CLC
ADVANCING DEMOCRACY THROUGH LAW

February 5, 2018

Federal Election Commission
Lisa J. Stevenson, Acting General Counsel
Office of the General Counsel
999 E Street, NW
Washington, DC 20463
Submitted via email and U.S.P.S.

Re: Petition for Rulemaking to Revise and Amend Regulations Relating to Former Candidates' Personal Use of Campaign Funds

Dear Ms. Stevenson,

Pursuant to 11 C.F.R. § 200.1 et seq., Campaign Legal Center ("CLC") hereby petitions the Federal Election Commission to conduct a rulemaking to revise and amend 11 C.F.R. § 113.1(g) and 11 C.F.R. § 113.2, the regulations pertaining to the personal use of campaign funds, to clarify the application of those rules to former candidates and officeholders.

Although Commission regulations prohibiting the conversion of campaign funds to personal use clearly apply to both current and former candidates and officeholders,[1] journalists in recent months have uncovered a disturbing trend of lawmakers leaving office with sizeable campaign chests, and then using those leftover campaign funds in ways that appear to constitute personal use.[2]

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[1] "Personal use means any use of funds in a campaign account of a present or *former* candidate to fulfill any commitment, obligation, or expense of any person that would exist irrespective of the candidate's election campaign or duties as a Federal officeholder." 11 C.F.R. § 113.1(g) (emphasis added).

[2] *See, e.g.*, Christopher O'Donnell, Eli Murray, Connie Humburg, & Noah Pransky, *Zombie campaigns*, Tampa Bay Times (Jan. 31, 2018), http://www.tampabay.com/projects/2018/investigations/zombie-campaigns/spending-millions-after-office/.

A *Tampa Bay Times* and *WTSP-TV* investigation reviewed reports filed with the Commission by 102 former candidate and officeholder campaign committees and, even after excluding the first two years following the official's last election or retirement from office, identified hundreds of thousands of dollars of potential disbursements for personal use. This included nine committees making $20,739 in computer or tablet purchases; eleven committees spending $11,812 for internet; twelve committees paying $367,402 for payroll to family members; 28 committees spending $94,762 on travel; and fourteen committees spending $70,800 for websites.[3] 21 campaign committees paid more than $53,000 in cell phone bills.[4]

Recent CLC complaints illustrate some of the most egregious examples of former lawmakers or their campaign staff converting campaign funds to personal use. Former Rep. Cliff Stearns used campaign funds for cell phone bills, lobbying-related expenses, and payments to his wife for five years after leaving office, and the treasurer for former Rep. Mark Takai's campaign committee has paid himself thousands of dollars per month during the eighteen months since Takai passed away.

These examples provide compelling reasons for the Commission to clarify the application of personal use restrictions to former candidates and officeholders.

Legal Background

Under the Federal Election Campaign Act (FECA), contributions accepted by a candidate may be used by the candidate for, *inter alia*, "otherwise authorized expenditures in connection with the campaign for Federal office of the candidate," 52 U.S.C. § 30114(a)(1), *see also* 11 C.F.R. § 113.2(a)-(e), and that such contributions shall not be converted to the personal use of the candidate or any other person, *id.* § 30114(b); *see also* 11 C.F.R. §§ 113.1(g), 113.2(e). Campaign funds are considered to have been converted to "personal use" if the funds are 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." 52 U.S.C. § 30114(b)(2). Commission regulations similarly define "personal use" as the use of funds in a campaign account "to fulfill any commitment, obligation, or expense of any person that would exist irrespective of the candidate's election campaign or duties as a Federal officeholder." 11 C.F.R. § 113.1(g).

When Congress adopted the personal use prohibition in 1979, it originally included a "grandfather" provision exempting any person who was a "Senator or

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[3] *See* Eli Murray and Connie Humburg, *See How the 102 Zombie Politicians Spent Their Money*, Tampa Bay Times and WTSP-TV (Jan. 31, 2018), http://www.tampabay.com/projects/2018/investigations/zombie-campaigns/spending-millions-after-office/database/#/; data available at http://www.tampabay.com/projects/2018/investigations/zombie-campaigns/spending-millions-after-office/database/assets/all_tagged_disbursements.csv.

[4] *Id.*

Representative in, or Delegate or Resident Commissioner to, the Congress" on January 8, 1980 from the personal use prohibition.[5] Following public outrage about ex-Members leaving office with sizeable campaign chests and using those funds for their own personal benefit, in 1989 Congress took the rare step of repealing the grandfather provision it had enacted a decade earlier.[6]

Following this Congressional directive that former members not be permitted to convert leftover campaign funds to personal use, in 1995 the FEC promulgated its current personal use regulations, which apply to any present or former candidate.[7]

Those regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use, 11 C.F.R. § 113.1(g)(1)(i), and state that, for uses of campaign funds not on this list, the Commission determines, on a case-by-case basis, whether they constitute personal use, 11 C.F.R. § 113.1(g)(1)(ii).

