

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5 **MUR 7710**

6 DATE COMPLAINT FILED: Feb. 28, 2020
7 DATE OF NOTIFICATIONS: March 5, 2020
8 DATE OF LAST RESPONSE: April 22, 2020
9 DATE ACTIVATED: June 3, 2020

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11 EXPIRATION OF SOL: Nov. 1, 2023 (earliest)
12 Nov. 11, 2025 (latest)
13 ELECTION CYCLE: 2020
14

15 **COMPLAINANT:**

Elizabeth Guide

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17 **RESPONDENTS:**

18 Hunt for Congress and Cabell Hobbs in his official
19 capacity as treasurer
20 Wesley Hunt
21 Perry Homes Building Company/Perry Homes LLC

22 **RELEVANT STATUTES
23 AND REGULATIONS:**

52 U.S.C. § 30118(a)
11 C.F.R. § 113.1(g)(6)(iii)
11 C.F.R. § 114.2

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26 **INTERNAL REPORTS
27 CHECKED:**

Disclosure Reports

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29 **AGENCIES CHECKED:**

None

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32 **I. INTRODUCTION**
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34 The Complaint alleges that congressional candidate Wesley Hunt and his authorized
35 committee received a prohibited corporate contribution from Hunt's employer, Perry Homes
36 Building Company/Perry Homes LLC ("Perry Homes"), when it paid him when it paid him an
37 excessive salary for the purpose of supporting his campaign. Respondents Hunt, Hunt for
38 Congress and Cabell Hobbs in his official capacity as treasurer (the "Committee"), and Perry
39 Homes deny the allegations and assert that the Complaint is based on a misunderstanding of
40 Hunt's work history with Perry Homes and that Hunt's employment was not related to his

1 campaign. Perry Homes submits documents, including Hunt's pay statements, indicating that
2 Hunt received a monthly salary far less than what the Complaint alleged. Because the available
3 information does not raise a reasonable inference that Hunt's employment with Perry Homes was
4 impermissible under Commission regulations governing compensation from *bona fide*
5 employment under 11 C.F.R. § 113.1(g)(6)(iii), we recommend that the Commission dismiss the
6 allegation that Hunt's salary constituted prohibited contributions in violation of 52 U.S.C. §
7 30118(a), and close the file.

8 **II. FACTUAL BACKGROUND**

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10 On April 2, 2019, Hunt filed his Statement of Candidacy for U.S. Congress in the 7th
11 District of Texas and designated the Committee as his principal campaign committee.¹ Perry
12 Homes is a home building company based in Texas that employed Hunt both before and after he
13 declared his candidacy.² In April of 2018, Hunt began his employment at Perry Homes as a
14 Phase II Construction Manager and later transitioned to a consultant position for the Human
15 Resources department providing training services.³

16 The Complaint alleges that Hunt's financial disclosure report filed with the House of
17 Representatives shows that Perry Homes paid Hunt an "excessive" salary of \$51,722.53 for just
18 two months of work in November and December of 2018.⁴ The Complaint asserts that this large

¹ Hunt, Statement of Candidacy (Apr. 2, 2019).

² <https://www.perryhomes.com/>. The available information does not indicate whether Perry Homes is taxed as a corporation. Perry Homes asserts that Perry Homes Building Company is a subsidiary of Perry Homes LLC and "has no business activities that are relevant in any way to this matter." Perry Homes Resp. at 1 n.1 (Apr. 23, 2020).

³ Perry Homes Resp. at 1-2, Attachs. 3-4, 9.

⁴ Compl. at 1 (Feb. 28, 2020).

1 payment was made to “further his political campaign.”⁵ The Complaint attaches a copy of
2 Hunt’s LinkedIn page indicating that his employment with Perry Homes began in November of
3 2018, and a copy of Hunt’s Candidate House Financial Disclosure Report filed May 2019 (“2019
4 FD Report”) disclosing the \$51,722.53 salary from Perry Homes for fiscal year 2018.⁶ Hunt for
5 Congress did not report any contributions from Perry Homes in reports filed with the
6 Commission.

