



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA EMAIL

February 28, 2022

Kate Sawyer Keane
Emily A. Hogin
Elias Law Group LLP
10 G Street, NE, Suite 600
Washington, DC 20002
kskeane@elias.law, ehogin@elias.law

RE: MUR 7893

Dear Ms. Keane and Ms. Hogin:

On April 1, 2021, the Federal Election Commission notified your clients, Sheldon Whitehouse and Whitehouse for Senate and Keith D. Lowey in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 15, 2022, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe that your clients violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another. Accordingly, the Commission closed its file in this matter.

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). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Nicholas Bamman, the attorney assigned to this matter, at (202) 694-1650 or nbamman@fec.gov.

Sincerely,

A handwritten signature in cursive script that reads "Theodore M. Lutz".

Theodore M. Lutz
Acting Assistant General Counsel

Enclosure:
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: William Wachtel MUR 7893
4 Lauren Durbal
5 Friends of Andrew Yang and Zach Graumann in his
6 official capacity as treasurer
7 Eric Gioia
8 Peter Goodman
9 Gregory Gushee
10 Roy Moskowitz
11 Helen Petulla
12 Zoe Siegel
13 Jesse Wachtel
14 Madeline Wachtel
15 Nicholas Wachtel
16 Sheldon Whitehouse
17 Whitehouse for Senate and Keith D. Lowey in his
18 official capacity as treasurer
19

20 **I. INTRODUCTION**

21 This matter was generated by a complaint filed with the Federal Election Commission
22 (the “Commission”).¹ The Complaint alleges that William Wachtel asked others to make, and
23 reimbursed, four contributions totaling \$7,400 during the 2018 and 2020 election cycles, in
24 violation of 52 U.S.C. § 30122, a provision of the Federal Election Campaign Act of 1971, as
25 amended (the “Act”). Specifically, the Complaint alleges that Wachtel reimbursed two \$1,000
26 contributions made by Roy Moskowitz and Paul Goodman to Friends of Andrew Yang and Zach
27 Graumann in his official capacity as treasurer (the “Yang Committee”), and two \$2,700
28 contributions made by Wachtel’s daughter, Madeline Wachtel, to Whitehouse for Senate and
29 Keith D. Lowey in his official capacity as treasurer (the “Whitehouse Committee”). In response,
30 William Wachtel, Madeline Wachtel, Moskowitz, and Goodman have each submitted sworn

¹ See 52 U.S.C. § 30109(a)(1).

1 statements denying the allegations and specifically averring that neither William Wachtel nor
2 any other person advanced or reimbursed the funds used to make the contributions at issue.

3 As to the contributions made to the Yang and Whitehouse Committees, the record does
4 not provide a sufficient factual basis to reasonably conclude that the contributions at issue were
5 reimbursed or otherwise made in the name of another. The Complaint relies primarily on
6 Complainant's assertion that Wachtel approached him to serve as a straw donor, which he
7 refused to do, and the related inference that contributions made the same day or shortly thereafter
8 by Wachtel's friends and family — at the behest of Wachtel — may have been reimbursed along
9 the lines of what Wachtel allegedly presented to Complainant. Although the Complaint provides
10 other circumstantial facts regarding the alleged reimbursement scheme, such as Wachtel's
11 alleged history of reimbursing contributions and Wachtel's email correspondence with Gregory
12 Gushee, the host of a Yang fundraiser, in which Wachtel appeared to act as if the fundraiser
13 tickets — given to Moskowitz and Goodman for their \$1,000 contributions — were his to use,
14 the Complaint does not provide any direct, firsthand information substantiating that Wachtel
15 actually reimbursed the contributions. Moreover, Wachtel and each of the alleged straw donors
16 have submitted sworn statements denying that any such reimbursements occurred. The
17 Commission therefore finds no reason to believe that William Wachtel, Madeline Wachtel,
18 Moskowitz, and Goodman violated 52 U.S.C. § 30122 by making or knowingly permitting their
19 names to be used to effect contributions in the name of another.