The Commission also adopted what it called a "safe harbor" for former officeholders, allowing them to use leftover campaign funds for "the costs of winding down the office of a former Federal officeholder for a period of six months after he or she leaves office." 11 C.F.R. § 113.2(a)(2).[8] The Commission initially proposed a sixty-day winding down period, but "[s]ince this process often takes longer than anticipated," adopted a six-month limit "to provide former officeholders with some leeway in the use of funds for these purposes."[9]

The Commission has been skeptical of advisory opinion requests from former officeholders seeking to use campaign funds for purposes only tangentially related

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5 "Campaign law allows retiring congressmen to convert unspent contributions to personal use, as a sort of informal retirement bonus. So the more a congressman raises, the more he can make--an exceptionally powerful financial incentive not to rock the boat and upset interest groups. When Representative Ray Roberts, of Texas, retired, in 1981, he took with him $13,014 from his campaign fund." Gregg Easterbrook, *What's Wrong With Congress?,* The Atlantic (Dec. 1984), http://www.theatlantic.com/past/docs/politics/congress/easterf.htm.

6 *See* Ethics Reform Act of 1989, Pub. L. No. 101–194, 103 Stat. 1716.

7 *See Expenditures; Reports by Political Committees; Personal Use of Campaign Funds,* 60 Fed. Reg. 7862 (Feb. 9, 1995) ("this rulemaking is prompted, in large part, by more recent Congressional action, specifically, the Ethics Reform Act of 1989, Pub. L. No. 101–194, 103 Stat. 1716. Section 504 of the Ethics Reform Act repealed a 'grandfather' provision that Congress included in section 439a when it enacted the personal use prohibition in 1979."); *see also* Revised Dissent of Vice Chairman Potter to Advisory Opinion 1993-06 (May 14, 1993) ("Congress evidently [repealed the grandfather provision] in response to public outrage over reports of ex-Members walking away from office with thousands of dollars of campaign contributions"), https://www.fec.gov/files/legal/aos/1993-06/1083037.pdf.

8 Commenters on this provision argued for a narrower rule: two commenters suggested campaign funds should not be used for winding-down costs, a third argued that the safe harbor only be available to incumbents who lose their seat to not allow "Members of Congress to build up a large treasury and then use that treasury after voluntarily leaving Federal office," and three argued that the winding down period be limited to sixty days. 60 Fed. Reg at 7873.

9 *Id*.

to their past campaign or previous duties as an officeholder.[10] And, yet, the reports described above present the appearance or reality of dozens of former officeholders using their campaign accounts as slush funds, or to continue paying for expenses that may have been permissible during their time in office but ceased to be so after they left office.

This is not merely an issue of enforcement. Although the Commission should enforce the law against former members who convert campaign funds to personal use, the breadth and scope of the dubious spending uncovered in the investigation noted above suggest that the Commission's personal use regulations are not sufficiently clear with respect to former officeholders.

Expenses that may be permissibly paid with campaign funds while a member is in office can become impermissible after they leave office; it is difficult to see how computers, cell phone bills, and plane tickets, for example, are costs incurred in connection with one's campaign or officeholder duties if a person is no longer a candidate or officeholder. Yet it appears that many former officeholders are interpreting the Commission's existing regulations as allowing for the continued use of campaign funds for a wide range of expenses for years after they have left office.

Request for Rulemaking

Accordingly, we request that the Commission open a rulemaking to clarify the permissible use of campaign funds for former candidates and officeholders. We request that the Commission seek comment on proposed rules that address the following two issues:

First, what are permissible and impermissible uses of campaign funds for an individual who is no longer a candidate or officeholder?

A plain-language reading of the personal use statute would suggest that, once an individual is no longer a candidate or officeholder, the permissible uses of leftover campaign funds become severely limited.[11] There are few disbursements that can reasonably be made "in connection with the campaign for Federal office" if a person is no longer a candidate, and few expenditures that pertain to an "individual's duties as a holder of Federal office" if they are no longer an officeholder. And, yet, as

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[10] *See, e.g.* Advisory Opinion Request 2017-11 (Gallegly); Advisory Opinion Request 2015-13 (Reid); *see also* Paul Bedard, *Harry Reid Demands Retirement 'Slush Fund,' FEC Defers,* Washington Examiner (Jan. 4, 2015), http://www.washingtonexaminer.com/harry-reid-demands-retirement-slush-fund-fec-defers/article/2579487.

[11] FECA provides that campaign funds may only be permissibly used for "otherwise authorized expenditures in connection with the campaign for Federal office of the candidate," 52 U.S.C. § 30114(a)(1), and are converted to "personal use" if the funds are 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." 52 U.S.C. § 30114(b)(2).

the above examples demonstrate, many former officeholders have nonetheless used campaign funds for an array of expenses that appear to constitute personal use, for years after leaving office.