7 Respondents assert that Hunt’s LinkedIn profile listed an erroneous start date of
8 November 2018, and that Hunt actually began his employment with Perry Homes as a “Phase II
9 Construction Manager” in mid-April 2018, one full year before Hunt declared his candidacy.⁷
10 Hunt’s compensation consisted of base pay at an hourly rate of \$18 per hour, overtime and
11 incentive payments, and a guaranteed minimum of \$5,000 per month.⁸ According to
12 Respondents, Perry Homes paid Hunt \$51,722.53 over the course of 7.5 months – not 2 months –
13 a salary which they argue was commensurate with similarly situated employees at Perry Homes.⁹
14 To support these assertions, Perry Homes submits Hunt’s offer letter dated April 16, 2018,¹⁰
15 Hunt’s pay statement from the period of April 14-27, 2018, establishing the start of his

⁵ *Id.*

⁶ *Id.*, Attachs A-B.

⁷ Hunt & Hunt for Congress Resp. at 1-2 (Apr. 23, 2020) (“Hunt Resp.”); Perry Homes Resp. at 1-2. Respondents are represented by the same attorney and make substantially similar arguments, although each response attaches different documentation to support their arguments. Hunt’s unsworn response states: “Mr. Hunt does not know why his LinkedIn profile indicates that “November 2018” was the commencement of his employment with Perry Homes, so he assumes it was nothing more than user error.” Hunt Resp. at 2 n.2.

⁸ Perry Homes Resp. at 2, Attach. 4. Hunt also received benefits and a \$450 stipend to partially reimburse his maintenance of a pick-up truck.

⁹ *Id.* at 7.

¹⁰ *Id.*, Attach. 4.

1 employment,¹¹ and Hunt's pay statement from December 8-21, 2018, indicating year-to-date
2 "FIT Taxable Wages" of \$51,722.53.¹²

3 Around the time that he declared his candidacy for the House, it appears that Hunt moved
4 from a full-time salaried position with Perry Homes into a part-time position as an independent
5 contractor to the Human Resources department providing "training services."¹³ Perry Homes
6 asserts that it compensated Hunt in the Human Resources position in accordance with an
7 "objective, third-party compensation study that took into account his experience and job
8 responsibilities."¹⁴ The compensation study indicates that Hunt was offered the position at
9 \$116,000 annually, "reduced commensurately to the extent the position requires less than 40
10 hours of work per week."¹⁵ There is no information in the available record indicating how many
11 hours Hunt worked or his total compensation in the new position, although Hunt's 2019 FD
12 Report states that he earned \$28,666 from January 1, 2019, through the filing date of May 15,
13 2019.¹⁶ Hunt won the primary election for his race in March 2020 but has not yet filed his
14 Financial Disclosure Report for 2020, which was due in May.

¹¹ *Id.*, Attach. 3.

¹² *Id.*, Attach. 6.

¹³ *Id.* at 6. The Complaint alleges that Hunt began working part-time in January 2019. It is unclear from the Perry Homes Response and accompanying documents when the transition took place. Although the Perry Homes Response states that "no changes" were made to Hunt's employment status or compensation until January 2020 "to comply with campaign-finance laws" and because "the March 3, 2020 primary election . . . could impact his ability to fulfill his work obligations," Perry Homes attaches to its response a human resources memorandum dated February 12, 2019, which indicates that Hunt had already been offered the part-time Human Resources position. *Id.* at Attach. 9. Hunt's 2019 FD report indicates that the transition occurred in April of 2019. *Id.* at Attach. 2.

¹⁴ *Id.*

¹⁵ *Id.* Hunt's new annual salary was higher than his annualized salary in 2018 of \$82,756, although Perry Homes asserts that Hunt did not receive "employee benefits" in the new position. *Id.* at 6.

¹⁶ *Id.*, Attach. 2 at Schedule C.

