



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 13, 2021

BY ELECTRONIC MAIL ONLY

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Mark Brewer, Esq.
Goodman Acker P.C.
17000 West Ten Mile, Second Floor
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RE: MUR 7579
Rashida Tlaib for Congress and Soh
Suzuki in his official capacity as
treasurer
Rashida Tlaib

Dear Mr. Brewer:

On March 20, 2019, the Federal Election Commission notified your clients, Rashida Tlaib for Congress and Soh Suzuki in his official capacity as treasurer and Rashida Tlaib, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at the time. Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on December 2, 2021, voted to dismiss the matter and close the file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

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If you have any questions, please contact Thaddeus H. Ewald, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Rashida Tlaib for Congress MUR 7579
and Soh Suzuki in his official capacity
as treasurer
Rashida Tlaib

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”).¹ The Complaint alleges that Rashida Tlaib for Congress and Soh Suzuki in his official capacity as treasurer (“Committee”) and Rashida Tlaib (collectively, “Respondents”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations by converting campaign funds to personal use by making two candidate salary payments to Tlaib after the date of the general election.²

As set forth below, the Commission exercises its prosecutorial discretion and dismisses the allegation that Respondents violated 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g)(1)(i)(I) by converting campaign funds to personal use.

II. FACTUAL AND LEGAL ANALYSIS**A. Factual Background**

Rashida Tlaib was a first-time candidate in Michigan’s 13th Congressional District in 2018.³ During the first four months of 2018 she worked full-time at Sugar Law Center for

¹ See 52 U.S.C. § 30109(a)(1).

² The Complaint also alleges Tlaib violated the law by running in a Congressional district in which she did not live and refusing to disclose income and the source thereof on her financial disclosure forms for the U.S. House of Representatives upon her election. The Commission lacks jurisdiction to consider these allegations.

³ See Rashida Tlaib for Congress Resp. at 2 (May 13, 2019) (“Tlaib Resp.”). Tlaib won the Democratic primary election on August 7, 2018, and won the general election on November 6, 2018. See FEC, FEDERAL ELECTIONS 2018: ELECTION RESULTS FOR THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES (Oct. 2019), <https://www.fec.gov/resources/cms-content/documents/federalections2018.pdf>.

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1 Economic & Social Justice in Detroit.⁴ On May 1, 2018, Tlaib reduced her employment by 85%,
2 reducing her total income to about \$200 per week.⁵ During the candidate’s primary election
3 campaign and carrying on through the general election campaign, the Committee paid Tlaib a bi-
4 weekly salary of \$2,000.⁶ The Complaint identifies two salary payments totaling \$17,500 that
5 were disbursed to Tlaib after the November 6, 2018, general election: \$2,000 on November 16,
6 2018, and \$15,500 on December 1, 2018.⁷

7 According to the Complaint, these payments violated the Act and Commission
8 regulations because they were made after Tlaib won the general election on November 6, 2018,
9 and was no longer a candidate.⁸ Respondents contend that “[a]ll salary payments were for the
10 covered period prior to the November 6, 2018 general election,” and therefore do not violate the
11 Act or Commission regulations.⁹

12 While this matter was pending with the Commission, the Office of Congressional Ethics,
13 on April 13, 2019, commenced a preliminary review into the Committee’s salary payments to

⁴ Tlaib Resp. at 2; *see* SUGAR LAW CTR., <https://www.sugarlaw.org/> (last visited Mar. 26, 2021).

⁵ Tlaib Resp. at 2.

⁶ The Committee made its first salary payment to Tlaib on May 7, 2018, *see* Rashida Tlaib for Congress, 2018 July Quarterly Report at 298 (July 15, 2018), and through December 1, 2018, the Committee disbursed a total of \$45,500 in salary payments to Tlaib. *See* Rashida Tlaib for Congress, 2018 July Quarterly Report at 298-99 (July 15, 2018); Rashida Tlaib for Congress, 2018 12-Day Pre-Primary Report at 113 (July 26, 2018); Rashida Tlaib for Congress, Amended 2018 October Quarterly Report at 291-92 (Nov. 26, 2018); Rashida Tlaib for Congress, 2018 12-Day Pre-General Report at 87-88 (Oct. 25, 2018); Rashida Tlaib for Congress, 2018 30-Day Post-General Report at 90 (Dec. 5, 2018); Rashida Tlaib for Congress, 2018 Year-End Report at 32 (Jan. 22, 2019); *see also* Tlaib Resp. at 2.

⁷ Compl. at 1-2 (Mar. 15, 2019). The Complaint references the Washington Free Beacon as the source of the allegations, but does not cite a specific article. *See id.* at 1; Joe Schoffstall, *Rashida Tlaib Paid Herself \$45,500 from Campaign Funds*, WASH. FREE BEACON (Mar. 1, 2019), <https://freebeacon.com/politics/rashida-tlaib-paid-herself-45500-from-campaign-funds/>.