20 Further, the available information, including Wachtel's email correspondence with
21 Gushee, does not support a reasonable inference that the recipient committees knew or had any
22 reason to believe that the contributions at issue may have been made in the name of another.
23 Therefore, the Commission finds no reason to believe that the Yang and Whitehouse Committees

1 violated 52 U.S.C. § 30122 by knowingly accepting contributions in the name of another.
2 Separate from the Yang and Whitehouse contributions, the Complaint also alleges that Wachtel
3 reimbursed contributions made by his children and employees to a number of candidates from
4 1999 through 2012. Because these allegations are well beyond the five-year statute of
5 limitations period, the Commission finds no reason to believe that William Wachtel, Lauren
6 Durbal, Helen Petulla, Madeline Wachtel, Jesse Wachtel, and Nicholas Wachtel violated
7 52 U.S.C. § 30122 by making, or knowingly permitting their names to be used to effect,
8 contributions in the name of another. Finally, as to the remaining Respondents, Zoe Siegel,
9 Gregory Gushee, and Eric Gioia, the Commission finds no reason to believe that they violated
10 the Act because the Complaint does not appear to allege a cognizable violation against them.

11 **II. FACTUAL BACKGROUND**

12 Complainant is an attorney and, from 2016 to 2019, was Chief of Staff of the law firm
13 Wachtel Missry LLP.² William Wachtel is the founding partner of Wachtel Missry and co-chair
14 of two non-profit organizations.³ The Yang Committee was the principal campaign committee
15 of Andrew Yang, a presidential primary candidate in the 2020 election.⁴ The Whitehouse
16 Committee is the principal campaign committee of Sheldon Whitehouse, a candidate for U.S.
17 Senate from Rhode Island in the 2018 election.⁵

² Compl. at 3 (Mar. 25, 2021).

³ *Id.*

⁴ Yang Comm. Statement of Org. at 1 (Mar. 13, 2020).

⁵ Whitehouse Comm. Statement of Org. at 1 (Jan. 25, 2021).

1 **A. The Yang Committee Contributions**

2 On November 4, 2019, Wachtel allegedly “directed” Complainant “to make two
3 donations in the amount of \$1,000 each to the Andrew Yang presidential campaign for which
4 Wachtel said he would reimburse [Complainant].”⁶ Complainant alleges that Wachtel informed
5 him “repeatedly that he did not want donations to appear in his name due to the non-partisan
6 nature of the non-profits which he co-chairs and has indicated that this is why he has chosen to
7 use straw donors.”⁷ Complainant alleges that he refused to make the contributions, at which
8 point Wachtel yelled at him “that attorneys need to be ‘tough.’”⁸ Four days later, on November
9 8, 2019, Wachtel fired Complainant.⁹

10 The same day as Complainant’s alleged refusal to make the contributions, on November
11 4, 2019, Wachtel emailed “close friends” Roy Moskowitz and Paul Goodman to request that
12 each make a \$1,000 contribution to the Yang Committee: “Paul and Roy, Whether you want to
13 attend [the fundraiser] or not, do me a big favor and make a \$1,000 contribution today if
14 possible.”¹⁰ For each \$1,000 contribution, the Yang Committee was offering a ticket to a Yang-
15 attended fundraiser hosted by Gregory Gushee who Wachtel allegedly wanted to “support”
16 because of his “professional relationship” with Gushee.¹¹ Later that day, Moskowitz and
17 Goodman forwarded to Wachtel emails confirming that each had made the requested

⁶ Compl. at 4.

⁷ *Id.*

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.*, Ex. G; *see also id.* at 1, 5. During this time, the parties do not dispute that Complainant had access to Wachtel’s email account by virtue of his position as Chief of Staff and, indeed, Complainant attaches several emails to the Complaint in support of his allegations. Compl. at 3; Wachtel Resp. at 1 n. 4 (May 7, 2021).

¹¹ Compl. at 4, Ex. J.

