



May 21, 2018

Federal Election Commission
Lisa J. Stevenson, Acting General Counsel
Office of the General Counsel
1050 First Street, NE
Washington, DC 20463

Re: REG 2018-01 (Former Candidates' Personal Use of Campaign Funds)

Dear Ms. Stevenson,

Campaign Legal Center ("CLC") respectfully writes to comment on REG 2018-01, the Federal Election Commission's notice of availability regarding former candidates' personal use of campaign funds. CLC thanks the Commission for publishing this notice regarding our February 5, 2018 petition and for this opportunity to comment.

CLC applauds the Commission's recent announcement that it will begin to scrutinize spending by "dormant" campaigns, and that it will review disclosure reports by committees of former candidates who had not campaigned or held office during the previous two years for the House, or four years for Senate and the presidency.¹ However, this welcome announcement does not obviate the need for the Commission to clarify the application of 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 former candidates and officeholders.

¹ FEC Record: Compliance, *Commission Will Review Dormant Committees' Use of Campaign Funds*, FEC Website (Apr. 26, 2018), <https://www.fec.gov/updates/commission-will-review-dormant-committees-use-campaign-funds/>.

A recent *Maplight* analysis found that the 64 Members of the Senate and House who are retiring this cycle have at least \$87.3 million remaining in their principal campaign committee accounts.² Reports also indicate that officeholders raised substantial sums in the time periods leading up to their retirement announcements.³

Unscrupulous retiring officeholders could view the fact that the Commission will not begin to scrutinize their reports until 2020 (in the case of retiring Members of the House) or 2022 (for retiring Senators) as a sign that they can misuse campaign funds for the next two to four years. Others will remain confused about the permissible and impermissible uses of leftover campaign funds, as demonstrated in our petition for rulemaking.

The tens of millions of dollars remaining in campaign accounts for those officeholders retiring this year alone should provide a sense of urgency for the Commission to proceed with a rulemaking to provide clear guidance on permissible and impermissible uses of campaign funds by former officeholders and candidates.

Moreover, as noted in CLC's initial petition, a *Tampa Bay Times* and *WTSP-TV* investigation identified 102 former candidate and officeholder campaign committees that had appeared to expend hundreds of thousands of dollars of potential disbursements for personal use.⁴ Following CLC's petition and the publication of that investigation, some of those "zombie committees" altered their spending after having been subjected to public scrutiny, but others continued to convert campaign funds to apparent personal uses, like private club dues and "internet/wifi"

² Frank Bass, *Retiring Lawmakers Have Added \$32.8 Million to Campaign Treasuries Since Last Cycle*, MAPLIGHT (May 17, 2018), <https://maplight.org/story/retiring-lawmakers-have-added-32-8-million-to-campaign-treasuries-since-last-election/>.

³ *Id.* (noting that retiring Congresspersons raised \$32.8 million since the 2016 election); see also Noah Pransky, *Rep. Dennis Ross kept Accepting PAC Money Up Until Retirement Announcement*, WTSP (Apr. 18, 2018), <https://www.wtsp.com/article/news/local/rep-dennis-ross-kept-accepting-pac-money-up-until-retirement-announcement/67-541953569>.

⁴ 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/>; Eli Murray and Connie Humburg, *See How the 102 Zombie Politicians Spent Their Money*, TAMPA BAY TIMES/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.

expenses.⁵ One former Congressman—who had not run for office for ten years—reported a \$1,801 “fundraising expense” at a Washington, D.C., restaurant on his first quarter 2018 report, but did not disclose any funds raised.⁶

These examples and others demonstrate that the Commission should proceed with a rulemaking to provide guidance to former officeholders and to prevent abuse. As CLC noted in its original petition, the breadth and scope of the dubious spending suggest that the Commission’s personal use regulations are not sufficiently clear with respect to former officeholders.

In addition to clarifying the permissible and impermissible uses of campaign funds for an individual who is no longer a candidate or officeholder, CLC’s petition also asks the Commission to establish a time period beyond which a former candidate’s campaign committee spending is presumptively personal use, absent some indicia of candidacy, such as seeking ballot access.

CLC believes the two year/four year period announced in the Commission’s “dormant committees” policy could serve as a reasonable timeframe for this proposed rule. Given that the Commission already plans to review reports from former candidates who have not campaigned or held office during the previous two years for the House, or four years for the Senate and the presidency, the Commission could additionally require that candidates whose campaign committees continue to engage in spending beyond that period demonstrate that they are running for office again. This would provide committees of all other candidates ample time to wind down their operations.

The Commission certainly has the statutory authority to establish such a requirement. The Federal Election Campaign Act provides that funds received by a candidate may permissibly be used for “otherwise authorized expenditures in connection with the campaign for Federal office of the candidate,” 52 U.S.C. § 30114(a)(1), or “for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office,” *id.* § 30114(a)(2). A person who is neither a candidate nor an officeholder has no statutory justification for continuing to spend funds from a campaign account indefinitely.

⁵ Noah Pransky, ‘Zombie Campaigns’ Reform Ways After 10Investigates Series, WTSP (Apr. 22, 2018), <https://www.wtsp.com/article/news/investigations/zombie-campaigns/zombie-campaigns-reform-ways-after-10investigates-series/67-544452644>.

⁶ *Id.*

Accordingly, CLC requests that the Commission initiate a rulemaking on this matter. Should the Commission choose to hold a public meeting, CLC requests the opportunity to provide testimony through a representative. Thank you for considering these comments.

Sincerely,

/s/

Brendan Fischer
Director, Federal and FEC Reform