

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 8164

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|-------------------------|-------------------------------|
| DATE COMPLAINT FILED: | Sept. 7, 2024 |
| DATE OF NOTIFICATIONS: | Sept. 18, 2024 |
| LAST RESPONSE RECEIVED: | Nov. 2, 2023 |
| DATE ACTIVATED: | Jan. 31, 2024 |
| EXPIRATION OF SOL: | Jan. 1, 2024 - May 1, 2029 |
| ELECTION CYCLE: | 2020, 2022, 2024 |

COMPLAINANT: Foundation for Accountability and Civic Trust

RESPONDENTS: GWEN PAC and Brenda Moore in her
official capacity as treasurer
Gwen Moore

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(i)(8)(B)
52 U.S.C. § 30114(a), (b)
52 U.S.C. § 30116(a), (f)
11 C.F.R. § 100.5(e)(6)
11 C.F.R. § 110.1(d)
11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint in this matter alleges that U.S. Representative Gwen Moore and her leadership PAC, Giving Willingly Empowering Nationally PAC and Brenda Moore in her official capacity as treasurer (“GWEN PAC”), violated the Federal Election Campaign Act of 1971, as amended (the “Act”), in two ways. First, the Complaint alleges that GWEN PAC is a “scam PAC” because it spends the overwhelming majority of its funds on operating expenses rather than on supporting candidates and causes. Second, the Complaint alleges that GWEN PAC violated the Act’s prohibition on converting contributions accepted by a candidate to personal use by paying

1 for personal expenses, such as tickets to the play “Hamilton,” resort stays in Napa Valley, fine
2 dining, and limousines. The Response denies that GWEN PAC is a scam PAC and asserts that the
3 Commission’s personal use prohibition does not apply to leadership PACs.

4 For the reasons below, we recommend that the Commission dismiss the allegation that
5 GWEN PAC violated the Act with respect to the Complaint’s scam PAC allegation because the
6 complained-of conduct by GWEN PAC does not violate the Act. Next, we recommend that the
7 Commission dismiss the allegation that GWEN PAC converted campaign funds to personal use in
8 violation of 52 U.S.C. § 30114(b) because Commission precedent provides that the personal use
9 prohibition does not apply to leadership PACs.

10 **II. FACTUAL BACKGROUND**

11 GWEN PAC is the leadership PAC of U.S. Representative Gwen Moore.¹ Gwen Moore
12 is GWEN PAC’s honorary chair, and Gwen Moore’s sister, Brenda Moore, is the treasurer.² Its
13 self-declared mission is to “support and elect progressive Democratic candidates for public
14 office.”³ GWEN PAC filed as a multicandidate committee on July 18, 2010.⁴

15 The Complaint makes two allegations. First, it alleges that GWEN PAC is a scam PAC
16 because it spends the overwhelming majority of its funds on operating expenses rather than on
17 supporting candidates and causes.⁵ In support, the Complaint attaches the following chart, which

¹ Giving Willingly Empowering Nationally (GWEN) PAC, Statement of Organization (Aug. 29, 2023), <https://docquery.fec.gov/pdf/589/202308299596851589/202308299596851589.pdf>.

² *Id.*; *The Chair*, GWENPAC GIVING WILLINGLY EMPOWERING NATIONALLY, <https://www.gwenpac.com/the-chair/> (last visited May 7, 2024).

³ *About*, GWENPAC GIVING WILLINGLY EMPOWERING NATIONALLY, <https://www.gwenpac.com/about-us/#top> (last visited May 7, 2024).

⁴ Giving Willingly Empowering Nationally (GWEN) PAC, Notification of Multicandidate Status (July 18, 2010), <https://docquery.fec.gov/pdf/466/10990930466/10990930466.pdf>.

