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 May 8, 2019

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Jeff S. Jordan, Assistant General Counsel  
 Federal Election Commission  
 Office of Complaints Examination  
 & Legal Administration  
 1050 First Street, NE  
 Washington, D.C. 20463  
**ATTN: Kathryn Ross, Paralegal**

**Re: MUR 7579**

Dear Mr. Jordan:

We are legal counsel for Congresswoman Rashida Tlaib, Rashida Tlaib for Congress, and its Treasurer, Soh Suzuki, in this matter.

This is their response to the meritless allegations in the complaint.

I. Introduction

Under *Heckler v. Chaney*, 470 U.S. 821 (1985), the FEC has broad prosecutorial discretion to dismiss matters that do not warrant expenditure of FEC resources. This is such a matter – the complaint is a poorly drafted, mistake-filled<sup>1</sup> hodgepodge of rumor-based allegations with no evidence submitted to support it.

Should the Commission decide to investigate, it should make a determination of “no reason to believe” under its enforcement policies in “Matters at the Initial Stage of Enforcement Process,” 72 Fed. Reg. 12,545 (2007). The residency and fellowship allegations “fail to describe a violation of the Act.” *Id.* at 546. As to the salary payment allegations, the “evidence convincingly demonstrates that no violation has occurred.” *Id.*

II. Residency

The complaint alleges that Congresswoman Tlaib “ran for a district she did not live in.”

This is meritless for several reasons. First, at all relevant times here, she has lived in the 13<sup>th</sup> Congressional District at 680 Delaware Street, #303, Detroit as demonstrated

<sup>1</sup> For example, it states that Congresswoman Tlaib “decided to run for John Conner’s seat.” She sought the seat formerly represented by longtime Congressman John Conyers.

by her driver's license (copy attached)<sup>2</sup> and every form she has filed with the state election authorities and the FEC. See, e.g., FEC Form 2; sample nominating petition sheet (attached). The complaint has provided no proof otherwise.

Second, even if she lived outside the district – and she does not – under the Constitution, she need only be a resident of Michigan to serve in Congress from Michigan – residency in the district is not required. See U.S. Const. Art. I, § 2. Thus even if the allegation was true, and it isn't, it doesn't make out a legal violation.

Finally, of course, the FEC does not even have jurisdiction over such allegations because they do not involve the FECA.<sup>3</sup>

### III. Salary

As reported to the FEC, Congresswoman Tlaib received a total salary from the campaign of \$45,500 in 2018 as permitted by 11 CFR § 113.1(g)(1)(i)(I). The complaint does not dispute the receipt of a salary or the amount, both of which were lawful. It alleges only that the timing of two salary payments was improper, \$2,000 on November 16, 2018 and \$15,500 on December 1, 2018.

The complaint is wrong. All salary payments were for the covered period prior to the November 6, 2018 general election and their timing did not violate the FECA or its regulations.

#### A. Facts

In 2018, the Congresswoman was a first-time federal candidate and the single mother of two boys. Before running for Congress, the Congresswoman supported her family on her own as a full-time employee at the Sugar Law Center for Economic & Social Justice ("Sugar Law Center") and as the recipient of a community organizing fellowship. She quickly realized that continued, full-time employment was inconsistent with the conduct of a successful campaign. Accordingly, Congresswoman Tlaib terminated her organizing fellowship at the end of 2017, and on May 1, 2018, she cut her employment at the Sugar Law Center by 85 percent, reducing her total income to about \$200 per week.

FEC regulations permit campaigns to pay a salary to candidates who have forgone outside employment to focus on their campaigns. See 11 C.F.R. §113.1(g)(1)(i)(I). This rule was promulgated in response to observations that "persons of average means need

<sup>2</sup> In Michigan when a driver changes residence, the State issues a sticker for the back of the license which has the new address and effective date. As evidenced by the sticker on the back of Tlaib's license, she moved to the Delaware Street address effective January 30, 2018 and has lived there ever since.

<sup>3</sup> Although not clear, the complaint apparently raises some issues about her residency in 2008 and 2010 when she served in state elected office. These allegations are false and are also beyond the FEC's jurisdiction in any event.



a salary in order to pay expenses while running for office.” See 67 Fed. Reg. 76,962, 76,972 (Dec. 13, 2002). Initially, Congresswoman Tlaib did not seek to avail herself of this allowance. However, she had not anticipated how quickly family expenses would mount upon drastically reducing her income. On April 4, the Congresswoman emailed her campaign manager Andrew Goddeeris and consultant Steve Tobocman confessing that she was struggling financially and that between rent and mortgage, she was sinking. Several weeks later, she told them she’s not going to make it through the campaign financially. As an emergency measure, she requested \$2,000 per two weeks for much needed expenses due to campaigning that included car maintenance, child care, and other necessities. Having not yet received assistance, on May 7 she informed campaign staff that she would substantially increase her work at the Sugar Law Center, curtailing her campaign activities until noon each day.