1 **III. LEGAL ANALYSIS**

2 Corporations are prohibited from making contributions to federal candidates or their
3 authorized committees, and candidates and authorized committees are prohibited from
4 knowingly receiving or accepting such contributions.¹⁷ Under section 30118 of the Act, the term
5 “contribution” includes “any gift, loan, advance, or deposit of money or anything of value made
6 by any person for the purpose of influencing any election for Federal office,” and “any direct or
7 indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or
8 anything of value . . . to any candidate, campaign committee, or political party or organization,”
9 in connection with any election to any Federal office.¹⁸

10 Payments of “compensation” to a candidate “shall be considered contributions” from the
11 payor to the candidate unless: (A) The compensation results from *bona fide* employment that is
12 genuinely independent of the candidacy; (B) The compensation is exclusively in consideration of
13 services provided by the employee as part of this employment; and (C) The compensation does
14 not exceed the amount of compensation which would be paid to any other similarly qualified
15 person for the same work over the same period of time.¹⁹

16 The available information does not raise a reasonable inference that Hunt’s salary should
17 be considered a prohibited corporate contribution because the salary appears to satisfy each
18 element of the regulation.

¹⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a) and (b)(1).

¹⁸ 52 U.S.C. § 30118(b)(2); 11 C.F.R. § 114.2(b)(1).

¹⁹ 11 C.F.R. § 113.1(g)(6)(iii); *see also* Advisory Op. 2013-03 (Bilbray-Kohn) (applying section 113.1(g)(6)(iii) to determine whether compensation paid to candidate would be contribution); Advisory Op. 2011-27 (New Mexico Voices for Children) (same); Advisory Op. 2006-13 (Spivack) (same); Advisory Op. 2004-17 (Klein) (same); Advisory Op. 2004-08 (American Sugar Cane League) (same).

1 First, as to whether the compensation results from *bona fide* employment that is
2 genuinely independent of his candidacy, the record evidence indicates that it was. Hunt began
3 working for Perry Homes almost a year before he declared his candidacy in April of 2019, which
4 suggests that his initial employment with Perry Homes was independent of his candidacy and
5 there is no information suggesting otherwise.²⁰ The change in Hunt's relationship with Perry
6 Homes to part-time status also appears to satisfy this element. In fact, the Commission has
7 previously approved similar arrangements where a full-time employee converted to part-time
8 consultant status. In Advisory Opinion 2013-03 (Bilbray Kohn), the Commission found that a
9 candidate's consulting arrangement was *bona fide* and independent, where the candidate quit her
10 job as Executive Director of a non-profit "in anticipation of her potential candidacy," and was re-
11 hired by the same non-profit as a part-time consultant. The Commission concluded that the non-
12 profit had genuine reasons for hiring the candidate as a consultant independent of her campaign,
13 including her expertise, her experience, and the difficulty of finding a replacement.²¹ Similarly,
14 here, Perry Homes asserts that Hunt, due to his experience, specifically his leadership training
15 background, was well-suited to fill the newly created human resources position with the
16 company.²² Nor is the information that Hunt may have adjusted his hours to allow time to

²⁰ See Factual and Legal Analysis at 5, MUR 7044 (Jodey Cook Arrington, *et al.*) (finding no reason to believe where candidate was employed for 15 months before declaring candidacy).

²¹ Advisory Op. 2013-03 (Bilbray-Kohn) at 5; *see also* Advisory Opinion 2004-17 (Klein) (Commission found that a candidate's part-time consulting services for a law firm, which began during her campaign, was genuinely independent of the campaign because the candidate was paid on an hourly basis for services rendered, and not for any campaign related reason.).

²² Perry Homes Resp., Attach. 9. The Perry Homes Response explains that it hired a campaign finance attorney both to analyze the propriety of Hunt's employment in light of his candidacy and to develop an employee handbook governing political activity. *Id.* at 5, Attach. 8.