⁵ Compl. at 2-4, 9-10 (Sept. 7, 2023).

it contends shows that since its inception, GWEN PAC's contributions to other candidates and committees have averaged only 22% of its total spending while 75% has been for "operating expenditures."⁶ The Complaint highlights that during the 2020 election cycle, only 14% of GWEN PAC's spending was to support candidates, and that so far in the 2024 election cycle, only 9% of its spending has been on contributions to candidates and committees.⁷ The Complaint does not specify a provision of the Act that GWEN PAC allegedly violates by spending a small portion of its funds to advance its stated mission but rather makes a general argument that GWEN PAC is acting fraudulently.

| Election Cycle | Receipts | Total Expenditures | Total Committee Contributions (% Of Total Expenditures) | Total Operating Expenditures (% Of Total Expenditures) |
|----------------|-----------------------|-----------------------|--|---|
| 2008 | \$5,000.00 | \$0.00 | \$0.00 (0%) | \$0.00 (0%) |
| 2010 | \$54,350.00 | \$55,637.32 | \$38,000.00 (68%) | \$17,637.32 (32%) |
| 2012 | \$117,777.57 | \$116,836.75 | \$42,000.00 (36%) | \$74,086.75 (63%) |
| 2014 | \$144,046.10 | \$141,141.80 | \$32,000.00 (23%) | \$108,641.80 (77%) |
| 2016 | \$225,906.11 | \$219,151.85 | \$61,200.00 (28%) | \$157,951.85 (72%) |
| 2018 | \$252,723.00 | \$258,209.79 | \$52,000.00 (20%) | \$205,809.79 (80%) |
| 2020 | \$325,243.70 | \$312,751.58 | \$42,322.59 (14%) | \$270,428.99 (86%) |
| 2022 | \$397,500.26 | \$401,186.45 | \$82,595.06 (21%) | \$318,591.39 (79%) |
| 2024 | \$140,234.90 | \$128,140.02 | \$11,448.18 (9%) | \$116,691.84 (91%) |
| Total | \$1,662,781.64 | \$1,633,055.56 | \$361,565.83 (22%) | \$1,269,839.73 (78%) |

Second, the Complaint alleges that GWEN PAC violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use. In support, the Complaint attaches an article by the *Milwaukee Journal-Sentinel* that reported on GWEN PAC's spending on "luxury" items between

⁶ *Id.* at 3.

⁷ *Id.*

January 2019 and December 2023.⁸ In terms of specific expenses that allegedly constitute conversion to personal use, the *Milwaukee Journal-Sentinel* article highlighted the following:

- \$22,200 paid to Rep. Moore's sister Brenda Moore for fundraising and consulting;
- \$18,000 paid to Fairmont Sonoma Mission Inn and Spa Sonoma Valley, California;
- Over \$19,000 paid to Uber and Uber Eats (equal to one Uber trip every four days and one Uber Eats meal every eight days);
- Almost \$17,000 paid for event tickets;
- \$6,000 spent on 16 trips to Ruth's Chris Steakhouse;
- \$4,623 paid to Blackline Limousines;
- \$2,055 spent on 13 dinners at Kobe Japanese Steakhouse;
- \$1,017 spent for one meal at Luke's Lobster in Chicago.⁹

The Complaint identifies additional expenses it alleges constituted conversion to personal use, such as \$5,573.23 GWEN PAC paid to Starbucks and \$1,991.93 paid to a personal chef.¹⁰

The Complaint focuses on the nature of the spending and identity of the payees rather than providing information that the expenses benefitted Moore or others personally.

The Response denies that GWEN PAC is a scam PAC.¹¹ While acknowledging that the Department of Justice has prosecuted persons associated with political committees for fraud, the Response argues that GWEN PAC fails to meet the FBI's definition of a scam PAC because it is engaged in "legitimate fundraising and political activity."¹² The Response also argues that

⁸ *Id.* at 17 (attaching Daniel Bice, *US. Rep. Gwen Moore Used Her Leadership PAC on Lobster, Limos and Wine Country*, MILWAUKEE JOURNAL-SENTINEL (May 30, 2023), <https://www.jsonline.com/story/news/politics/2023/05/30/gwen-moore-spent-leadership-pac-funds-on-lobster-limos-and-wine-country-fundraiser/70245090007/>).

⁹ *Id.*

¹⁰ *Id.* at 5-6.

¹¹ Resp. at 2-4 (Nov. 2, 2023).

¹² *Id.* at 3 (quoting FBI, *Election Crimes and Security – Scam PACs*, <https://www.fbi.gov/how-we-can-help-you/safety-resources/scams-and-safety/common-scams-and-crimes/electioncrimes-and-security> (defining "scam PAC" as "fraudulent political action committee[] designed to reroute political contributions for personal financial gain.")).

