

March 24, 2021

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Commission Secretary  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

**Re: Agenda Document No. 21-14-B, Draft Interpretive Rule on Use of Campaign Funds  
by Members of Congress for Personal and Residential Security**

Dear Commission Secretary:

We submit the following comments on behalf of the DCCC and DSCC regarding the Revised Draft Interpretive Rule on Use of Campaign Funds by Members of Congress for Personal and Residential Security (the “Draft Interpretive Rule”), Agenda Document No. 21-14-B. The DCCC and the DSCC are national committees of the Democratic Party dedicated to electing Democratic members to the United States House of Representatives and the United States Senate, respectively. The DSCC and the DCCC appreciate the Commission’s efforts to provide clarity in this important matter so that Members may ensure their personal safety while complying with the law. We submit these comments to address a few specific concerns with the Draft Interpretive Rule as written.

*First*, the Draft Interpretive Rule fails to specify that only bona fide security personnel may be compensated with campaign funds, opening the door to the improper use of campaign funds to compensate fringe militia groups under the guise of a legitimate security expense. *Second*, the Draft Interpretive Rule breaks from Federal Election Commission (“FEC” or “Commission”) precedent by requiring an outside third party to certify that conditions exist to justify the use of campaign funds for a specific purpose, rather than leaving that determination up to each individual Member of Congress. *Third*, the Draft Interpretive Rule permits the use of campaign funds to hire personal security personnel only to protect immediate family “residing with the member,” thereby ignoring the non-traditional family arrangements of Members who may not reside with their minor children full-time.

We strongly encourage the Commission to revisit the Draft Interpretive Rule to address these concerns in order to ensure that Members of Congress are able to procure the necessary security to protect themselves and their families, and that campaign funds are not improperly used to fund groups organized to harass and intimidate political opponents.

**A. The Draft Interpretive Rule Should Clarify that it is Intended to Condone the Use of Campaign Funds to Only Hire *Bona Fide* Personal Security Personnel**

In the past election cycle, some individuals who are now Members of Congress displayed troubling ties to extremist groups, including some self-proclaimed “militias,” such as the Proud Boys, the Oath Keepers, and the Three Percenters.<sup>1</sup> In some cases, these groups purported to provide “security” at events attended by Congressional candidates and Members of Congress.<sup>2</sup>

We fully agree with the Commission that the use of campaign funds for “personal security personnel” constitutes “ordinary and necessary expenses incurred in connection with duties of . . . a holder of Federal office.” However, we urge the Commission to make clear that it is only *bona fide* personal security that falls within this allowance. Payments to the types of fringe political groups that purport to provide “security” to campaigns, but in fact intend to harass or intimidate those with views opposed to the candidates or Members of Congress they support, should not under any circumstances be considered an ordinary and necessary expense incurred in connection with the duties of a Member.

We therefore encourage the Commission to require that payments for “personal security personnel” be made to *bona fide* security firms or other qualified security professionals, and not ideological groups or individuals that intend to intimidate or harass a Member of Congress’s political opponents. By clarifying that the use of campaign funds in this instance is limited to qualified security personnel, the Commission can avoid endorsing the use of campaign funds to support extremist groups that undermine our national security.

**B. Statements from Capitol Police or the Sergeant at Arms Should not be Required**

The Draft Interpretive Rule proposes separate examples of when the Commission would interpret expenses for residential security and personal security personnel to be “ordinary and necessary expenses incurred in connection with duties of . . . a holder of Federal office.”<sup>3</sup> For residential security, the Draft Interpretive Rule requires that “the U.S. Capitol Police, the Office of the Sergeant at Arms of the U.S. House of Representatives, or the Office of the Sergeant at Arms of the U.S. Senate (collectively, “U.S. Capitol Law Enforcement Offices”) has recommended that members of Congress use residential security systems.”<sup>4</sup> For personal security personnel, the Draft Interpretive Rule requires that “one or more of the U.S. Capitol Law Enforcement Offices has recommended that members of Congress use personal security personnel due to the heightened threat environment facing members of Congress generally or that the individual

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<sup>1</sup> Luke Broadwater and Matthew Rosenberg, “Republican Ties to Extremist Groups Are Under Scrutiny,” NYTimes (Jan. 29, 2021) <https://www.nytimes.com/2021/01/29/us/republicans-trump-capitol-riot.html>.

<sup>2</sup> *Id.*

<sup>3</sup> 52 U.S.C. § 30114(a)(2).

<sup>4</sup> Draft Interpretive Rule at 7.

member use personal security personnel due to a specific threat to the member related to his or her officeholder status.”<sup>5</sup>

As the Draft Interpretive Rule itself points out, threats against Members of Congress are constantly evolving, requiring “a proactive rather than reactive response” in order for Members to adequately protect themselves and their families.<sup>6</sup> It is the individual Members and their campaigns who are in the best position to assess and react to sudden and evolving threats. Conditioning the permissibility of security related spending on a determination or recommendation of law enforcement organizations poses an unnecessary burden to Members and is inconsistent with Commission precedent.

