



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 8, 2023

VIA CERTIFIED MAIL

James R. Schwartz II
Inmate Registration # 47763509
FCI Morgantown
446 Greenbag Rd, Route 857
Morgantown, WV 26501

RE: MUR 7677

Dear Mr. Schwartz:

On July 12, 2022, the Federal Election Commission (“Commission”) notified you of a complaint alleging violations of the Federal Election Campaign Act of 1971. A copy of the complaint was forwarded to you at that time.

Upon review of the allegations contained in the complaint and available information, the Commission on January 26, 2023, found reason to believe that you knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30103(b), (c), 30104(b), 30114(b)(1) and 11 C.F.R. §§ 102.2(a)(1), (2), 102.9, and 104.3, 104.14(d) by converting funds of Steve Chabot for Congress and Natalie Bauer as treasurer (the “Committee”) to personal use, failing to keep complete Committee financial records, and failing to file accurate disclosure reports. The Factual and Legal Analysis, which forms the basis of the Commission’s determination, is attached.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. You may consult with an attorney and have an attorney assist you in the preparation of your responses to this letter. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

If you are interested in engaging in pre-probable cause conciliation, please contact Aaron Rabinowitz, the attorney assigned to this matter, at (202) 694-1476 or at arabinowitz@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter, including regarding your current ability to pay the civil penalty. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish that the matter be made public. Please be advised that although the Commission cannot disclose information

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regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

We look forward to your response.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read 'Dara Lindenbaum', written in a cursive style.

Dara Lindenbaum
Chair

Enclosures:
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**
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3 **FACTUAL AND LEGAL ANALYSIS**
4

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6 RESPONDENT: James R. Schwartz II

MUR 7677

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9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission
11 (the “Commission”), which alleges violations of the Federal Election Campaign Act of 1971, as
12 amended (the “Act”), relating to allegations of an eight-year embezzlement scheme by James R.
13 Schwartz II, the former campaign manager of Steve Chabot for Congress and Natalie Baur as
14 treasurer (the “Committee”). The Committee submitted a complaint shortly after learning of the
15 embezzlement scheme in which it acknowledges that Schwartz, as part of his efforts to conceal
16 the misappropriations of funds, caused it to file inaccurate disclosure reports that misrepresented
17 its receipts, disbursements, and cash-on-hand balances. Schwartz has since pleaded guilty to
18 charges of wire fraud and the falsification of records in a federal investigation in connection with
19 embezzling \$1.4 million from the Committee and related misrepresentations made in reports he
20 prepared and filed on behalf of the Committee and falsified documents he provided to the Audit
21 Division.

22 Based on the available information, the Commission finds reason to believe that James
23 R. Schwartz II knowingly and willfully violated 52 U.S.C. §§ 30102(c), 30103(b), (c), 30104(b),
24 30114(b)(1), and 11 C.F.R. §§ 102.2(a)(1), (2), 102.9, 104.3, 104.14(d) by converting Committee
25 funds to personal use, failing to keep complete Committee financial records, misrepresenting the
26 actual treasurer of the Committee, and failing to file accurate disclosure reports.

1 **II. FACTUAL BACKGROUND**

2 Steve Chabot for Congress and Natalie Baur as treasurer is the principal campaign
3 committee of Ohio Representative Steve Chabot.¹ James R. Schwartz II acted as the campaign
4 manager for the Committee from 2011 to 2019.² During the same period the Committee listed
5 his father, James Schwartz, Sr., as treasurer on all Committee filings.³

6 On April 23, 2019, the Commission voted to undertake an audit of the Committee's
7 2017-2018 election cycle activity.⁴ At the start of the audit, Schwartz communicated on behalf
8 of the Committee and provided bank statements and internal records in response to the Audit
9 Division's requests.⁵ After the Audit Division made follow-up requests, however, Schwartz
10 became noncommunicative and, it was later learned, turned himself into law enforcement.⁶

11 On April 27, 2021, Schwartz was charged with wire fraud and falsification of records in a
12 federal investigation in connection with a long running scheme to embezzle funds from the
13 Committee,⁷ and Schwartz pleaded guilty to those charges in an amended plea agreement on

¹ Steve Chabot for Congress, Statement of Organization (Oct. 11, 2021).

² *United States v. Schwartz*, 1:21-cr-45, Information ¶ 12 ("Schwartz Information") (S.D. Ohio, Apr. 27, 2021); Compl., MUR 7677 (Dec. 27, 2019).

³ Steve Chabot for Congress, Statement of Organization (Jan. 30, 2011); Steve Chabot for Congress, Statement of Organization (Oct. 31, 2019).

⁴ Letter from Patricia C. Orrock, FEC, to James Schwartz Sr. (Apr. 25, 2019).

⁵ *United States v. Schwartz*, 1:21-cr-45, Amended Plea Agreement, Attachment A ("Schwartz Plea Agreement") (S.D. Ohio, May 28, 2021).

⁶ Schwartz Plea Agreement.