Mr. Goddeeris informed Congresswoman Tlaib that under campaign finance regulations, she was allowed to receive about \$7,900 per month in salary from the campaign committee, but warned that she might face baseless political retribution for allegedly using her campaign funds to enrich herself. On the other hand, Mr. Goddeeris reasoned, if Congresswoman Tlaib dedicated large portion of each day to outside employment, it would significantly impact campaign activities.

Shortly thereafter the campaign decided to pay the Congresswoman a salary, although it was understood that the salary would fall well below the maximum amount permitted and would be paid according to the availability of resources. Thus the campaign paid Congresswoman Tlaib a salary, but not the full amount permitted. As public FEC records show, the campaign made a payment of \$2,000 on November 16, 2018 – that was part of her pre-election salary. The campaign also made a single final payment to the Congresswoman on December 1, 2018. The campaign made that payment in order to make up some – though not all – of the difference between what she has been permitted to receive for services provided through Election Day, November 6, 2018, and what the campaign had actually paid her for those same services.

## B. Legal Analysis

### 1. Congresswoman Tlaib's salary was well below the maximum allowed.

The Committee properly calculated the maximum salary Congresswoman Tlaib could receive under 11 CFR 113.1(g)(1)(i)(I). As reported to the U.S. House, her 2017 earned income was \$129,357 which was less than the \$174,000 annual salary of a U.S. Representative. The total amount paid to Tlaib in 2018, \$45,500, was well below the pro rata maximum allowed. See *id.*

2. Making a candidate salary payment after the general election for the pre-election period was legal.

Analysis begins with the text of the governing regulation:

If the candidate wins the primary election, his or her principal campaign committee may pay him or her a salary from campaign funds through the date of the general election...

11 CFR 113.1(g)(1)(i)(I) (emphasis added). This language does not expressly require payment of the salary by the date of the general election or the regulation would have so stated (e.g., "salary payment shall be made on or before the date of general election"). Instead, the date of the general election is simply the end of the term or period of employment because it is the end of the campaign. It is not a deadline for a payment.<sup>4</sup> A candidate can be paid after the election for salary accrued before the election.

The FEC has interpreted the regulation consistent with this reading.

In MUR 7068 (Mowrer for Iowa) the FEC addressed the situation in which a candidate received 1) a post-election salary payment for a portion of the pre-election covered period, and 2) a post-election salary payment for a post-election time period. The General Counsel's Legal Analysis indicated that the "controlling factor" was the period covered by the salary. Thus, the post-election salary payment for the period before the general election was permissible while payment for any period after the election was not. See MUR 7068 First General Counsel's Report at 6 & n. 23; MUR 7068 Conciliation Agreement at 3-6 (2018) (excluding post-election payment for the pre-election period from the calculation of excessive salary paid).

The same principle applies here – the November 16, 2018 salary payment of \$2,000 was for the covered period prior to the general election. The final December 1, 2018 payment of \$15,500 was also for the covered pre-election period, representing some of the salary Tlaib was owed but not paid due to the campaign's lack of resources prior to the general election.<sup>5</sup>

<sup>4</sup> The FEC's Explanation and Justification for 11 CFR 113.1(g)(1)(i)(I) sheds no light on the instant question but certainly does not prohibit post-election payment of a salary obligation incurred pre-election as here.

<sup>5</sup> This situation is not remotely like the circumstances in MUR 5787 (Kalyn Free) where months after a candidate lost an election, post-election salary payments were reported for the first time, and the candidate later claimed that there had been a prior agreement for a salary entirely deferred until the end of the campaign. See First General Counsel's Report at 2, 4-5, 7-8. Here, the public has been fully apprised of the salary payments in FEC reports, the entire salary was not deferred, and the post-election payments were for salary accrued but not paid prior to the general election.



This analysis and result are also consistent with the FEC's regulatory treatment of unpaid campaign employees. In 11 CFR §116.6 the FEC has long recognized (the regulation was adopted in 1990) that cash flow issues are common in campaigns resulting in delayed payment to employees of their agreed upon and earned salaries.<sup>6</sup>

That regulation provides political committees with options to handle that situation. Allowing the Committee to fulfill its agreed upon salary obligation to Tlaib after the election is consistent with 11 CFR 116.6.

The salary payments were proper and this allegation is baseless.