1 contributions.¹² Wachtel responded to Moskowitz’s email confirmation, “Please send your
2 ticket.”¹³

3 Emails attached to the Complaint appear to indicate that Wachtel viewed the fundraiser
4 tickets for Moskowitz’s and Goodman’s contributions as his to use or transfer to others. For
5 instance, on November 4, 2019, Wachtel emailed Gushee, the organizer of the Yang event: “Bell
6 rang twice today for 1000 each” and in a separate email “Moskowitz and Goodman are mine.”¹⁴
7 Two days later, on November 6, 2019, in reference to who would attend the fundraiser, Wachtel
8 emailed Gushee, “Fernando Rojo will be attending the fundraiser in my stead . . . I offered him
9 my/paul goodman’s ticket. He could easily prove to be a contributor in his own right or after the
10 next event. Sorry I will be out of town.”¹⁵ The next day, on November 7, 2019, Wachtel
11 informed Gushee that Eric Gioia would attend “in my stead” with the second fundraiser ticket.¹⁶

12 **B. The Whitehouse Committee Contributions**

13 The Complaint alleges that, prior to the Yang contributions, on March 29, 2017, Wachtel
14 similarly directed Complainant to make a \$2,700 contribution to the Whitehouse Committee,
15 which Wachtel offered to reimburse, but Complainant refused.¹⁷ Wachtel allegedly responded
16 that he would get his daughter, Madeline Wachtel, to make the contribution “on his behalf.”¹⁸

12 *Id.*, Ex. I.

13 *Id.*

14 *Id.*, Ex. J.

15 *Id.*, Ex. L.

16 *Id.*, Ex. M.

17 *Id.* at 4.

18 *Id.*

1 Disclosure reports indicate that Madeline Wachtel made two \$2,700 contributions to Whitehouse
2 on March 29, 2017.¹⁹

3 **C. Activity Beyond the Five-Year Statute of Limitations**

4 The Complaint alleges that Wachtel has engaged in a “decades long practice” of
5 reimbursing contributions by friends and family members.²⁰ As evidence of a “pattern of straw
6 donations,” the Complaint alleges that Madeline Wachtel made multiple contributions between
7 2007 and 2012, while she was still a student.²¹ William Wachtel’s older children, Nicholas and
8 Jesse Wachtel, also made contributions as students, and in 2012 all three adult children each
9 made two \$2,500 contributions and Wachtel made one \$2,500 contribution to Julian Schreiber,
10 a former Wachtel Missry partner and a candidate for the U.S. House of Representatives.²² The
11 Complaint quotes several news articles from 2004 and 2005 “which publicly suspected Wachtel
12 of making straw donations.”²³ Complainant further alleges that Helen Petulla, Wachtel’s
13 executive assistant, told him that Wachtel directed her, office manager Lauren Durbal, and
14 another unnamed employee to make “straw donations” to Bill Bradley, a presidential candidate
15 in the 2000 election.²⁴

¹⁹ *Id.*, Ex. D; Individual Contributions, Madeline Wachtel, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=madeline%20wachtel.

²⁰ Compl. at 2.

²¹ *Id.* at 5; *id.*, Ex. D (copy of Commission website donor lookup for Madeline Wachtel).

²² *Id.*, Exs. D-F (copies of Commission website donor lookup for Madeline, Nicholas and Jesse Wachtel); Friends of Julian Schreiber, Am. October 2012 Quarterly Report at 203 (May 21, 2013) (showing Wachtel’s contribution).

²³ Compl. at 1-2 (citing, for example, Ben Smith, *Ferrer’s Campaign Gets McCall Man, A Peppy Wachtel*, OBSERVER (Mar. 29, 2004), <https://observer.com/2004/03/ferrers-campaign-gets-mccall-man-a-peppy-wachtel/> (“Mr. Wachtel is also Mr. Ferrer’s biggest political fund-raiser, and has been so aggressive that three administrative workers at his law firm and his two college-age sons each contributed \$4,950-the highest amount allowed under city campaign-finance regulations.”)).

