12 indicate that the payment was for Gaetz's own legal expenses or that this payment otherwise was
13 a conversion of campaign funds to personal use.²⁵ Moreover, even if it were the case that the
14 Committee paid for Gaetz's legal expenses, it would not be a conversion to personal use as long
15 as the legal expenses arose from campaign activity.²⁶ Given that available information indicates
16 that Gaetz separately hired counsel in connection with the investigation,²⁷ there is no information

²¹ Resp. at 1.

²² *Id.*

²³ *Supra* notes 5, 14 and accompanying text.

²⁴ *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).

²⁵ 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.

²⁶ *Supra* notes 18-20 and accompanying text.

²⁷ 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->

1 in the record to indicate that the Committee’s payment of legal expenses would have exceeded
2 the portion of the investigation that arose from campaign activity.

3 Because the Complaint fails to state facts sufficient to establish a violation and the
4 available information indicates that the legal payments at issue were to represent the Committee,
5 the Commission finds no reason to believe that Friends of Matt Gaetz and Steven G. Martin in
6 his official capacity as treasurer and Matt Gaetz violated 52 U.S.C. § 30114(b) by converting
7 campaign funds to personal use.

[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”).