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June 20, 2023

The Honorable Brian Schwalb
Attorney General for the District of Columbia
Public Advocacy Division, Public Integrity Section
Office of the Attorney General
400 6th Street, NW
Washington, DC 20001

Re: Complaint Against American Conservative Union

Dear Attorney General Schwalb:

Pursuant to the Attorney General's authority to regulate nonprofit corporations in the District of Columbia, I write to request that the District of Columbia Office of the Attorney General ("OAG") investigate the nonprofit corporation, American Conservative Union ("the Organization"), which is incorporated in the District of Columbia. I request that the OAG open an investigation immediately to determine whether the Organization's Board of Directors and its chairman Matt Schlapp have breached District of Columbia law by failing to exercise their fiduciary duties to the Organization.

Factual Background

The Organization is incorporated in the District of Columbia as a nonprofit corporation and claims to be organized and operated under Section 501(c)(4) of the Internal Revenue Code for federal tax purposes. As of filing its most recent Form 990 for fiscal year 2021, the Organization's Board of Directors consisted of twenty-five directors.¹ According to news accounts, Director and Treasurer Bob Beauprez resigned from the Board on May 30, 2023.² Matt Schlapp apparently remains the Chairman of the Board, as well as a director.³

Upon his resignation, Mr. Beauprez alleged several credible violations of the Board's and Mr. Schlapp's fiduciary duties to the Organization. He claimed that the Board was not adequately supervising the Organization's payments for Mr. Schlapp's legal defense against a lawsuit accusing him of sexual battery and defamation.⁴ According to Mr. Beauprez, days after the lawsuit commenced, the Board agreed to advance \$50,000 for Mr. Schlapp's attorney. These

¹ American Conservation Union Inc., IRS Form 990 Return of Organization Exempt From Income Tax, 2021, available at <https://s3.documentcloud.org/documents/23828921/acu-2021-990.pdf> (last visited June 6, 2023).

² Isaac Arnsdorf & Beth Reinhard, *CPAC Treasurer Accuses Chief Matt Schlapp of Financial, Personnel Mismanagement*, WASH. POST (May 25, 2023, 12:10 PM), <https://www.washingtonpost.com/nation/2023/05/25/cpac-treasurer-matt-schlapp-resigns-letter/>.

³ IRS Form 990 Return of Organization Exempt from Income Tax, *supra* note 1.

⁴ Arnsdorf & Reinhard, *CPAC Treasurer Accuses Chief Matt Schlapp of Financial, Personnel Mismanagement*, *supra* note 2; see also Isaac Arnsdorf & Beth Reinhard, *GOP Operative Comes Forward as Accuser in Sexual Misconduct Claim Against CPAC Head*, WASH. POST (March 8, 2023, 5:43 PM), <https://www.washingtonpost.com/politics/2023/03/08/matt-schlapp-cpac-accuser-sexual-misconduct/>.

legal fees quickly spiraled to over \$270,000.⁵ The Board did not receive case updates, summaries of expenditures, or any information whatsoever regarding the monies contributed by the Organization to Mr. Schlapp's legal defense, despite the fact these funds were already "either dispersed [sic] or invoiced."⁶

More broadly, the Organization's spending on legal fees – largely for Mr. Schlapp and in defense of private litigants charged with crimes related to the January 6, 2021, incident at the U.S. Capitol – has ballooned under Mr. Schlapp's recent leadership. The Organization reported legal fees for its 2021 financial year to be ten times greater than what was reported in 2020.⁷

Mr. Beauprez "lost confidence" in the Organization's financial statements and could not "deliver a financial report at the upcoming board meeting with any confidence in the accuracy of the numbers."⁸ In March, the Organization's bookkeeping was taken over by Frank Sadler, Mr. Schlapp's longtime business associate. Mr. Sadler, who is not a certified public accountant, provided financial documents with "glaring irreconcilable, unexplained differences."⁹ The presence of such conspicuous discrepancies in the Organization's core financial documents suggests that Mr. Schlapp and his fellow Board members failed to oversee Mr. Sadler in any meaningful way. In particular, Beauprez was concerned about payment obligations that were "a far greater amount than [he] ever recall[ed]."¹⁰ Furthermore, Mr. Schlapp refused to give Mr. Beauprez, the Board's treasurer, any specific information about the finances of the 2023 CPAC conference held in March, calling into question the integrity of the Organization's financial data and Mr. Schlapp's diligence in overseeing these activities.

Additionally, Mr. Beauprez alleged several instances where the Board of Directors failed to follow the Organization's bylaws. Specifically, the Board's executive committee approved a \$600,000 salary for Mr. Schlapp in mid-2022, but neither the committee nor the Board ever saw a formal contract, as required by the bylaws. Beauprez also alleged that the Board never approved a resolution authorizing officers to sign checks as required by the bylaws.¹¹

Legal Background

The District of Columbia Nonprofit Corporations Act (the "Act") requires all nonprofit corporations incorporated in the District to maintain a Board of Directors and for "all corporate powers [to] be exercised by or under the authority of the board of directors of the nonprofit corporation, and the activities and affairs of the corporation [to] be managed by or under the

⁵ Arnsdorf & Reinhard, *CPAC Treasurer Accuses Chief Matt Schlapp of Financial, Personnel Mismanagement*, *supra* note 2.

⁶ Ben Jacobs, *CPAC Is Rocked by a Resignation*, *Intelligencer* (May 25, 2023),

<https://nymag.com/intelligencer/2023/05/bob-beauprez-resigns-from-cpac-blasting-matt-schlapp.html>.