Although the Sergeant at Arms advised all Members of Congress in 2017 to install or upgrade residential security systems due to the threat environment, and the Commission assumes that recommendation is still in effect, that guidance could be rescinded or amended at any time, creating uncertainty about the permissibility of residential security expenditures. The Draft Interpretive Rule previews that uncertainty by stating that the interpretive rule will expire two years after the effective date. Upon expiration of the interpretive rule, Members will be left with further uncertainty regarding the permissibility of using campaign funds to protect themselves and their families.<sup>7</sup>

In addition, to our knowledge, there has not been a determination by any U.S. Capitol Law Enforcement office “that members of Congress use personal security personnel due to the heightened threat environment facing members of Congress generally or that [any] individual member use personal security personnel due to a specific threat to the member related to his or her officeholder status.”<sup>8</sup> Including these requirements in the final interpretive rule would leave Members in an immediate state of uncertainty regarding whether the use of personal security personnel is an ordinary and necessary expense incurred in connection with their duties as Federal officeholders, regardless of the level of threat any individual Members or their families face.

The Commission has long recognized that the law gives broad discretion to campaigns in the use of campaign funds, so long as funds are not used for “personal use,” defined as the use of campaign funds to “fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or duties as a Federal officeholder.”<sup>9</sup> To our

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<sup>5</sup> *Id.*

<sup>6</sup> *See id.* at 5.

<sup>7</sup> *See id.* at 8.

<sup>8</sup> *See id.* at 7.

<sup>9</sup> *See e.g.*, Disclaimers, Fraudulent Solicitation, and Personal Use of Campaign Funds, 67 Fed. Reg. 76962, 76972 (Dec. 13, 2002) (“As the Commission has previously stated, under the Act and Commission regulations, a candidate and the candidate’s campaign committee have wide discretion in making expenditures to influence the candidate’s

knowledge, never in its interpretation of the permissible uses of campaign funds has the Commission required a third party - other than the campaign or the FEC itself - to rule on whether a given expenditure would exist irrespective of the candidate's election campaign or duties as a Federal officeholder. But here, the Commission proposes to make the recommendation of U.S. Capitol Law Enforcement Offices a necessary factor in its interpretation that security expenses - for either residential or personal security - are permissible uses of campaign funds.<sup>10</sup> This is particularly unnecessary in this context, where there is less room for abuse of the personal use restriction than there is with other categories of expenses normally analyzed on a case-by-case basis, such as meals and travel.

This one size fits all approach is unnecessary and burdensome. Members and their campaigns are best situated to accurately assess the need for any specific types of security measures. The level of the threat environment and nature of specific threats are far from identical among Members. As long as an expense is directly and legitimately related to ensuring the security and safety of a Member and his or her family against a threat arising from the Member's elected status, the expense should be considered a permissible use of campaign funds.

We therefore encourage the Commission to remove the prerequisite that U.S. Capitol Law Enforcement offices make a specific determination or recommendation before security expenses will be considered "ordinary and necessary expenses incurred in connection with duties of . . . holder of Federal office."<sup>11</sup> Instead, it should be sufficient for Members to show that security expenses - for either residential security or personal security services - are directly related to protecting the Member and his or her family against threats that result from the Member's status as a Federal officeholder. Members and their campaigns are in the best position to understand the threats they and their families face, and the Commission's guidance should allow them to make those determinations without relying on a third party. To do otherwise may cause unnecessary uncertainty and delay in Members' ability to take reasonable steps to ensure the safety of themselves and their families.

### **C. Members Should Be Permitted to Protect Immediate Family Members Regardless of Presence in the Member's Residence**

Section II of the Draft Interpretive Rule specifies that in order to constitute ordinary and necessary expenses in connection with duties of a Federal officeholder, "the use of campaign funds for personal security personnel [must be] for the member or the member's immediate family, including a spouse, minor children, or other relatives *residing with the member*."<sup>12</sup> This

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election, but may not convert excess campaign funds to personal use."); FEC Adv. Op. 1981-25; Adv. Op. 2011-02; citing 52 U.S.C. § 30114(a)(6); 11 C.F.R. § 113.2(e), (g).

<sup>10</sup> See Draft Interpretive Rule at 7.

<sup>11</sup> 52 U.S.C. § 30114(a)(2).

<sup>12</sup> See Draft Interpretive Rule at 8 (emphasis added).

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language suggests that the ability to provide personal security to family members is limited to family members residing with the Member and in doing so ignores the fact that in some cases, a Member's immediate family, including a Member's minor children, may not live with the Member full time. In such instances, where there are sufficiently specific threats to both the Member and the Member's immediate family due to the Members' status as a Federal officeholder, the Member should be able to use campaign funds to provide personal security to his or her immediate family, including a spouse or minor children, regardless of where they reside.

We recommend the Draft Interpretive Rule be revised to permit the use of campaign funds for personal security to protect a Member's immediate family, regardless of whether they reside with the officeholder.

Very truly yours,

A handwritten signature in blue ink, appearing to be "Marc E. Elias", written over a light blue horizontal line.

Marc E. Elias  
Jacquelyn K. Lopez  
Elizabeth P. Poston  
Shanna M. Reulbach

Counsel to the DSCC and DCCC