

May 20, 2021

Hon. Sean Cooksey
Commissioner
Federal Election Commission
1050 First St. NE
Washington, DC 20463

RE: Leadership PAC Personal Use (REG 2018-02)

Dear Commissioner Cooksey:

As organizations committed to the non-partisan enforcement and administration of campaign finance law, we write to address your recent interpretative statement regarding the personal use of campaign funds.¹

As you know, the ban on the conversion of campaign funds to personal use serves important anti-corruption purposes. As former Commissioner Brad Smith observed, “campaign funds are different from bribes because they are spent on the advocacy of the election of the candidate and/or the promotion of the candidate’s political positions.”² However, “if officeholders are free to spend contributions for personal enrichment,”³ then those contributions “begin to look more like personal gifts than an integral part of political speech, and opportunities are created for personal corruption.”⁴ In other words, it is one thing to contribute to a candidate in order to support their run for office; it is another to finance an officeholder’s country club dues or home renovation.

¹ Interpretative Statement of Comm’r Sean J. Cooksey (May 6, 2021), <https://www.fec.gov/resources/cms-content/documents/2021-05-06-Interpretative-Statement-of-Cmsr-Cooksey.pdf>.

² Dissent of Comm’r Bradley Smith from Advisory Opinion 2001-09, at 1 (July 18, 2001) (Kerrey), <https://www.fec.gov/files/legal/aos/2001-09/989492.pdf>.

³ *Id.* at 1-2.

⁴ *Id.* at 2.



Your statement accurately notes that the Commission has not historically enforced the personal use prohibition against leadership PACs. Indeed, our organizations have documented how officeholders from both parties have taken advantage of the Commission’s laxity by using leadership PACs as personal slush funds to subsidize their lifestyles.⁵

Yet as your statement acknowledges, the Commission can clarify the reach of the personal use prohibition—and limit these opportunities for corruption—with a formal rulemaking.⁶ We filed a petition for such a rulemaking in 2018,⁷ *see* REG 2018-02,⁸ and we encourage your support to amend 11 C.F.R. § 113.1(g) to address leadership PACs.

As described in the original petition, the Commission not only has the statutory *authority* to end the personal use exemption it has applied to leadership PACs, but in fact has a *mandate* to do so.

FECA states that “any contribution accepted by a candidate” cannot be converted to the “personal use” of the candidate or any other person. 52 U.S.C. § 30114(a), (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), so a contribution to a candidate’s leadership PAC is a “contribution accepted by a candidate” subject to the statutory personal use prohibition.

Moreover, the reason that the Commission has allowed officeholders to establish and accept contributions to leadership PACs is to support their duties as officeholders—

⁵ *See* CAMPAIGN LEGAL CTR. & ISSUE ONE, *All Expenses Paid: How Leadership PACs Became Politicians’ Preferred Ticket to Luxury Living* (July 2018), https://campaignlegal.org/sites/default/files/2018-07/All%20Expenses%20Paid%20-%20How%20Leadership%20PACs%20Became%20Politicians%27%20Preferred%20Ticket%20to%20Luxury%20Living_0.pdf.

⁶ Interpretive Statement, *supra* note 1, at 1, 3.

⁷ Campaign Legal Ctr. & Issue One, et al., Petition for Rulemaking to Revise and Amend Regulations Relating to the Personal Use of Campaign Funds (July 24, 2018), <https://sers.fec.gov/fosers/showpdf.htm?docid=399206>.

⁸ REG 2018-02, Leadership PACs’ Personal Use, FEC.gov (last updated Jan. 15, 2021), <https://sers.fec.gov/fosers/rulemaking.htm?pid=2933211>.

specifically, so that an officeholder may “support other candidates' campaigns”⁹ in order “to gain support when the officeholder seeks a leadership position in Congress.”¹⁰ FECA’s personal use prohibition covers any contribution accepted “by an individual as support for activities of the individual as a holder of Federal office,” 52 U.S.C. § 30114(a), (b)(1), which includes contributions to a leadership PAC.

In short, the plain text of the statutory personal use prohibition applies to leadership PAC contributions, but the Commission’s current regulations have narrowed the statute. The Commission should proceed with a formal rulemaking to clarify that the personal use prohibition applies to leadership PACs.

Finally, we wish to correct a mischaracterization in your interpretive statement. You wrote:

The Commission’s regulations provide that the personal-use restriction applies only to the “use of funds *in a campaign account*”—that is, an account of a campaign committee for a federal candidate. Once an authorized candidate committee dispenses funds for a lawful purpose, including making permissible contributions or donations to other organizations, the funds are, by definition, no longer *in* the campaign account. They become the property of the recipient organization and may be used just like any other funds the recipient raises. The personal-use restriction is not tied to the funds, and there is no obligation under the Act or Commission regulations to trace, segregate, or restrict the use of funds that originate from a campaign account once those funds have been transferred.¹¹

This paragraph is inconsistent with statutory law and Commission precedent.

First, as noted above, the statutory personal use ban applies to 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” (emphases added). Thus, the ban attaches to the funds upon their receipt by the candidate or individual. The

⁹ Notice of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 35654, 35672 (May 20, 2002).

¹⁰ *Id.* at 78754.

¹¹ Interpretive Statement, *supra* note 1, at 2 (emphasis in original).

ban is not triggered by—or contingent on—the money being located in a particular bank account.

Second, the paragraph in your interpretive statement appears to overlook extensive Commission precedent applying the personal use ban—consistent with the statute—to funds that are received by a campaign committee and then transferred to other accounts.

For example, the Commission has long advised that when a former candidate converts their principal campaign committee to a multicandidate committee, any contributions received when a committee was still a principal campaign committee remain subject to the personal use ban.¹² Likewise, the Commission has interpreted the statutory personal use ban to prohibit donations of campaign funds to a charitable organization that would use the funds to pay compensation to the candidate,¹³ and to prohibit the use of campaign funds to purchase a candidate’s book if the candidate receives royalties on those purchases.¹⁴ The fact that the funds were no longer “*in the campaign account*” at the time a charity paid candidate compensation, or a publisher paid candidate royalties, had no bearing on the Commission’s conclusion that the personal use prohibition applied to those funds.

We stand ready to assist you and the Commission in these and other matters,

/s/
Adav Noti
Chief of Staff, Campaign Legal Center

/s/
Meredith McGehee
Executive Director, Issue One

¹² See FEC, *Campaign Guide for Congressional Candidates and Committees* at 123 (June 2014), <https://www.fec.gov/resources/cms-content/documents/candgui.pdf> (“[T]he Commission has explicitly permitted a principal campaign committee to become a multicandidate committee . . . Note that the prohibition on converting campaign funds to personal use still applies to such a committee”); see also Advisory Opinion 2012-06 (Perry) at note 2; Advisory Opinion 2004-03 (Dooley for the Valley) at 3; Advisory Opinion 1993-22 (Roe) at 3.

¹³ 11 C.F.R. 113.1(g)(2); see also, e.g., Advisory Opinion 2012-05 (Lantos), Advisory Opinion 1983-27 (McDaniel).

¹⁴ See, e.g., Advisory Opinion 2014-10 (Farr) at 2-3; Advisory Opinion 2014-06 (Ryan) at 5; Advisory Opinion 2011-02 (Brown) at 5-6; Advisory Opinion 2006-18 (Haworth); Advisory Opinion 2001-08 (Specter) at 3.