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Federal Election Commission
1050 First Street NE
Washington, DC 20463

The National Republican Congressional Committee (“NRCC”) writes to voice its views on the Commission’s proposed codification of 11 C.F.R. § 113.1(g)(10) and offers this comment to directly address some of the questions on which the Commission has requested public feedback.

NRCC presents four broad recommendations to shape the Final Rule, discussed in greater detail below, that can be summarized as follows: (1) the Final Rule should apply to all federal candidates without any required showing of a heightened or ongoing threat; (2) the Commission should not adopt a “reasonableness test,” and if it does total security costs should not be a relevant factor; (3) the existing prohibition on conversion of campaign funds to personal use should be the only restriction on candidate security spending; and (4) the Final Rule should extend to a candidate’s family members, but not to a candidate’s campaign staff.

I. The Final Rule Should Apply to All Federal Candidates and Should Not Depend on Any Showing of a “Heightened Threat Environment.”

NRCC recommends that the Commission avoid adopting any requirement that candidates demonstrate “ongoing dangers or threats” or a “heightened threat environment” before spending campaign funds on security measures. Retaining this requirement in the Final Rule will require the Commission to undertake difficult assessments of threat perception that are beyond the Commission’s core competency of campaign finance law and could even unintentionally endanger candidate security by effectively requiring candidates to pre-clear all security spending via an advisory opinion request. In a fast-changing threat environment, any delay could endanger the physical safety of candidates or their family members and thereby undermine the Commission’s intention in promulgating this rule.

It is an unfortunate reality that *all* federal candidates now operate in a permanently heightened threat environment, and threats to candidate security show no signs of abating any time soon.¹ A 2023 UMass-Amherst poll of retired Members of Congress found that roughly half received at least occasional threats during their tenures in office.² Even in the absence of a specific targeted threat, it is difficult to argue that the expenditure of campaign funds for basic security measures such as the installation of a Ring doorbell camera or reinforced locks on a candidate’s primary residence are “unreasonable.”

Also, the degree of danger faced by a candidate can change in an instant; a candidate who saw no need for any security spending on a Monday can suddenly require the protection of a

¹ Andrew Solender, *Threats Against Members of Congress Went Back Up in 2023*, Axios (Jan. 18, 2024), <https://www.axios.com/2024/01/19/threats-members-congress-2023> (reporting that “Capitol Police opened 8,008 threat assessment cases in 2023 . . . an increase of more than 500 over 2022”).

² David Meyers, *Former Members of Congress Say Threats of Violence Are On The Rise*, The Fulcrum (Dec. 14, 2023), <https://thefulcrum.us/governance-legislation/threats-against-members-of-congress>.



private security guard on a Tuesday after the candidate is prominently featured in a national media story concerning a controversial issue. It is also unclear how a candidate could plausibly demonstrate to the Commission that a threat remains imminent long after the initial threat was identified. For example, if a candidate receives a death threat from a specific individual, does the threat remain “ongoing” until such time as the individual is arrested, or until they are incarcerated? There’s no obvious answer to that question. And it shouldn’t be asked.

The same goes for any requirement that a candidate obtain a professional recommendation from a law enforcement agency or private security firm before expending campaign funds for security measures. Such external sources may not agree with the candidate’s individual perception of threat, and different agencies or firms could offer inconsistent recommendations for how the candidate should respond. The legality of a particular security expenditure should not depend on who a candidate asks. Likewise, a candidate who is already the beneficiary of law enforcement protection should not be prohibited from expending campaign funds for additional security measures. Law enforcement protection is not always offered 24/7, and oftentimes the candidates who are already receiving protection in response to credible threats are the candidates for which additional spending is most justified.

Above all, any requirement that a candidate “pre-clear” their security spending by asking permission from law enforcement agencies, private security professionals, or even the Commission itself places an additional hurdle between the candidate and measures that may be necessary to protect their life or that of their family members. Put simply, the Commission lacks any legitimate interest in second-guessing the wisdom of a candidate’s decisions concerning their own security needs. The Commission *does*, however, play a vital role in ensuring that campaign spending is not converted towards unlawful personal use, so this is where the Commission’s focus should be directed: towards ensuring that security spending is never used for personal or familial enrichment, rather than assessing whether the outlays were empirically justified *ex ante*.

For the same reason, a Final Rule should *not* distinguish between federal officeholders and non-incumbent federal candidates. In the permanently tense environment in which all candidates now operate, it is not necessary for an individual to first be elected to Congress to become a target of malicious actors. Rather, simply announcing one’s intention to compete as a partisan candidate for federal office is sufficient to attract threats,³ and therefore should suffice to qualify for candidate security spending. And if the Commission is concerned about abuse by non-incumbents, there is an additional inherent constraint on the willingness of any candidate to “abuse” the security spending exception: every dollar allocated towards security expenditures is a dollar that cannot otherwise be spent on the candidate’s campaign.

II. A Reasonableness Test is Unnecessary, and if the Commission Adopts One Then a Candidate’s Total Security Costs Should Not Be a Relevant Factor.