⁸ Compl. at 1.

⁹ Tlaib Resp. at 2-5. In particular, Respondents argue that, under their interpretation, Commission regulations permit payment of salary covering time through the date of the general election but do not require that payment to be made *by* the date of the general election. *Id.* Respondents further assert that the total salary paid to Tlaib in 2018 (\$45,500) did not exceed the maximum amount allowed because it was less than her 2017 earned income (\$129,357) and less than the annual salary of a U.S. Representative (\$174,000). *Id.* at 3.

1 Tlaib and then on August 16, 2019, referred the matter to the U.S. House of Representatives
2 Committee on Ethics (“House Ethics Committee”) for further investigation.¹⁰ On July 23, 2020,
3 the House Ethics Committee completed its investigation and issued a report with its findings and
4 conclusions on August 7, 2020.¹¹ The report concluded that \$10,800 of the Committee’s post-
5 election salary payments to Tlaib corresponding to post-election periods were “inconsistent with
6 [the Act]’s personal use restrictions.”¹² As a result, the House Ethics Committee directed Tlaib
7 to reimburse her campaign \$10,800 within a year of August 7, 2020.¹³ The Committee’s
8 disclosure reports show that Tlaib made the required reimbursements in seven installments
9 between November 13, 2020, and August 3, 2021.¹⁴

¹⁰ See OFFICE OF CONG. ETHICS, FINDINGS OF FACT AND CITATIONS TO LAW AND EXHIBITS, REVIEW NO. 19-4114 at 1 & ¶ 10 (Aug. 9, 2019) (“OCE Report”), https://oce.house.gov/sites/congressionaletics.house.gov/files/documents/OCE%20Review%20No.%2019-4114_Referral.pdf; <https://oce.house.gov/sites/congressional.ethics.house.gov/files/documents/Referral%20Exhibits.pdf>. On August 9, 2019, the Office of Congressional Ethic (“OCE”) found that there is “substantial reason to believe that Rep. Tlaib converted campaign funds from Rashida Tlaib for Congress to personal use or Rep. Tlaib’s campaign committee expended funds that were not attributable to bona fide campaign or political purposes” and voted to refer the matter to the House Ethics Committee. OCE Report at 1 & ¶ 10. On August 16, 2019, OCE transmitted its report and findings to the House Ethics Committee. *Id.* ¶ 11. On November 14, 2019, the House Ethics Committee announced it would review the matter further to “gather additional information” and published the OCE Report, accompanying exhibits, and Tlaib’s response. Press Release, U.S. House of Representatives Comm. on Ethics, Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Rashida Tlaib (Nov. 14, 2019), <https://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-17>.

¹¹ COMM. ON ETHICS, IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE RASHIDA TLAIB, H.R. REP. NO. 116-473 (2020) (“HEC Report”), <https://www.govinfo.gov/content/pkg/CRPT-116hrpt473/pdf/CRPT-116hrpt473.pdf>.

¹² *Id.* at 1-2

¹³ *Id.* at 2. The report also noted, however, that “Tlaib engaged in good faith efforts to comply with the relevant FECA requirements” and described the violation as “one of bad timing and not ill intent.” *Id.* at 1-2. The House Ethics Committee concluded that there was no evidence that Tlaib “sought to unjustly enrich herself” and thus decided that a sanction was not warranted. *Id.* at 2.

¹⁴ See Rashida Tlaib for Congress, 2021 October Quarterly Report at 814 (Oct. 15, 2021); Rashida Tlaib for Congress, 2021 July Quarterly Report at 762 (July 15, 2021); Rashida Tlaib for Congress, 2021 April Quarterly Report at 256 (Apr. 15, 2021); Rashida Tlaib for Congress, 2020 30-Day Post General Report at 451 (Dec. 3, 2020).

1 **B. Legal Analysis**

2 Under the Act, a contribution accepted by a candidate may be used by the candidate for
3 otherwise authorized expenditures in connection with the campaign for federal office of the
4 candidate.¹⁵ However, a contribution shall not be converted by any person to personal use.¹⁶
5 “Personal use” means any use of funds in a campaign account of a present or former candidate to
6 fulfill a commitment, obligation, or expense of any person that would exist irrespective of the
7 candidate’s campaign or duties as a federal officeholder.¹⁷

8 The Act and Commission regulations enumerate certain expenses that are considered *per*
9 *se* “personal use” and thus prohibited, including salary payments to a candidate that do not meet
10 specified criteria.¹⁸ A candidate’s principal campaign committee may pay a salary to the
11 candidate that will not constitute personal use of campaign funds so long as it does not exceed
12 the lesser of the minimum salary paid to a Federal officeholder holding the Federal office that the
13 candidate seeks or the earned income that the candidate received during the year prior to
14 becoming a candidate.¹⁹ Any earned income that a candidate receives from salaries or wages
15 from any other source, however, shall count against the minimum salary paid to a federal
16 officeholder holding the seat sought by the candidate.²⁰ Moreover, the committee shall not pay
17 salary to a candidate before the filing deadline for access to the primary election ballot for the
18 Federal office that the candidate seeks, as determined by state law.²¹ During the time period in

15 52 U.S.C. § 30114(a)(1).