1 neither the Act nor Commission regulations address the concept of a scam PAC and that the
2 Commission has never established a minimum percentage that leadership PACs must spend on
3 contributions to any type of political committee.¹³ The Response further questions the
4 Complaint's reliance on the percentage of funds spent on contributions, noting that leadership
5 PAC spending as a general matter is quite varied, with ranges from 3% of spending to 88% being
6 spent on contributions and 11% to 78% spent on operating expenditures.¹⁴

7 As to the second allegation, the Response asserts that the Act's personal use prohibition
8 is inapplicable to the spending of leadership PACs.¹⁵ In support, the Response relies on the
9 Commission's decisions in MUR 7961 (LOU PAC, *et al.*) and Advisory Opinion 2008-17 (KIT
10 PAC).¹⁶ Notwithstanding the Response's argument that the GWEN PAC's spending is not
11 subject to the Act's personal use prohibition as a matter of law, the Complaint argues that
12 GWEN PAC's payments to Brenda Moore were for "bona fide" services provided to GWEN
13 PAC in her capacity as Executive Director and Treasurer or were for "legitimate travel
14 expenses."¹⁷ Other than GWEN PAC's payments to Brenda Moore, the Response does not
15 address any of the specific examples of GWEN PAC's spending on alleged personal expenses
16 other than to generally state that GWEN PAC is engaged in "legitimate fundraising and political
17 activity."¹⁸ Finally, the Response argues that the Complaint's allegations with respect to GWEN

13 *Id.*

14 *Id.* at 4.

15 *Id.*

16 *Id.* at 4-5.

17 *Id.* at 2.

18 *Id.* at 3.

PAC's spending on personal expenses are speculative and therefore fail to meet the Act's "reason to believe" standard.¹⁹

III. LEGAL ANALYSIS

The Act and Commission regulations define a "leadership PAC" as a political committee that is directly or indirectly established, financed, maintained, or controlled by a candidate for federal office or an individual holding federal office, but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual.²⁰ Although a leadership PAC may be associated with a particular candidate, a leadership PAC is not legally affiliated with the candidate's principal campaign committee and is treated as a non-connected committee.²¹

A leadership PAC can qualify as a multicandidate committee. A multicandidate committee is a political committee that (1) has been registered with the Commission for at least six months; (2) has received contributions from more than 50 persons; and (3) has made contributions to at least five federal candidates.²² A committee shall certify to the Commission that it has satisfied the criteria for becoming a multicandidate committee by filing an FEC Form 1M (Notification of Multicandidate Status) with the Commission within 10 days of the date that the committee meets these criteria.²³ Once qualified as such, a multicandidate committee may give a candidate up to \$5,000 per election and can receive up to \$5,000 per calendar year per

¹⁹ *Id.* at 5-6.

²⁰ 52 U.S.C. § 30104(i)(8)(B); 11 C.F.R. § 100.5(g)(4).

²¹ 11 C.F.R. § 100.5(g)(4); *Final Rules and Explanation and Justification on Leadership PACs*, 68 Fed. Reg. 67013 (Dec. 1, 2003).

²² 52 U.S.C. § 30116(a)(4); 11 C.F.R. § 100.5(e)(3).

²³ 11 C.F.R. § 102.2(a)(3).

contributor.²⁴ A multicandidate committee that makes a contribution is required to notify the recipient in writing of its status as a multicandidate committee.²⁵

A. The Commission Should Dismiss the Allegation that GWEN PAC Violated the Act by Being a Scam PAC

The Act and Commission regulations prohibit two types of fraudulent conduct, they prohibit: (1) a candidate or their employees or agents from fraudulently misrepresenting themselves or any committee or organization under their control from speaking, writing or otherwise acting on behalf of another candidate or political party committee on a matter which is damaging to such other candidate or political party; and (2) any person from fraudulently misrepresenting themselves as speaking, writing, or otherwise acting for or on behalf of any candidate or political party for the purpose of soliciting contributions.²⁶ The Act and Commission regulations also provide that no person shall willfully and knowingly participate in or conspire to participate in such conduct.²⁷

Neither of these antifraud provisions are implicated in this matter. Rather, it appears that the Complaint is alleging that GWEN PAC is engaging in fraudulent activity by soliciting contributions on the basis that its mission is to support candidates whereas making contributions to such candidates represents only a small portion of its spending. This conduct is not covered by the Act or Commission regulations. In MUR 6641(CAPE PAC, *et al.*) — which involved an allegation against a non-connected committee for purporting to raise funds to independently support a candidate's campaign but then spending "virtually all" of its disbursements on operating

²⁴ *Id.* §§ 110.1(d), 110.2(b).