1 campaign sufficient, absent additional information, to suggest that Hunt's employment was
2 dependent on his campaign.²³

3 As to the second element, whether the compensation is exclusively in consideration of
4 services provided by the employee as part of this employment, it appears that Hunt was paid for
5 services rendered. Perry Homes asserts in its response that Hunt's compensation "complied with
6 the terms of his employment agreement in that role..."²⁴ The Complaint does not make an
7 allegation that Hunt failed to provide the required services to Perry Homes, and there is no
8 information in the record, contradicting this statement.

9 The allegations in the Complaint most directly implicate the third element – whether the
10 compensation that Perry Homes paid to Hunt was excessive for his position. The Complaint
11 expressly alleges that payment of \$51,722.53 for two months of work (annualized to
12 \$310,335.18) was excessive for Hunt's position.²⁵ The Complaint, however, does not provide
13 any evidence that Hunt's salary was excessive, instead basing its allegations solely on the
14 apparently mistaken belief that Hunt was earning the amount of \$26,000 per month as a
15 construction project manager.²⁶ Perry Homes, submits documents demonstrating that the
16 \$51,722.53 was not earned over 2 months, but over 7.5 months and asserts that Hunt's salary that
17 was the initial basis of the Complaint was commensurate with other similarly situated

²³ See Factual and Legal Analysis at 6, MUR 6853 (Weston Wamp) (finding that candidate who switched his hours to work full-time remotely on a flex schedule still constituted *bona fide* employment genuinely independent of the campaign).

²⁴ Perry Homes Resp. at 5.

²⁵ Compl. at 1.

²⁶ See Factual and Legal Analysis at 6, MUR 6855 (Amash) (finding salary not excessive where "we are in possession of no information indicating that [candidate's] compensation was excessive.").

1 employees.²⁷ Thus, there is no information in the record that the original full-time position was
2 excessively compensated.

3 Similarly, the record does not suggest that Hunt's compensation for his later role as a
4 part-time independent contractor was excessive. Perry Homes submits information that Hunt's
5 annual salary of \$116,000 was designed by an independent compensation specialist, apparently
6 did not include employee benefits, and was reduced to reflect the part-time nature of the work
7 hours.²⁸ In previous matters, the Commission has accepted the representations of the employer
8 that the compensation paid to a candidate was not excessive for the position given the
9 responsibilities of the employee.²⁹ Here, although Perry Homes does not assert that a similarly
10 situated employee was paid equivalently, Perry Homes submits a contemporaneous document
11 indicating that Perry Homes conducted a study to ascertain the market rate for the position and
12 paid Hunt accordingly. There is no information in the record to suggest that Hunt's salary was
13 excessive in either position.

14 Because Hunt's compensation appears to satisfy the regulation for *bona fide* employment,
15 we recommend that the Commission dismiss the allegation that Respondents violated 52 U.S.C.
16 § 30118(a) by making or receiving a prohibited corporate contribution.

²⁷ Perry Homes Resp. at 7.

²⁸ *Id.*, Attach. 9.

²⁹ See Advisory Op. 2013-03 (Bilbray-Kohn) (\$5,000 per month part-time 20 hours per week consulting salary not found excessive); Factual and Legal Analysis, MUR 7044 (Jodey Cook Arrington) (\$220,000 salary for company's President not found excessive); Factual and Legal Analysis at 5-6, MUR 6855 (Justin Amash, *et al.*) (\$100,000 bonus year-end bonus from family owned firm was not considered excessive because candidate's work generated substantial income for the company).

1 **III. RECOMMENDATIONS**

- 2 1. Dismiss the allegation that Wesley Hunt, Hunt for Congress and Cabell Hobbs in his
- 3 official capacity as treasurer, and Perry Homes Building Company/Perry Homes LLC
- 4 violated 52 U.S.C. § 30118(a);
- 5
- 6 2. Approve the attached Factual and Legal Analysis;
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- 8 3. Approve the appropriate letters;
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- 10 4. Close the file.
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