²⁴ *Id.* at 4. According to the Complaint, “election officials” interrogated Petulla and Durbal at their homes about the contributions, but did not take further action.

1 **D. Responses**

2 In his Response, Wachtel contends that Complainant is a “disgruntled former employee,”
3 and despite having had full access to Wachtel’s email, does not directly allege, much less
4 provide evidence, that Wachtel reimbursed the Yang or Whitehouse contributions.²⁵ Attached to
5 Wachtel’s Response are the sworn statements of William Wachtel, Madeline Wachtel, Petulla,
6 Goodman, and Moskowitz. Madeline Wachtel, Petulla, Goodman, and Moskowitz state that
7 neither Wachtel nor anyone else “offered or promised to reimburse” or “reimbursed” any
8 contributions,²⁶ and that “[a]ny political contribution I ever made was done so voluntarily using
9 my own personal funds.”²⁷ Wachtel attests that “I have not furnished anyone with funds, or
10 anything else of value, for the purpose of making any political contributions, whether through an
11 advance or through a reimbursement.”²⁸

12 The Yang and the Whitehouse Committees each filed a Response arguing that the
13 Complaint does not directly allege any reimbursement of the contributions, and that even if the
14 contributions were reimbursed, the Complaint does not allege that the committees knew that the
15 contributions were made in the name of another.²⁹

16 Finally, Zoe Siegel, an employee of Drum Major Institute, one of the non-profit
17 organizations that Wachtel co-chairs, submitted a Response stating that she appears in some of

²⁵ Wachtel Resp. at 1.

²⁶ *Id.*, Madeline Wachtel Aff. ¶¶ 6-7; Petulla Aff. ¶¶ 7-8; Goodman Aff. ¶¶ 5-6; Moskowitz Aff. ¶¶ 5-6.

²⁷ Wachtel Resp., Madeline Wachtel Aff. ¶ 4; Petulla Aff. ¶ 5; Goodman Aff. ¶ 3; Moskowitz Aff. ¶ 3.

²⁸ Wachtel Resp., Wachtel Aff. ¶ 4.

²⁹ Friends of Andrew Yang Resp. at 1 (May 5, 2021); Whitehouse and Whitehouse for Senate Resp. at 1 (Apr. 21, 2021).

1 the emails attached to the Complaint concerning who would attend the Yang fundraiser, but she
2 played no part in the making or acceptance of the contributions.³⁰

3 **III. LEGAL ANALYSIS**

4 The Act and Commission regulations provide that no person shall make a contribution in
5 the name of another person, knowingly permit his or her name to be used to effect such a
6 contribution, or knowingly accept such a contribution.³¹ The Commission has included in its
7 regulations illustrations of activities that constitute making a contribution in the name of another:

- 8 (i) Giving money or anything of value, all or part of which was provided to the
9 contributor by another person (the true contributor) without disclosing the
10 source of money or the thing of value to the recipient candidate or committee
11 at the time the contribution is made; or
12
13 (ii) Making a contribution of money or anything of value and attributing as the
14 source of the money or thing of value another person when in fact the
15 contributor is the source.³²
16

17 Here, the Complaint alleges that Wachtel first approached Complainant asking him to
18 make contributions to Yang and Whitehouse and that Wachtel would reimburse him for the
19 contributions. Upon his refusal, Complainant states that Wachtel solicited others to make the
20 contributions the same day or shortly thereafter. Complainant also alleges that Wachtel revealed
21 his motivation for making contributions through straw donors, which was to keep his name out
22 of politics given his role in non-profit organizations. The Complaint further suggests that
23 Wachtel's email correspondence describing the Yang fundraiser tickets as "my ticket" and
24 appointing people to attend the fundraiser "in my stead" indicates that Wachtel reimbursed the

³⁰ Siegel Resp. at 1 (Apr. 6, 2021).

³¹ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i), (ii), (iv).

³² 11 C.F.R. § 110.4(b)(2)(i)–(ii).