IV. Leadership in Government Fellowship

The complaint finally alleges that Tlaib "refuse[d] to disclose who the organization was that was paying" her the Fellowship in 2017. This is not only false – her financial disclosure form filed with the U.S. House made all the necessary disclosures and the U.S. House has asked for nothing further – but this issue is also not within the jurisdiction of the FEC.

V. Conclusion

For all these reasons this frivolous complaint should be dismissed.

Sincerely,



Mark Brewer

cc: Hon. Rashida Tlaib  
Andrew Goddeeris  
Soh Suzuki

<sup>6</sup> The Explanation and Justification for this regulation is replete with references to campaign cash flow problems as the source of this regulation. See 55 Fed. Reg. at 26,383 (1990).

MICHIGAN MI USA

DRIVER LICENSE



DOB [REDACTED]

ISS  
EXP [REDACTED]

RASHIDA HARBI TLAIB

1428 17TH ST  
DETROIT, MI 48216-1813

Sex [REDACTED]

Hgt [REDACTED]

Eyes [REDACTED]

Lic Type [REDACTED]

End [REDACTED]

*Rashida Tlaib*

DDI [REDACTED]

680 DELAWARE ST APT 303  
DETROIT

MI 48202

1-30-18



## INSTRUCTIONS ON REVERSE SIDE

00057

# NOMINATING PETITION

(COUNTYWIDE PARTISAN)

\* The "Countywide" Partisan Petition form may be used by any partisan candidate. Exception: the form may not be used by a partisan candidate who seeks the office of County Commissioner; such candidates must use the "City/Township" Partisan Petition form.

We, the undersigned, registered and qualified voters of the County of Wayne, and State of Michigan, nominate Rashida Tlaib 680 Delaware, #303  
(Name of Candidate) (Street Address or Rural Route)  
Detroit, as a candidate of the Democratic Party for the office of U.S. Representative in Congress / January 3, 2021 13TH  
(City or Township) (Title of Office/Term Expiration Date) (District, if Any)  
to be voted for at the Primary Election to be held on the 7TH day of August, 20 18

**WARNING - A PERSON WHO KNOWINGLY SIGNS MORE PETITIONS FOR THE SAME OFFICE THAN THERE ARE PERSONS TO BE ELECTED TO THE OFFICE, SIGNS A PETITION MORE THAN ONCE, OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.**

Indicate City or Township in Which Registered to Vote	Signature	Printed Name	Street Address or Rural Route	Zip Code	DATE OF SIGNING Month Day Year
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Jennifer L. Craighead</u>	Jennifer L. CRAIGHEAD	3909-11TH	48229	04 08 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Calvin G. L. H. H.</u>	CALVIN G. L. H. H.	3794 10th	48229	4 8 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Nicholas J. Enright</u>	Nicholas J. Enright	4337 - 5th	48229	4 8 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Christopher A. Marcott</u>	CHRISTOPHER A. MARCOTT	4389 - 7th	48229	4 8 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Linda D. Crawford</u>	LINDA D. CRAWFORD	4223 7th	48229	4 8 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Isabel C. Gray</u>	Isabel C. Gray	4323 7th	48229	4 8 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Gerald M. D. D.</u>	GERALD M. D. D.	4236 16th	48229	4 08 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Shirley L. D. D.</u>	SHIRLEY L. D. D.	4236 16th	48229	4 09 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Dennis E. Breakfield Jr</u>	DENNIS E. BREAKFIELD JR	4231 9th	48229	4 09 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Ida G. G.</u>	Ida G. G.	4242 - 9th	48229	4 09 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Kismet M. D. D.</u>	KISMET M. D. D.	4315 9th	48229	4 09 18
CITY OF TOWNSHIP OF <u>ECORSE</u>	<u>Henrietta R. R.</u>	HENRIETTA R. R.	205 B E. C. H. W. D.	48229	4 09 18
CITY OF TOWNSHIP OF <u>ECORSE</u>					
CITY OF TOWNSHIP OF <u>ECORSE</u>					

## CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on this petition sheet is valid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

☐ If the circulator is not a resident of Michigan, the circulator shall make a cross [X] or check mark [✓] in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

**WARNING - A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.**

## CIRCULATOR — DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

Lisa Jencer 4/12/18  
(Signature of Circulator) (Date)  
Lisa Jencer  
(Printed Name of Circulator)  
26380 Dundee Rd  
(Complete Residence Address [Street and Number or Rural Route]) - [Do not enter a post office box]  
Huntington Woods, MI 48070  
(City or Township, State, Zip Code)

(County of Registration, If Registered to Vote, of a Circulator who is not a Resident of Michigan)