²⁵ *Id.* § 110.2(a)(2).

²⁶ 52 U.S.C. § 30124(a)(1), (b)(1); 11 C.F.R. § 110.16(a)(1), (b)(1).

²⁷ 52 U.S.C. § 30124(a)(2), (b)(3); 11 C.F.R. § 110.16(a)(2), (b)(2).

expenditures — the Commission determined that it “cannot agree with [the] Complainant that this conduct constitutes a fraud within the reach of the Act or Commission regulation.”²⁸ Here, the Complaint’s scam PAC allegation against GWEN PAC mirrors the allegation made against CAPE PAC in MUR 6641, and the Complaint’s allegation with respect to the large percentage of GWEN PAC’s spending going toward operating expenditures does not constitute a violation of the Act.

Therefore, we recommend that the Commission dismiss the allegation that GWEN PAC violated the Act by being a scam PAC.²⁹

B. The Commission Should Dismiss the Allegation that GWEN PAC Violated 52 U.S.C. § 30114(b) by Converting Contributions to Personal Use

The Act affords candidates and their campaign committees wide discretion in the disposition of their campaign funds and provides that contributions accepted by a candidate may be used by the candidate “for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate” and “for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office.”³⁰ The Act provides, however, that contributions accepted by a candidate “shall not be converted by any person to

²⁸ Factual and Legal Analysis (“F&LA”) at 1-2, 6, MUR 6641 (CAPE PAC, *et al.*). The Commission also noted, however, that whether CAPE PAC’s conduct “is prohibited by laws beyond the Act, criminal or otherwise, is not a matter within the Commission’s jurisdiction.” *Id.* at 1-2.

²⁹ Although this conduct is not presently covered by the Act or Commission regulations, the Commission has submitted legislative recommendations to Congress that would prohibit fraudulent fundraising practices. Legislative Recommendations of the Federal Election Commission at 11-12 (Dec. 15, 2022), <https://www.fec.gov/resources/cms-content/documents/legrec2023.pdf>. For its part, the Department of Justice has prosecuted multiple individuals associated with alleged scam PACs for committing wire fraud and mail fraud. *E.g.*, Press Release, U.S. Dep’t of Justice, *PAC Fundraiser And PAC Treasurer Charged with Multi-Year Schemes to Defraud Donors* (Aug. 17, 2023), <https://www.justice.gov/usao-sdny/pr/pac-fundraiser-and-pac-treasurer-charged-multi-year-schemes-defraud-donors>; Press Release, U.S. Dep’t of Justice, *Three Individuals Sentenced for Soliciting Millions of Dollars in Contributions to Scam PACs* (Apr. 25, 2023), <https://www.justice.gov/opa/pr/three-individuals-sentenced-soliciting-millions-dollars-contributions-scam-pacs>.

³⁰ 52 U.S.C. § 30114(a)(1)-(2); *see* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866-67 (Feb. 9, 1995) (“Personal Use E&J”) (explaining that the personal use prohibition is “not so broad as to limit legitimate campaign related or officeholder related activity,” and that “candidates have wide discretion over the use of campaign funds”).

personal use.”³¹ The Act states that “a contribution or a donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.”³² This means that expenses “that would be incurred even if the candidate was not a candidate” are considered personal rather than campaign related.³³

The Act and Commission regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use.³⁴ For all other disbursements, the Commission determines on a case-by-case basis whether a disbursement is for 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.³⁵ The Commission has stated that “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.”³⁶

In the enforcement context, the Commission has determined that the Act’s personal use prohibition is limited in scope to funds held by a candidate’s authorized committee, or funds of a multicandidate committee that converted from principal campaign committee, so long as those funds had been received when the committee was still a principal campaign committee.³⁷ This

³¹ 52 U.S.C. § 30114(b).

³² *Id.* § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

³³ Personal Use E&J at 7863.

³⁴ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

³⁵ 11 C.F.R. § 113.1(g)(1)(ii).

³⁶ *See* Personal Use E&J at 7867.

