



November 16, 2018

Federal Election Commission
Robert M. Knop, Assistant General Counsel
Office of the General Counsel
1050 First Street, NE
Washington, DC 20463

Submitted via the Commission's website

Comments on REG 2018-02, Rulemaking Petition to Revise and Amend Regulations Relating to the Personal Use of Leadership PAC Funds

Dear Mr. Knop,

The Campaign Legal Center (“CLC”), Issue One, and former United States Representatives Rod Chandler (R-WA), Larry LaRocco (D-ID), Peter Smith (R-VT), Claudine Schneider (R-RI), and John Tanner (D-TN) (collectively “Petitioners”) respectfully write to comment on REG 2018-02, the Federal Election Commission’s notice of availability regarding a rulemaking to revise and amend 11 C.F.R. § 113.1(g) to clarify that the prohibition on the personal use of campaign funds applies to so-called “Leadership PACs.”

Petitioners thank the Commission for publishing this notice regarding our July 24, 2018 petition and for this opportunity to comment.

As we noted in our original petition, Congress has prohibited “any contribution accepted by a candidate” and “any other donation received by an individual as support for activities of the individual as a holder of Federal office” from being converted to the “personal use” of the candidate or any other person. 52 U.S.C. §§ 30114(a), 30114(b)(1). A leadership PAC is a committee established, financed, maintained or controlled by a candidate. 52 U.S.C. § 30104(i)(8)(B); 11 C.F.R. § 100.5(e)(6). The Commission allowed officeholders to establish leadership PACs to support their duties as officeholders—specifically, so that an officeholder may “support other candidates' campaigns”¹ in order “to gain support when the

¹ Notice of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 35654, 35672 (May 20, 2002).

officeholder seeks a leadership position in Congress.”² Thus, by its very terms, the statutory personal use prohibition is applicable to any contribution received by a candidate’s leadership PAC, and Commission rules should reflect this clear statutory mandate.

Although the Commission has allowed for the creation of leadership PACs to permit candidates and officeholders to support other candidates or party committees, in the absence of clear rules, leadership PACs have become commonly used as slush funds to subsidize officeholders’ lifestyles.

As described in our original petition, over the past five years, only a minority of all leadership PAC spending has gone towards contributions to other candidates or political committees—and many leadership PACs give even less. Yet over that same period, candidates and officeholders spent millions in leadership PAC funds at resorts, golf courses, and high-end steakhouses.

Leadership PAC reports filed following our rulemaking petition demonstrate that these trends have continued.

According to CLC’s analysis of second and third quarter 2018 reports filed with the Commission, between April 1 and September 30, 2018, leadership PACs spent at least \$124,162 at the luxury Greenbrier resort in West Virginia, \$160,809 at St. Regis resorts, \$53,165 at Ritz Carlton hotels, \$46,121 at Charlie Palmer Steak restaurant in Washington, D.C., and \$19,760 at Disney properties. Meanwhile, only 46 percent of overall leadership PAC spending in the 2018 cycle went towards contributions to other candidates or political committees, according to data provided by the Center for Responsive Politics.

Some individual leadership PAC spending patterns are particularly questionable.

Georgia Congressman Johnny Isakson’s leadership PAC, 21st Century Majority Fund, spent \$59,145 for “PAC events” at the Bandon Dunes golf club in Bandon, Oregon in June, July, and September 2018.³ Yet only 26.7 percent of Isakson’s leadership PAC spending in the 2018 cycle went towards contributions.⁴ In

² 67 FR at 78754.

³ 21st Century Majority Fund, 2018 August Monthly, FEC Form 3X, at 12, 17 (filed Aug. 20, 2018), <http://docquery.fec.gov/pdf/895/201808209120034895/201808209120034895.pdf>; 21st Century Majority Fund, 2018 October Monthly, FEC Form 3X, at 10 (filed Oct. 17, 2018), <http://docquery.fec.gov/pdf/264/201810179125572264/201810179125572264.pdf>.

⁴ OpenSecrets, *21st Century Majority Fund: Expenditures, 2018 cycle*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/pacs/expenditures.php?cycle=2018&cmte=C00361956> (last visited Nov. 14, 2018).