It is common—and usually permissible—for a current candidate or officeholder to use campaign funds to pay cell phone or internet bills, office rent, or travel expenses, as those expenditures have an apparent connection to their campaign or duties as an officeholder. However, the reports described above indicate that it is increasingly commonplace for former members to continue using campaign funds for those expenses after leaving office—despite no longer operating a campaign or holding office. For example, the *Tampa Bay Times*/*WTSP-TV* investigation identified 21 campaign committees of former members that, combined, paid more than $53,000 in cell phone bills; eight committees that together spent $55,000 renting office space; and 27 committees that spent a total of $94,762 on travel.[12] Several former members used campaign funds to pay for private club members or dues; between 2007 and 2011, Robin Tallon, Jr., who left office in 1993, paid roughly $8,200 in "dues" to what appears to be a country club.[13]

It is very difficult to see how cell phone bills, office rent, travel expenses, or club dues are expenditures "in connection with the campaign for Federal office" if a person is no longer a candidate, or how those expenses might otherwise relate to an "individual's duties as a holder of Federal office," if they are no longer an officeholder.

The most charitable reading of this trend is that former officeholders use campaign funds for these expenses out of habit; they paid cell phone bills, office rent, and travel costs with campaign funds while in office, and after leaving office, they have continued to do so. A less charitable interpretation is that former officeholders think they can get away with it. In either case, the Commission should clarify its rules to provide clear guidance on permissible and impermissible uses of campaign funds for former officeholders.

The Commission should adopt new rules clarifying that the permissible uses of campaign funds for former candidates and officeholders are limited to fulfilling financial obligations incurred solely as a result of their candidate or officeholder activities (and for other purposes expressly permitted under FECA and Commission regulations, such as donations to charity or to state and local candidates). The Commission may wish to include a non-exhaustive set of such activities – such as winding-down expenses – in its regulations.

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12 O'Donnell, et al., *supra* note 2.

13 *Id*.

Second, is there a point at which a former candidate or officeholder's continued spending of leftover campaign funds becomes so attenuated from his or her candidate or officeholder status that the spending is presumptively personal use?

In some instances, former officeholders seem to be keeping their campaign accounts open under the pretext of considering another run for office. Yet the mere *possibility* of a future run for office cannot justify spending leftover campaign funds indefinitely. The *Tampa Bay Times/WTSP-TV* investigation found 20 examples of campaign committees continuing to spend funds more than a decade after the candidate left office, and eight examples of continued spending after the officeholder had died.[14]

For example, decades after Tallon left office, the Tallon for Congress committee has still been using campaign funds to buy computers and iPads, to pay Tallon's son, and to pay Tallon himself "reimbursements" for unspecified expenses.[15] The Mark Takai for Congress committee has been paying its treasurer's LLC $70,000 per year, despite Takai passing away eighteen months ago.[16] Turner for Congress, the principal campaign committee of former Congressman Jim Turner, continued paying Turner's wife approximately $4,000 a year for six years after he left office in 2005.[17] Ben Nighthorse Campbell left the U.S. Senate in January 2005,[18] but his campaign committee paid Campbell's daughter a salary of $2,000 almost every

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[14] *Id*.

[15] Tallon left Congress in 1993. *Tallon, Robert Mooneyhan, Jr. (Robin)*, (*1946-)*, Biographical Directory of the United States Congress, http://bioguide.congress.gov/scripts/biodisplay.pl?index=T000034. However, his principal campaign committee, Tallon for Congress, has continued to pay Tallon's son Robert M. Tallon III; most recently, he received $1,000 from the committee on August 3, 2017 for "FEC Filings and Records." Tallon for Congress, 2017 October Quarterly, FEC Form 3, at 1, 6 (filed Oct. 12, 2017), http://docquery.fec.gov/pdf/360/201710120300176360/201710120300176360.pdf. Tallon for Congress also continued paying Tallon himself annual amounts ranging from $785 to $9,407 for unspecified "reimbursements." *See, e.g.*, Tallon for Congress, Disbursements for "Reimbursement," 2007-08, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2008&data_type=processed&committee_id=C00153684&min_date=01%2F01%2F2007&max_date=12%2F31%2F2008&disbursement_description=reimburse. The committee also spent $935.36 on an iPad on February 3, 2017, twenty-five years after Tallon left office. Tallon for Congress, 2017 April Quarterly, FEC Form 3, at 9 (filed April 13, 2017), http://docquery.fec.gov/pdf/321/201704140300148321/201704140300148321.pdf.