⁷ Compare IRS Form 990 Return of Organization Exempt From Income Tax, *supra* note 1, with American Conservation Union Inc., IRS Form 990 Return of Organization Exempt From Income Tax, 2020, available at <https://s3.documentcloud.org/documents/23563710/american-conservative-union-2020-2021-990.pdf> (last visited June 6, 2023).

⁸ Arnsdorf & Reinhard, *CPAC Treasurer Accuses Chief Matt Schlapp of Financial, Personnel Mismanagement*, *supra* note 2.

⁹ *Id.*; Jacobs, *CPAC Is Rocked by a Resignation*, *supra* note 6.

¹⁰ Arnsdorf & Reinhard, *CPAC Treasurer Accuses Chief Matt Schlapp of Financial, Personnel Mismanagement*, *supra* note 2.

¹¹ *Id.*

direction, and subject to the oversight, of its board of directors.”¹² In exercising these responsibilities to the nonprofit corporation, Board members must act in good faith, in a manner they reasonably believe to be in the best interests of the nonprofit corporation, and with the care that a person in a like position would reasonably believe appropriate under similar circumstances.¹³ Effective financial oversight of the nonprofit corporation falls squarely within these obligations.

Furthermore, under the common law “duty of obedience,” a director must act in a manner that is consistent with the provisions of the articles of incorporation, bylaws, and tax-exempt status of the organization.¹⁴

The OAG is empowered by statute to enforce the Act and to seek injunctive and equitable relief if a District of Columbia nonprofit corporation “has continued to act contrary to its nonprofit purposes.”¹⁵ The OAG also possesses a long-recognized common law authority to ensure that a nonprofit’s Board of Directors fulfills its fiduciary duties to the nonprofit organization.¹⁶

The Organization’s Board Breached its Fiduciary Duties

The evidence strongly suggests that the Organization’s Board of Directors has repeatedly violated its fiduciary duties to the Organization by failing to adequately supervise its financial activities and by violating its bylaws.

Mr. Beauprez alleges that he and the members of the Board did not adequately supervise the Organization’s payments for Mr. Schlapp’s legal defense. Organization funds were dispersed without the Board having any knowledge of where funds were going, how the case was managed, or what legal theories were presented. Furthermore, the majority of these legal expenses appear to have benefited Mr. Schlapp and private criminal defendants, which calls into question whether such expenses were prudent or aligned with the Organization’s tax-exempt purposes. More broadly, the Board appears to have failed to adequately supervise *any* activities of the Organization, as Mr. Beauprez alleged that none of the Organization’s financial reports could be trusted. Not only did the Board neglect to hire a qualified accountant to manage the Organization’s bookkeeping, but they also failed to supervise the financial director’s maintenance of the Organization’s financials, resulting in purported mismanagement. Such flagrant neglect of their duty to oversee the “activities and affairs of the corporation” breached the Board’s statutory responsibility to govern the Organization with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

Furthermore, Mr. Beauprez alleged several instances where the Board of Directors failed to follow the Organization’s bylaws. Each member of the Board of Directors, in order to meet their duty of obedience to the Organization, and in order to act with the care that a person in a like

¹² D.C. Code § 29-406.01.

¹³ *Id.* § 29-406.30(b).

¹⁴ *See, e.g., Gearhart Indus., Inc. v. Smith Int’l, Inc.*, 741 F.2d 707, 719 (5th Cir. 1984).

¹⁵ *Id.* § 29-412.20(a)(1)(B)-(C).

¹⁶ *See, e.g., In re Milton Hershey Sch. Trust*, 807 A.2d 324, 330 (Pa. Commw. Ct. 2002) (“The responsibility for public supervision of charitable trusts traditionally has been delegated to the Attorney General to be performed as an exercise of his *parens patriae* powers.”); *People ex rel. Ellert v. Cogswell*, 45 P. 270, 271 (Cal. 1896) (“The state, as *parens patriae*, superintends the management of all public charities or trusts, and in these matters acts through her attorney general.”)

position would reasonably believe appropriate under similar circumstances, must abide by the Organization's bylaws. Failure to do so breached the Board's statutory fiduciary obligations.

Director and Chairman Matt Schlapp Breached his Fiduciary Duties

Mr. Schlapp, as a member of the Board of Directors and an officer of the Organization, has repeatedly violated his fiduciary obligations for the reasons described immediately above. Additionally, Mr. Schlapp has individually breached his fiduciary obligations by failing to provide pertinent financial information about the Organization that he apparently possessed, to the Board. Such violations compound the existing failures of the Board of Directors.

Mr. Schlapp has also uniquely and egregiously violated his statutory obligation to avoid self-dealing. As a director and officer, Mr. Schlapp has an obligation to act in a manner he reasonably believes to be in the best interests of the nonprofit corporation and not for his personal benefit. Mr. Schlapp breached this obligation by accepting over \$270,000 in legal fees for a personal matter from the Organization without providing the Board of Directors with the supporting information needed for the Board to adequately oversee the transmittal of funds. By failing to account for the Organization's funds spent on his own legal fees, which prevented the Board from exercising its fiduciary oversight responsibilities, Mr. Schlapp breached his fiduciary duties to the Organization twice over.

Conclusion

I request that the OAG exercise its statutory and common law authority to immediately open an investigation into whether the American Conservative Union Board of Directors and its chairman Matt Schlapp have breached their fiduciary duties under District of Columbia law by failing to oversee the Organization's financial activities and failing to adhere to the Organization's adopted bylaws.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kyle Herrig', with a long horizontal flourish extending to the right.

Kyle Herrig
President, Accountable.US