September, the \$24,000 expenditure at Bandon Dunes exceeded the \$18,500 that the PAC raised during the entire month.⁵

Texas Congressman Pete Sessions' leadership PAC, PETE PAC, spent \$36,337 at a St. Regis resort in Deer Valley, Utah in May 2018,⁶ which was more than three times the \$10,263 in receipts PETE PAC took in that month,⁷ and paid the Dallas Cowboys \$27,000 for a "PAC event" in August 2018.⁸ Only 33.6 percent of PETE PAC's overall spending in the 2018 cycle went towards contributions.⁹

Kentucky Congressman Hal Rogers' HALPAC devoted only 33.4 percent of its overall spending to contributions last cycle,¹⁰ but spent \$14,564 at the Pebble Beach Golf Club in California for "PAC lodging" in April 2018.¹¹

In September, Kentucky Senator Rand Paul's RAND PAC spent more than \$4,000 on meals, transportation, and sightseeing in London, including \$353 for "travel" paid to Historic Royal Palaces, which manages the tourist destination the Tower of London, and \$889 to the Mirror Room, an upscale hotel restaurant.¹² Yet there is no discernible connection between Sen. Paul's spending in London and any officeholder duties or candidate expenses. Meanwhile, only 14 percent of RAND PAC's spending in the 2018 cycle went towards contributions.¹³

⁵ 21st Century Majority Fund, 2018 October Monthly, *supra* note 3, at 3.

⁶ PETE PAC, 2018 June Monthly, FEC Form 3X, at 10, 12-13 (amended July 20, 2018), <http://docquery.fec.gov/pdf/744/201807209116047744/201807209116047744.pdf>.

⁷ *Id.* at 3.

⁸ PETE PAC, 2018 September Monthly, FEC Form 3X, at 11 (filed Sept. 19, 2018), <http://docquery.fec.gov/pdf/629/201809199122005629/201809199122005629.pdf>.

⁹ OpenSecrets, *PETE PAC: Expenditures, 2018 cycle*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/pacs/expenditures.php?cycle=2018&cmte=C00363770> (last visited Nov. 14, 2018).

¹⁰ OpenSecrets, *Help America's Leaders: Expenditures, 2018 cycle*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/pacs/expenditures.php?cycle=2018&cmte=C00376038> (last visited Nov. 14, 2018).

¹¹ HALPAC, 2018 May Monthly, FEC Form 3X, at 16 (filed May 20, 2018), <http://docquery.fec.gov/pdf/844/201805209112153844/201805209112153844.pdf>.

¹² RAND PAC, 2018 October Quarterly, FEC Form 3X, at 154, 173, 175, 176, 179-80 (filed Oct. 12, 2018), <http://docquery.fec.gov/pdf/920/201810129124503920/201810129124503920.pdf>. It is not clear when these disbursements were made, since RAND PAC appears to have misdated them. The London transactions are reported as "memo items" following a \$16,052 credit card payment to First Bankcard dated September 7, 2018, see *id.* at 154, which suggests that these transactions were made on that credit card. However, contrary to Commission guidance (see <https://www.fec.gov/help-candidates-and-committees/filing-reports/credit-card-disbursements/>), the transactions were dated September 7, 2018, which does not appear to be the date that the transactions actually occurred.

¹³ OpenSecrets, *Reinventing a New Direction: Expenditures, 2018 cycle*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/pacs/expenditures.php?cycle=2018&cmte=C00493924> (last visited Nov. 14, 2018).

Other politicians used leadership PAC funds for questionable purposes after abandoning their own campaigns.

After Florida Congressman Dennis Ross announced in April 2018 that he would be retiring from Congress, his Taxpayers Incensed By Government Excess and Regulation (“TIGER”) PAC stopped raising money—but it didn’t stop spending. According to TIGER PAC’s second and third quarter reports, it spent \$525 at Hemmingway’s Rum Company in Key West,¹⁴ \$294 for “travel” at the Chateau La Coste vineyard in Provence, France,¹⁵ \$228 for “travel” with His & Hers Limousines in Florida,¹⁶ \$216 for “event expenses” at Grapevine Wine & Spirits in Florida,¹⁷ and almost \$14,000 in airfare.¹⁸ Throughout that period, TIGER PAC did not report receiving any contributions, nor did it report making any contributions.¹⁹ Even when TIGER PAC’s earlier spending is taken into account, only 5.6 percent of its overall spending in the 2018 cycle went towards contributions to other candidates or political committees.²⁰

In early 2018, New York Congressman Joe Crowley had been described as an officeholder with leadership aspirations,²¹ and contributions to other candidates had made up a majority of Crowley’s Jobs, Opportunities and Education (“JOE”) PAC’s spending throughout 2017 and the first half of 2018. However, after Crowley lost his primary in June 2018, JOE PAC’s spending patterns shifted. In July 2018, the first month after Crowley’s primary loss, JOE PAC made \$0 in contributions to other candidates or committees, but it did pay \$17,768 to the New York Racing Association for “tickets for fundraising event & catering,”²² which was more than five times the amount JOE PAC raised that month.²³ Over the remainder of the 2018 campaign, JOE PAC made \$7,223 in contributions, yet also reported \$1,685 for

¹⁴ TIGER PAC, 2018 October Quarterly, FEC Form 3X, at 12 (filed Oct. 15, 2018), <http://docquery.fec.gov/pdf/500/201810159125005500/201810159125005500.pdf>.

¹⁵ *Id.* at 7.