The existing personal use prohibition should be the sole constraint on candidate security spending, and it is not necessary for the Commission to adopt a new “reasonableness test” to continue enforcing that prohibition. However, if the Commission does end up adopting such a test, then a candidate’s total security costs should not be considered as part of the inquiry.

³ Rebecca Falconer, *Man Charged With Threatening to Kill 3 Presidential Candidates*, Axios (Dec. 21, 2023), <https://www.axios.com/2023/12/22/death-threats-ramaswamy-christie-presidential-candidates>.



As an initial matter, the Commission does not police the “reasonableness” of candidate spending in any other realm; it does not second-guess a campaign’s total outlays for television advertising and question whether that pricey final primetime ad buy was *really* necessary to secure the candidate’s margin of victory. There is no reason for the Commission to set a new precedent for this single category of campaign spending. Most importantly, there is no way to develop a single standard defining what constitutes “reasonable” security costs for all federal candidates. The prices for different residential security enhancements or technology could differ based upon the state in which the equipment is purchased, or even the specific contractor used, leading to different standards being unfairly applied to candidates simply by virtue of the jurisdiction in which they live.

There is not even a consistent metric that the Commission could use to evaluate which candidates are exposed to the greatest danger. The frequency of credible threats is no longer correlated with a candidate’s seniority, leadership position, or the state or district in which they are running, all of which may have been reasonable factors used to assess a candidate’s public prominence fifty years ago. However, in today’s flattened media environment in which even first-time candidates build social media followings larger than those of many long-time Members of Congress, it has become harder to predict which candidates face the greatest threats. Hence, the factors determining the amount of money a candidate should “reasonably” spend to ensure their safety are mostly intangible and, candidly, beyond the competence of the Commission to assess.

Rather than attempting to develop a one-size-fits-all multifactor “reasonableness test,” the Commission should instead focus on developing a list of security expenditures that are presumptively reasonable for *all* candidates. For example, it is difficult to imagine scenarios in which the purchase of a Ring doorbell camera or reinforced locks for the candidate’s primary residence would add so much value to the candidate’s property that they would tip the line towards impermissible personal use, even if the candidate in question had not received any targeted threats. Some measures just make prudent sense, no matter who you are. Therefore, to assist the regulated community in complying with a Final Rule, NRCC encourages the Commission to develop and publish an itemized list of presumptively permissible security expenditures that can function as a “safe harbor” for all candidates. Developing this list at the outset will also advance the Commission’s interest in conserving enforcement resources by reducing the time the Commission will have to spend in the future evaluating complaints that are targeted at low-hanging fruit.

If the Commission is inclined to adopt some form of reasonableness test, NRCC recommends that the inquiry focus only on the *types* of security measures for which campaign funds are used, rather than the overall amount of security spending. And if the Commission does adopt this focus, then a “safe harbor” list of presumptively reasonable security expenditures would still prove beneficial to the regulated community, even if it is non-exhaustive.

III. The Commission Should Continue to Enforce the Personal Use Prohibition Against Any Security Expenditures that Appear Designed to Personally Enrich a Candidate or Their Family Members.

As discussed above, the Commission’s primary concern in evaluating campaign security spending should not be whether a candidate has misjudged the severity of the threat that they



face and spent campaign money unnecessarily, but whether they are intentionally using the Final Rule as a guise to steer campaign dollars into their own bank accounts or those of their family members (whether directly or by inflating their property values). Specifically, when the Commission is faced with complaints alleging that candidates have overinterpreted the scope of a Final Rule, the Commission should ask a single question: was the challenged security expenditure “used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign” pursuant to 52 U.S.C. § 30114(b)(2)? If the answer to that question is yes, then the Commission should impose appropriate penalties under the Act; if the answer is no, then the Commission should inquire no further into the wisdom of the candidate’s spending decisions.

The possibility that security funds may be converted to a candidate’s personal use is not far-fetched. In recent years, the Commission has reviewed allegations that candidates have already misinterpreted the Commission’s qualified approval of the use of campaign funds for candidate security to justify compensating a candidate’s immediate family members for security services. For example, the Department of Justice is currently investigating Rep. Cori Bush for her campaign spending practices after she married her security guard and then continued compensating him for security services provided to her campaign.⁴ It is easy to imagine other hypotheticals, such as a candidate spending campaign funds for security upgrades to their infrequently used vacation home in addition to their primary residence in a way that appears solely designed to boost the value of the property.

IV. The Final Rule Should Permit Security Spending for the Benefit of Those Facing Threats due to Their Relationship with a Candidate or Officeholder.

NRCC recommends that the Final Rule be generous in the amount of leeway that it offers to federal candidates when making decisions about their own security or that of their family members, as well as those who face threats due to their relationship with the candidate or affiliation with the campaign.