⁷ Schwartz Information.

1 May 28, 2021.⁸ Schwartz stipulated that he had embezzled a total of \$1,420,475.23 from the
2 Committee throughout his time as campaign manager for Chabot from 2011 through 2019.
3 According to the plea, Schwartz effectuated this scheme by: (1) misrepresenting in reports to the
4 Commission that his father was the Committee's treasurer; (2) writing checks from the
5 Committee's bank account to himself and his consulting companies, Fountain Square Group
6 LLC and Prime Media LLC; (3) sending reports to the Commission that misrepresented the
7 Committee's cash on hand, receipts, and disbursements in order to hide the embezzlement; and
8 (4) falsifying documents in connection with a Commission audit, including sending auditors
9 fraudulently-altered bank account information.⁹ On May 1, 2022, Schwartz was sentenced to
10 twenty four months of imprisonment and three years of supervised release and was required to
11 pay \$1,407,220.03 in restitution.¹⁰

12 On December 27, 2019, the Committee filed a Complaint with the Commission alleging
13 violations of the Act by Schwartz based on the criminal indictment and the Committee's review
14 of its records to-date.¹¹ Schwartz did not file a Response.

15 **III. LEGAL ANALYSIS**

16 Each treasurer is required to keep an accurate account of and disclose, among other
17 things, its receipts, disbursements, and cash-on-hand balances.¹² Committees, through their

⁸ Schwartz Plea Agreement.

⁹ *Id.*, Attachment A.

¹⁰ *United States v. Schwartz*, 1:21-cr-45, Judgment in a Criminal Case (S.D. Ohio, Apr. 1, 2022).

¹¹ Compl.

¹² 52 U.S.C. § 30104(a), (b).

1 treasurers, are also required to file a statement of organization that accurately discloses the
2 current name and address of the treasurer of the committee.¹³ The Act prohibits any person from
3 converting contributions to a federal candidate to personal use.¹⁴ The Act prescribes additional
4 monetary penalties for violations that are knowing and willful.¹⁵ A violation of the Act is
5 knowing and willful if the “acts were committed with full knowledge of all the relevant facts and
6 a recognition that the action is prohibited by law.”¹⁶ This does not require proving knowledge of
7 the specific statute or regulation the respondent allegedly violated.¹⁷ Rather, it is sufficient to
8 demonstrate that a respondent “acted voluntarily and was aware that his conduct was
9 unlawful.”¹⁸ This awareness may be shown through circumstantial evidence from which the
10 respondent’s unlawful intent reasonably may be inferred.¹⁹

¹³ 52 U.S.C. § 30103(a), (b); 11 C.F.R. § 102.2(a)(1), (2).

¹⁴ 52 U.S.C. § 30114(b)(1). A contribution or 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. *Id.* § 30114(b)(2).

¹⁵ *Id.* §§ 30109(a)(5)(B), 30109(d).

¹⁶ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

¹⁷ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

¹⁸ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

¹⁹ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

1 Although Schwartz was not named in Committee filings as the Committee's treasurer, the
2 available information establishes that Schwartz performed all the duties of the treasurer while he
3 was campaign manager, including maintaining the Committee's depository account and
4 preparing and filing reports with the Commission.²⁰ The Commission has consistently held that
5 an individual who is assigned the duties of a treasurer will be liable for violations of his or her
6 duties even if the Committee names a figurehead treasurer in its reports.²¹

7 The available information, including the criminal investigation, and the plea agreement,
8 confirms that Schwartz converted campaign funds to personal use and caused the Committee to
9 inaccurately report its receipts, disbursements, cash-on-hand, the identity of the Committee's
10 treasurer and other information while he functioned as treasurer. In addition, the available
11 information, including Schwartz's plea agreement acknowledging that he purposefully filed
12 inaccurate reports to conceal his embezzlement, supports a knowing and willful finding.

13 Therefore, the Commission finds reason to believe that James R. Schwartz II knowingly
14 and willfully violated 52 U.S.C. §§ 30102(c), 30103(b), (c), 30104(b), 30114(b)(1), and 11
15 C.F.R. §§ 102.2(a)(1), (2), 102.9, 104.3, 104.14(d) by converting Committee funds to personal
16 use, failing to keep complete Committee financial records, misrepresenting the actual treasurer of
17 the Committee, and failing to file accurate disclosure reports.

²⁰ *See United States v. Schwartz*, 1:21-cr-45, Amended Plea Agreement, Attachment A.

²¹ *See, e.g.*, Conciliation Agreement at 5-6, MUR 5358 (Jamie Morgan) (holding candidate personally liable where treasurer of record ceased performing his duties, but the candidate subsequently signed and filed nine disclosure reports); Factual & Legal Analysis at 7, MUR 5646 (Burchfield) (Mar. 3, 2005) (holding campaign manager personally liable as *de facto* treasurer where campaign manager prepared the committee's reports, performed finance-related duties, deposited contributions, and prepared checks to pay the campaign's expenses).