¹⁶ TIGER PAC, 2018 July Quarterly, FEC Form 3X, at 14 (filed July 15, 2018), <http://docquery.fec.gov/pdf/574/201807159115507574/201807159115507574.pdf>.

¹⁷ TIGER PAC, 2018 October Quarterly, *supra* note 14, at 8.

¹⁸ *Id.* at 6, 8-13; TIGER PAC, 2018 July Quarterly, *supra* note 16, at 6-11, 13-18.

¹⁹ TIGER PAC, 2018 July Quarterly, *supra* note 16, at 3; TIGER PAC, 2018 October Quarterly, *supra* note 14, at 3.

²⁰ OpenSecrets, *Taxpayers Incensed by Government Excess: Expenditures, 2018 cycle*, CENTER FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/pacs/expenditures.php?cycle=2018&cmte=C00493239> (last visited Nov. 14, 2018).

²¹ See David Hawkings, *Joseph Crowley, 56 Years Young and Ready to Succeed the Old Guard*, ROLL CALL (Apr. 11, 2018), <https://www.rollcall.com/news/hawkings/joseph-crowley-democratic-leadership>.

²² JOE PAC, 2018 August Monthly, FEC Form 3X, at 4, 7 (filed Aug. 20, 2018), <http://docquery.fec.gov/pdf/335/201808209120022335/201808209120022335.pdf>.

²³ *Id.* at 3.

“catering” at the Saratoga Racetrack plus \$6,450 for hotels and meals in Saratoga Springs, New York around the same date.²⁴

The risk of corruption associated with the conversion of leadership PAC contributions to personal use is amplified given that leadership PACs are generally subject to higher contribution limits than authorized committees. A candidate’s authorized committee may only accept contributions of up to \$2,700 per election from an individual, *see* 52 U.S.C. § 30116(a)(1)(A), but a leadership PAC that qualifies for multicandidate status may accept contributions of up to \$5,000 per year, *id.* § 30116(a)(1)(C). In a two-year election cycle, a Congressman may accept only up to \$5,400 in contributions from an individual to their authorized committee, but may accept \$10,000 from that same individual to their leadership PAC. A U.S. Senator operating on a six-year election cycle may only accept \$5,400 from an individual donor to their campaign committee, but can take \$30,000 from that same individual for their leadership PAC.

The Commission authorized leadership PACs with the understanding that the federal candidate or officeholder controlling the leadership PAC would use the funds raised to support other candidates and party committees. *See* Advisory Opinion 1978-12 (Waxman). As the Commission noted in its 2002 Notice of Proposed Rulemaking on Leadership PACs:

The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder’s travel when campaigning for other Federal candidates. The monies may also be used to make contributions to party committees, including State party committees in key states, or donated to candidates for State and local office.²⁵

The Commission has also described leadership PACs as “organizations set up by congressional leaders and other Federal candidates and officeholders as a way to support other candidates’ campaigns.”²⁶

²⁴ JOE PAC, 2018 September Monthly, FEC Form 3X, at 4 (amended Oct. 19, 2018), <http://docquery.fec.gov/pdf/703/201810199125776703/201810199125776703.pdf> (showing, on line 23, \$7,000 in contributions to other candidates or political committees in the month of August); JOE PAC, 2018 October Monthly, FEC Form 3X, at 4, 16, 18-19 (filed Oct. 19, 2018), <http://docquery.fec.gov/pdf/960/201810199125776960/201810199125776960.pdf> (showing \$0 in contributions to other candidates or political committees during the month of September, \$1,685 for “catering” at the Saratoga Racetrack, and \$6,450 at hotels and restaurants in Saratoga Springs); JOE PAC, 2018 Pre-General, FEC Form 3X, at 4 (filed Oct. 25, 2018), <http://docquery.fec.gov/pdf/941/201810259133327941/201810259133327941.pdf> (showing an additional \$223 in contributions to other candidates or political committees).

²⁵ 67 FR 78754.

²⁶ Notice of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 35654, 35672 (May 20, 2002).

But in the absence of clear guidance from the Commission, federal candidates and officeholders have routinely used leadership PAC funds for purposes other than supporting other candidates and party committees. Instead, some candidates and officeholders are using leadership PAC funds in ways that appear to constitute personal use—and which would likely be prohibited if made from a candidate’s or officeholder’s authorized committee.

In sum, the Commission has a plain statutory mandate to apply the personal use prohibition to leadership PACs, and the examples described above and in our original petition provide compelling reasons for doing so.

As noted in our original petition, the Commission could amend section 113.1(g) to state:

Personal use means any use of funds in a campaign account *or leadership PAC account* of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

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

Sincerely,

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Rep. Peter Smith (R-VT)

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Rep. Rod Chandler (R-WA)

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Rep. Claudine Schneider (R-RI)

_____ /s/ _____

Rep. John Tanner (D-TN)