Sadly, in the modern threat environment, the family members of candidates have already become collateral damage in partisan warfare. Since January 2024, at least three Members of Congress have been “swatted,” in which “a call to law enforcement officials provokes an armed response” to the candidate’s residence.⁵ Members’ spouses have received threatening phone calls in response to official actions taken by the Member to whom they are married.⁶ And one man was recently arrested for leaving voicemails on a Member’s congressional office phone line threatening to “come and kill your children.”⁷ Given the persistent and demonstrated threats to

⁴ Rebecca Kaplan, Ryan Nobles, & Scott Wong, *Justice Department Investigating Rep. Cori Bush Campaign’s Use of Security Funds*, NBC News (Jan. 30, 2024), <https://www.nbcnews.com/politics/congress/justice-department-investigating-rep-cori-bush-campaigns-use-security-rcna136377>.

⁵ Gloria Oladipo, *House Republican Cites Threats and Swatting of Family as Reasons for Quitting*, The Guardian (Apr. 18, 2024), <https://www.theguardian.com/us-news/2024/apr/18/mike-gallagher-congress-quits-threats-swatting>.

⁶ Ashley Murray & Jennifer Shutt, *Members of U.S. House GOP Describe Threats Sparked by Votes Against Jim Jordan for Speaker*, Missouri Independent (Oct. 19, 2023), <https://missouriindependent.com/2023/10/19/members-of-u-s-house-gop-describe-threats-sparked-by-votes-against-jim-jordan-for-speaker/>.

⁷ Sahil Kapur & Zoë Richards, *Florida Man Arrested and Accused of Threatening to Kill Rep. Eric Swalwell and His Kids*, NBC News (Jan. 3, 2024), <https://www.nbcnews.com/politics/congress/florida-man-arrested-allegedly-threatening-kill-rep-eric-swallow-kids-rcna132198>.



candidates' family members, the Commission should avoid the need for an additional future rulemaking by making the outer boundaries of the Final Rule clear now. The Final Rule should permit the same types of security spending for a candidate's family members that it permits for candidates themselves. This also should extend to security spending on behalf of family members that do not reside with the candidate or officeholder, such as parents, children who no longer live at home, and fiancées who face threats due to their relationship with the candidate.

Unfortunately, even congressional staffers have gotten caught in the crossfire. One man was arrested and charged after he “called into a congressional office in Washington D.C., threatening a staff member. ‘I will kill you, I am going to run you over, I will kill you with a bomb or grenade.’”⁸ When another man recently “dumped a liquid at the bottom of [a district office] door and set it ablaze,” the Senator targeted was not in the building, “but seven of his staffers were.”⁹ Like Members' official district offices, campaign offices are often “located in commercial spaces with heavy foot traffic and lax security,” presenting “a logistical issue” particularly when paired with the fact that campaign offices do not enjoy the benefit of protection by U.S. Capitol Police.¹⁰

For these reasons, when campaign staffers are exposed to threats of physical harm by virtue of their employment or affiliation with the campaign, the relevant candidate committee should be permitted to spend campaign funds to provide for their security as well. This permission will of course apply to security upgrades at campaign office spaces and could even extend to hiring private security personnel in appropriate cases. Some proposed outlays may necessitate a fact-intensive inquiry into whether the threat stems from the campaign connection or some other source, but these questions are within the competence of the Commission to assess.

CONCLUSION

The Commission has undertaken this rulemaking to codify that which it has already recognized in advisory opinions: that “Members of Congress may use campaign contributions to install or upgrade residential security systems that do not constitute structural improvements to Members' homes.”¹¹ While previous guidance issued via advisory opinions has necessarily been limited to the facts of those cases, here the Commission should take the opportunity to recognize that (1) the benefit of the Final Rule should adhere to candidates in addition to Members of Congress and should not require any demonstration of a particular level of threat; (2) the Final Rule should authorize security spending on a variety of different types of security measures for the protection of candidates and their family members, not merely residential security systems (including training and equipment for self-defense); and (3) the Final Rule should prohibit not

⁸ U.S. Dep't of Justice, *Defendant Pleads Guilty to Threatening a Congressional Staff Member and Making 12,000 Harassing Telephone Calls to Members of Congress*, (May 30, 2024), available at: <https://www.justice.gov/usao-dc/pr/defendant-pleads-guilty-threatening-congressional-staff-member-and-making-12000#:~:text=On%20October%2021%2C%202022%2C%20Lilly,Lilly%20repeatedly%20called%20Congressional%20offices.>

⁹ Ryan Tarinelli & Justin Papp, *Staffers Bear the Brunt of Threats Aimed at District Offices*, (May 29, 2024), available at: <https://rollcall.com/2024/05/29/staffers-bear-brunt-threats-congress-district-offices/>.

¹⁰ *Id.*

¹¹ Advisory Opinion 2017-07 (Hon. Paul D. Irving, Sergeant at Arms) at 2.



only the use of campaign funds on “structural improvements to Members’ homes,” but any conversion of campaign funds to personal use consistent with existing statutory prohibitions and Commission precedent. Addressing these concerns will give clearer guidance to the regulated community, reduce the size of the Commission’s enforcement docket, and reconcile the new regulation with existing law.

Sincerely,

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