1 Yang contributions.³³ While the Complaint does not provide direct factual support regarding any
2 reimbursement, the Complaint suggests that a reasonable inference can be made that Wachtel
3 offered to reimburse the actual contributors as he did with respect to Complainant.

4 Wachtel and the individuals alleged to have received the reimbursements for those
5 contributions — *i.e.*, Moskowitz, Goodman, and Madeline Wachtel — have each submitted a
6 sworn statement specifically denying the factual premise of the allegations.³⁴ William Wachtel
7 states that “I have not furnished anyone with funds, or anything else of value, for the purpose of
8 making any political contributions, whether through an advance or through a reimbursement.”³⁵
9 Likewise, Moskowitz, Goodman and Madeline Wachtel state that “Neither [William Wachtel],
10 nor anyone else, has ever given me funds or anything else of value, whether through an advance
11 or a reimbursement, for the purpose of making a political contribution.”³⁶

12 In similar prior matters where allegations of reimbursed contributions were based on
13 circumstantial information, the Commission has required specific factual support regarding the
14 alleged reimbursement, especially where respondents submitted sworn denials.³⁷ For example,
15 in MUR 6246 (Brennan), the complainant alleged that his employer asked him to make a

³³ Compl., Exs. L-M.

³⁴ Wachtel Resp., Attachs.

³⁵ Wachtel Resp., Wachtel Aff. ¶ 4.

³⁶ Wachtel Resp., Moskowitz Aff. ¶ 6; Goodman Aff. ¶ 6; Madeline Wachtel Aff. ¶ 6.

³⁷ *E.g.*, Factual and Legal Analysis (“F&LA”) at 7, MUR 6246 (Brennan) (finding no reason to believe where complaint lacked firsthand information regarding reimbursement); MUR 7341 (Law for Congress) (finding no reason to believe where complaint relied on circumstantial information and respondents submitted affidavits denying the receipt of reimbursements); *see also* F&LA at 4, MUR 7091 (Friends of Patrick Murphy) (finding no reason to believe where contributions of family members and associates were clustered but not supported by any additional information that the contributions were not made with personal funds); F&LA at 4-5, MUR 6990 (Friends of Patrick Murphy) (finding no reason to believe that a “donor swap” scheme violated the Act where the complaint failed to present facts that the contributions were not made with the personal funds of the contributors); F&LA at 12-13, MUR 6292 (Joe Walsh for Congress Committee, Inc.) (finding no reason to believe where the complainant lacked personal information about the identity, source or how the alleged family contributions in the name of another scheme was perpetrated).

1 political contribution that he would reimburse in cash, telling him that others, including the
2 employer’s parents, were “doing it as well.”³⁸ Complainant alleged that his employer must have
3 likewise asked others to make contributions with the promise of reimbursement, and then
4 reimbursed those contributions.³⁹ However, the Commission found no reason to believe a
5 violation occurred, rejecting the complainant’s inferential argument in light of the respondents’
6 sworn statements specifically denying the reimbursement allegations, and the fact that the
7 complaint provided “no information or firsthand knowledge” of the reimbursement.⁴⁰ Likewise,
8 in MUR 7341 (Law for Congress), the Commission found no reason to believe a violation
9 occurred where the complaint alleged that a candidate’s wealthy aunt reimbursed a series of
10 contributions from the candidate’s family members, relying principally on circumstantial
11 information including the clustering and amount of the contributions, as well as the familial
12 relationship of the contributors, and the Respondents submitted affidavits denying that the
13 contributions were reimbursed.⁴¹

14 Similarly, here, while the Complaint submits circumstantial information suggesting that
15 Wachtel might have reimbursed the Yang and Whitehouse contributions, there is no firsthand
16 information to indicate that the contributions at issue were, in fact, reimbursed — an assertion
17 that the individuals involved have specifically denied. With respect to the Yang contributions,
18 Wachtel first allegedly approached Complainant to make a contribution with the promise of
19 reimbursement, and when Complainant refused, Wachtel approached personal friends,
20 Moskowitz and Goodman, who made the requested contributions later the same day. Although

³⁸ F&LA at 2, MUR 6246 (Brennan).