³⁷ F&LA at 8-9, MUR 7961 (LOU PAC, *et al.*).

interpretation comes from the Commission's reading of the phrase "funds in a campaign account" in 11 C.F.R. § 113.1(g) as limited to accounts of authorized committees.³⁸ For example, in MUR 6511, the Commission stated that payment by Rep. Robert Andrews' leadership PAC of the cost of round-trip tickets, plus insurance, for Andrews and his family to fly to the United Kingdom was not prohibited because the payment was not from Andrews' campaign account.³⁹ Most recently, in MUR 7961, the Commission found no reason to believe that a multicandidate committee that had been Lou Barletta's leadership PAC converted funds to personal use by paying for his wife's rent.⁴⁰ There, the Commission again held that the personal use prohibition is "inapplicable" to leadership PACs because the prohibition applies only to funds contributed to an authorized committee's account.⁴¹

The Commission has stated that as long as a candidate does not give written authorization to a committee, it will not be considered an authorized committee.⁴² There is no information indicating that GWEN PAC was ever authorized by a candidate in writing. Indeed, the Complaint acknowledges that GWEN PAC is a leadership PAC, which is by definition *not* an authorized committee.⁴³ There is also no information or allegation that campaign funds were transferred to GWEN PAC. Accordingly, GWEN PAC does not hold funds "in a campaign

³⁸ *Id.* at 9.

³⁹ F&LA at 7 n.6, MUR 6511 (Robert E. Andrews, *et al.*) ("Because the [leadership PAC's] disbursement was not made from Andrews' 'campaign account,' it was not subject to the Commission's personal use regulation.").

⁴⁰ F&LA at 1-2, 10, MUR 7961 (LOU PAC, *et al.*).

⁴¹ *Id.*

⁴² Advisory Opinion 1978-12 at 2 (Friends of Congressman Henry Waxman); *see also* 11 C.F.R. §§ 100.5(f)(1); 102.13(a)(1) (requiring written authorization).

⁴³ 52 U.S.C. § 30104(i)(8)(A); 11 C.F.R. § 100.5(e)(6).

account” under 11 C.F.R. § 113.1(g) — meaning that its funds are not subject to the Act’s personal use ban.⁴⁴

Therefore, we recommend that the Commission dismiss the allegation that GWEN PAC violated 52 U.S.C. § 30114(b) by converting contributions to personal use.⁴⁵

IV. RECOMMENDATIONS

1. Dismiss the allegation that GWEN PAC and Brenda Moore in her official capacity as treasurer violated the Act as a result of the portion of GWEN PAC’s disbursements for operating expenditures;
2. Dismiss the allegation that GWEN PAC and Brenda Moore in her official capacity as treasurer violated 52 U.S.C. § 30114(b) by converting contributions to personal use;
3. Approve the attached Factual and Legal Analysis;
4. Approve the appropriate letters;

⁴⁴ See F&LA at 9, MUR 7961 (LOU PAC, *et al.*). The Commission has recommended to Congress that the Act’s personal use prohibition be extended to all political committees. *E.g.*, Legislative Recommendations of the Federal Election Commission at 15 (Dec. 14, 2023), <https://www.fec.gov/resources/cms-content/documents/legrec2023.pdf>; Legislative Recommendations of the Federal Election Commission at 7 (Mar. 16, 2011), <https://www.fec.gov/resources/cms-content/documents/legrec2011.pdf>.


⁴⁵ The Commission has held that leadership PACs are third parties under 11 C.F.R. § 113.1(g)(6), which provides that payments of a personal expense by a third party on behalf of candidate shall be a contribution to the candidate unless the payment would have been made irrespective of the candidacy. See F&LA at 9, MUR 7961 (LOU PAC, *et al.*) (citing AO 2008-17 (KITPAC)). Thus, we considered the possibility that the complained-of payments by GWEN PAC were contributions to Moore and subject to the contribution limits and reporting requirements. However, the Complaint did not make such an allegation and provided no information, as opposed to mere speculation, that the payments by GWEN PAC were not in connection with ordinary leadership PAC activities, nor do the reported purposes of the payments — *e.g.*, “food/beverage,” “event catering,” “travel expenses” — indicate that they were not in connection with such activities. Accordingly, we declined to make a separate recommendation as to whether any of GWEN PAC’s payments could be considered a contribution to Moore under 11 C.F.R. § 113.1(g)(6).

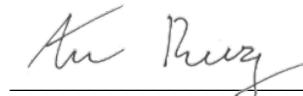
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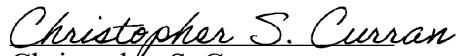
4 Lisa J. Stevenson
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