[16] *See, e.g.*, Mark Takai for Congress, Disbursements to Lanakila Strategies LLC, 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00548131&recipient_name=lanakila+strategies&min_date=01%2F01%2F2017&max_date=02%2F01%2F2018 (last visited Feb. 1, 2018).

[17] *See, e.g.*, Jim Turner for Congress, Disbursements to "Turner," 2011-12, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2012&data_type=processed&committee_id=C00308387&recipient_name=turner&min_date=01%2F01%2F2011&max_date=12%2F31%2F2012 (last visited Jan. 23, 2018).

[18] *Campbell, Ben Nighthorse*, *(1933-)*, Biographical Directory of the United States Congress, http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000077.

month through February 2015,[19] and continued paying Verizon at least $150 a month—sometimes more—through July 2016, eleven years after Campbell left office.[20] Ronald C. Packard left Congress in January 2001, but his campaign committee kept spending through the summer of 2012.[21] Hilda Solis left Congress in February 2009 and served as secretary of labor from 2009 until 2013, yet her campaign committee has continued spending through at least June 2017.[22] Christopher Cox served in Congress until 2005, after which he served as U.S. Securities and Exchange Commission chairman; his campaign committee also reported June 2017 spending.[23]

Moreover, although the Commission has advised that the costs of temporary storage for campaign and officeholder materials are a permissible use of campaign funds, the *Tampa Bay Times/WTSP-TV* investigation identified 30 campaign committees that continued paying at least $172,631 in storage-related expenses more than two years after the candidate left office or passed away, and in some cases for over a decade.[24]

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[19] *See, e.g.*, Campbell for Colorado, Disbursements to Karen Campbell, 2005-06, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2006&data_type=processed&committee_id=C00384610&recipient_name=campbell&min_date=01%2F01%2F2005&max_date=12%2F31%2F2006 (last visited Feb. 2, 2018); Campbell for Colorado, Disbursements to Karen Campbell, 2013-14, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2014&data_type=processed&committee_id=C00384610&recipient_name=campbell&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014 (last visited Feb. 2, 2018).

[20] *See, e.g.*, Campbell for Colorado, Disbursements to Verizon Wireless, 2015-16, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00384610&recipient_name=verizon&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016 (last visited Feb. 2, 2018).

[21] Eli Murray & Connie Humburg, *Interactive database: See how the 102 'Zombie' politicians spent their money*, Tampa Bay Times (Jan. 31, 2018), http://www.tampabay.com/projects/2018/investigations/zombie-campaigns/spending-millions-after-office/database.

[22] *Id.*

[23] *Id.*

[24] For example, Don Payne for Congress, the campaign committee of former Congressman Donald Payne, who died in 2012, spent $2,361.90 on storage in 2017, five years after Payne's death. Don Payne for Congress, Disbursements for "Storage," 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00225045&min_date=01%2F01%2F2017&max_date=01%2F21%2F2018&disbursement_description=storage (last visited Feb. 2, 2018). The former campaign committee of Howard Dean, who ended his campaign for president in February of 2004 (David Paul Kuhn, *The Rise And Fall of Howard Dean*, CBS News (Feb. 18, 2004), https://www.cbsnews.com/news/the-rise-and-fall-of-howard-dean-18-02-2004/), continued paying a storage facility in Burlington, Vermont through March of 2014, ten years after the end of his campaign. *See, e.g.*, Dean for America, Disbursements for "Storage," 2013-14, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2014&data_type=processed&committee_id=C00378125&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014&disbursement_description=storage (last visited Feb. 2, 2018). Mark Foley left Congress in January 2007 (*Foley, Mark A., (1954-)*, Biographical Directory of the United States Congress,

The Commission could consider establishing a time period beyond which campaign committee spending by a committee with no outstanding net debts whose candidate is no longer in office or running for office is presumptively personal use. If a campaign committee wishes to remain operative beyond that time limitation, the Commission might require some indicia of candidacy, such as ballot access.

Accordingly, CLC requests that the Commission promptly publish a Notice of Availability of this petition in the Federal Register, 11 C.F.R. § 200.3(a)(1), and thereafter initiate a rulemaking to consider promulgation of the proposed regulation set forth above. *Id.* § 200.4(a).

Sincerely,

Brendan Fischer
Director, Federal and FEC Reform

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http://bioguide.congress.gov/scripts/biodisplay.pl?index=F000238), but his committee has continued to pay for storage costs, among other expenses, for more than a decade—including $2,403.64 for storage in 2016 and, most recently, a $426.32 storage payment in February 2017. Friends of Mark Foley for Congress, Disbursements for "Storage," 2015-16, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00289140&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016&disbursement_description=storage (last visited Feb. 2, 2018); Friends of Mark Foley for Congress, Disbursements for "Storage," 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00289140&min_date=01%2F01%2F2017&max_date=02%2F02%2F2018&disbursement_description=storage (last visited Feb. 2, 2018).