³⁹ *Id.*

⁴⁰ *Id.* at 6.

⁴¹ Certification at 1-2, MUR 7341 (Law for Congress) (Mar. 19, 2019).

1 his emails indicate that Wachtel appeared to view the resulting Yang fundraiser tickets as his to
2 make use of, all three have denied under oath that any reimbursement occurred, and Complainant
3 does not provide any firsthand information to contradict or undermine their denials.⁴²

4 With respect to the Whitehouse contributions, likewise, there is no firsthand information
5 indicating that Wachtel actually reimbursed his daughter's contributions, and both Wachtel and
6 his daughter have denied any such reimbursement.⁴³ Moreover, the Complaint's allegation that
7 Wachtel said that he would get his daughter to contribute "on his behalf" does not necessarily
8 mean that Wachtel intended to reimburse his daughter's contributions, and could instead be
9 interpreted to mean that Wachtel intended to ask her to make the contributions on her own, using
10 her own personal funds, albeit as a favor to him — a view arguably supported by Madeline
11 Wachtel's history of making political contributions.

12 Because the Complaint provides only circumstantial information regarding the alleged
13 contributions in the name of another — *i.e.*, it provides no direct firsthand knowledge that the
14 contributions were reimbursed — and multiple sworn affidavits specifically deny that the
15 contributions were, in fact, reimbursed, the Commission finds no reason to believe that William
16 Wachtel made, and that Moskowitz, Goodman, and Madeline Wachtel knowingly permitted their
17 names to be used to effect, contributions in the name of another, in violation of 52 U.S.C.
18 § 30122. Further, the available information, including Wachtel's email correspondence with

⁴² Further, there are alternative explanations to some of the emails that are unrelated to reimbursed contributions. For example, a possible explanation for the emails from Wachtel to Gushee that "Moskowitz and Goodman are mine" or that Gioia would attend "in my stead" could be that Wachtel wanted to take credit for having raised legal funds for the fundraiser of Gushee, a person with whom he had a "professional relationship." If Moskowitz and Goodman made the contributions to the Yang Committee as a "big favor" to Wachtel, they may have had no interest in attending the Yang fundraiser, and indeed, the original solicitation asked them to make the contribution whether they "want to attend or not." Compl., Ex. G. Further, the Complaint attaches an email in which Wachtel asks Moskowitz to send him his fundraiser ticket. *Id.*, Ex. I.

⁴³ See Wachtel Resp., William Wachtel Aff. ¶¶ 2-4, Madeline Wachtel Aff. ¶¶ 4-7.

1 Gushee, does not support a reasonable inference that the recipient committees knew or had any
2 reason to believe that the contributions at issue may have been made in the name of another. The
3 Commission therefore finds no reason to believe that the Yang Committee, Sen. Whitehouse, or
4 the Whitehouse Committee knowingly accepted a contribution in the name of another, in
5 violation of 52 U.S.C. § 30122.

6 In addition, the Complaint alleges that Wachtel made, and Lauren Durbal, Helen Petulla,
7 Jesse Wachtel, Nicholas Wachtel, and Madeline Wachtel used their names to effect,
8 contributions in the names of another, to various candidates from 1999 through 2012. However,
9 this conduct occurred beyond the five-year statute of limitations.⁴⁴ The Commission therefore
10 finds no reason to believe that these Respondents violated the Act concerning these allegations.
11 Finally, the Complaint makes allegations against Eric Gioia, Gregory Gushee, and Zoe Siegel —
12 the individuals who attended the Yang fundraiser with Moskowitz’s ticket, organized the Yang
13 fundraiser and interacted with Wachtel about the tickets, and corresponded with Wachtel about
14 potential attendees to the fundraiser, respectively — but does not appear to state a cognizable
15 violation of the Act or Commission regulations. Therefore, the Commission finds no reason to
16 believe these Respondents violated the Act.

⁴⁴ 28 U.S.C. § 2462.