16 *Id.* § 30114(b)(1).

17 *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g).

18 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i)(I).

19 11 C.F.R. § 113.1(g)(1)(i)(I).

20 *Id.* Upon request of the Commission, the candidate must provide evidence of earned income. *Id.*

21 *Id.*

1 which a principal campaign committee may pay a salary to a candidate, such payment must be
2 computed on a pro-rata basis.²² If the candidate wins the primary election, his or her principal
3 campaign committee may pay him or her a salary from campaign funds through the date of the
4 general election.²³ The payment of salary to candidates that do not meet these conditions is
5 considered *per se* personal use.²⁴

6 The Complaint in this matter alleges that the Committee impermissibly disbursed two
7 salary payments to Tlaib after the November 6, 2018, general election when she was no longer a
8 federal candidate. This same allegation was also the subject of congressional ethics proceedings
9 in the House of Representatives, which included an investigation by the House Ethics Committee
10 that involved reviewing more than 600 pages of materials and interviewing five witnesses,
11 including Tlaib herself.²⁵ Following its investigation, the House Ethics Committee determined
12 that \$10,800 of the salary payments Tlaib received from her campaign after the November 6
13 general election violated the Act's personal use restrictions. Specifically, the House Ethics
14 Committee determined that \$1,200 of the \$2,000 November 16 salary payment to Tlaib covered
15 a period of time after the November 6 general election.²⁶ Similarly, the House Ethics Committee
16 determined that \$9,600 of the \$15,500 salary payment Tlaib received on December 1 covered a

²² *Id.* This is intended to prevent a candidate's principal campaign committee from paying the candidate the entire minimum annual salary for the Federal office sought by the candidate, unless he or she is a candidate, as defined by 11 C.F.R. § 100.3(a), for at least one year. *See* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds; 67 Fed. Reg. 76,962, 76,972 (Dec. 13, 2002) ("Personal Use E&J").

²³ 11 C.F.R. § 113.1(g)(1)(i)(I).

²⁴ *Id.*; *see also* Personal Use E&J, 67 Fed. Reg. at 76,972.

²⁵ HEC Report at 2.

²⁶ *Id.* at 16-17. Specifically, the House Ethics Committee determined that \$800 of the November 16 payment was for a period of time when she was still a candidate — November 1 through November 6. *Id.* at 16. However, the House Ethics Committee determined that the remaining \$1,200 was for the November 7 through November 15 time period in which she was no longer a candidate. *Id.* at 17.

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1 period of time after the November 6 general election.²⁷ To resolve these violations, the House
2 Ethics Committee directed Tlaib to reimburse her campaign committee \$10,800.²⁸ The
3 Committee’s disclosure reports confirm that Tlaib has complied with this reimbursement
4 directive.²⁹ Under these circumstances, and in light of the fact that the salary payments were not
5 in excess of Tlaib’s maximum salary threshold, the Commission concludes that further
6 enforcement action in this matter would not be a prudent use of the agency’s limited resources.
7 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the allegations
8 in this matter.³⁰

²⁷ *Id.* at 19. The House Ethics Committee determined that \$9,600 of the December 1 payment was impermissible because it represented compensation for post-election pay periods in November and the entire month of December. *Id.* at 17-19. As for the remaining \$5,900 of the December 1 payment, the House Ethics Committee determined that it was for work performed *before* the general election but paid *after* the election under a deferred compensation or back pay agreement between Tlaib and the Committee. *Id.* at 17-19. Although the House Ethics Committee credited the existence of such an agreement, it noted that the Commission had “not specifically stated whether ‘deferred compensation’ or ‘back pay’ arrangements are permissible” under the Act. *Id.* at 14-16, 20-21. And the Commission declines to do so here.

²⁸ *Id.* at 2.

²⁹ See Rashida Tlaib for Congress, 2021 October Quarterly Report at 814 (Oct. 15, 2021); Rashida Tlaib for Congress, 2021 July Quarterly Report at 762 (July 15, 2021); Rashida Tlaib for Congress, 2021 April Quarterly Report at 256 (Apr. 15, 2021); Rashida Tlaib for Congress, 2020 30-Day Post General Report at 451 (Dec. 3, 2020).

³⁰ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).