

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

5 MUR 7764  
6 DATE FILED: July 24, 2020  
7 DATE OF NOTIFICATION: July 29, 2020  
8 LAST RESPONSE RECEIVED: August 25, 2020  
9 DATE ACTIVATED: September 22, 2020  
10 SOL EXPIRATION: May 20, 2025 / June 20, 2025  
11 ELECTION CYCLE: 2020

12  
13 **COMPLAINANT:** Josephine Thomas

14  
15 **RESPONDENTS:** Friends of Dana Balter and Sterling Talob Waters  
16 in his official capacity as treasurer  
17 Dana Balter  
18

19 **RELEVANT STATUTES**  
20 **AND REGULATIONS:** 52 U.S.C. § 30114(a)(1)  
21 52 U.S.C. § 30114(b)(1)  
22 11 C.F.R. § 113.1(g)(1)  
23

24 **REPORTS CHECKED:** Disclosure Reports

25  
26 **FEDERAL AGENCIES CHECKED:** None  
27

28 **I. INTRODUCTION**

29 The Complaint alleges that salary payments made to federal candidate Dana Balter by her  
30 authorized committee, Friends of Dana Balter and Sterling Talob Waters in his  
31 official capacity as treasurer (“Committee”), exceeded the amount permitted by law and  
32 constitute a prohibited personal use of campaign funds.<sup>1</sup> For the reasons set forth below, we  
33 recommend that the Commission dismiss the allegation that the Committee and Balter violated  
34 the personal use provisions of the Federal Election Campaign Act of 1971, as amended (the  
35 “Act”), and Commission regulations.

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<sup>1</sup> Compl. at 1 (July 24, 2020).

1    **II.    FACTUAL SUMMARY**

2  
3           Dana Balter was the Democratic Party nominee for U.S. Congress for the 24th  
4 Congressional District of New York in 2020.<sup>2</sup> Balter filed her Statement of Candidacy with the  
5 Commission on April 17, 2019.<sup>3</sup> Friends of Dana Balter is her principal campaign committee.<sup>4</sup>  
6 The primary election filing deadline for becoming a candidate for U.S. Congress in New York  
7 was April 2, 2020.<sup>5</sup>

8           The Complaint alleges that the Committee paid a salary to Balter in 2020 that “exceeds  
9 the amount permitted” under the Act and Commission’s regulations and that the excess amount  
10 constitutes the personal use of campaign funds by Balter.<sup>6</sup> The Complaint alleges that the salary  
11 amount that Balter can be paid is based on the amount of her earned income in the year prior to  
12 the election, which is 2019.<sup>7</sup> The Complaint states that according to Balter’s 2020 Financial  
13 Disclosure Statement filed with the United States House of Representatives (“House Financial  
14 Disclosure Statement”), she disclosed income of \$3,000 in 2019, consisting of \$2,300 from  
15 Syracuse University and \$700 from the Republic of Kazakhstan.<sup>8</sup> Based on the Committee’s  
16 2020 July Quarterly Report, the Complaint alleges that, as of July 24, 2020, the Committee paid

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<sup>2</sup>       The primary election was held on June 23, 2020. Balter lost the general election on November 3, 2020.

<sup>3</sup>       *See* Balter Statement of Candidacy (Apr. 17, 2019).

<sup>4</sup>       Committee Amended Statement of Organization (Aug. 18, 2020).

<sup>5</sup>       *See* <https://www.elections.ny.gov/NYSBOE/law/2020PoliticalCalendar0608.pdf>.

<sup>6</sup>       Compl. at 1.

<sup>7</sup>       *Id.* at 2.

<sup>8</sup>       Compl. at 3. *See* Balter 2020 House Financial Disclosure Statement (May 23, 2020), [http://clerk.house.gov/public\\_disc/financial-pdfs/2020/10035624.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2020/10035624.pdf).

1 Balter a total salary amount of \$6,213.71, which is \$3,213.71 in excess of the amount that she  
 2 could receive and represents personal use of campaign funds.<sup>9</sup>

3 According to its disclosure reports, some of which were filed after the Complaint, the  
 4 Committee made the following biweekly salary payments to Balter totaling \$18,086.10 during  
 5 2020:

<b>Committee Salary Payments to Dana Balter</b>	
<b>Payment Date</b>	<b>Amount</b>
April 20, 2020	\$1,056.54
May 5, 2020	\$1,289.30
May 20, 2020	\$1,289.29
June 5, 2020	\$1,289.29
June 19, 2020	\$1,289.29
July 2, 2020	\$1,289.30
July 20, 2020	\$1,289.29
August 5, 2020	\$1,289.30
August 20, 2020	\$1,289.28
September 4, 2020	\$1,289.30
September 18, 2020	\$1,289.29
October 5, 2020	\$1,289.30
October 20, 2020	\$1,289.28
November 5, 2020	\$1,289.30
November 20, 2020	\$268.75
Total:	\$18,086.10

6  
 7 In response, Respondents assert that the \$6,213.71 in salary that the Committee paid to  
 8 Balter as of the time of the Complaint was permissive, not excessive, and made in compliance  
 9 with the Act and Commission's regulations.<sup>10</sup> Respondents claim that the amount of salary to be  
 10 paid is based upon earned income in the year prior to filing the Statement of Candidacy with the

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<sup>9</sup> Compl. at 3, 4.

<sup>10</sup> Resp. at 1 (Aug. 25, 2020). The Response to the Complaint states that the response is on behalf of Balter, the Committee, and Sterling Waters "as treasurer and individually." Resp. at 1 (Aug. 25, 2020). The Complaint names Waters as a respondent, but it does not make allegations as to Waters in his individual capacity, and we did not notify him as such. See Compl. at 1.

1 Commission.<sup>11</sup> Respondents state that Balter became a candidate on April 17, 2019, and the  
2 standard for determining the amount of money that the Committee could pay Balter is based  
3 upon her earned income in 2018, not 2019 as alleged in the Complaint.<sup>12</sup> Further, Respondents  
4 assert that Balter earned a salary of \$35,198 in 2018 and submitted a copy of Balter's 2018  
5 federal tax return.<sup>13</sup> Respondents claim that as of August 25, 2020, the date of the response, the  
6 Committee has made salary payments to Balter totaling \$12,296.70, which is less than the  
7 amount of her 2018 earned income of \$35,198.<sup>14</sup> As of the 2020 Year-End Report, the  
8 Committee has paid Balter a total of \$18,086.10 in 2020.

9 The Complaint also notes that the Committee paid a salary of \$11,114.96 to Balter in  
10 2019, although it does not allege that this amount constitutes a personal use payment.<sup>15</sup> The  
11 Committee disclosed salary payments to Balter totaling \$6,719.76 on its 2019 July Quarterly  
12 Report and payments totaling \$4,395.20 on its 2019 October Quarterly Report.<sup>16</sup> The

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<sup>11</sup> Resp. at 2.

<sup>12</sup> *Id.* at 3. Respondents assert that Balter's salary payments began on April 20, 2020, which was after the primary election filing deadline of April 2, 2020, for being a candidate for U.S. Congress in New York. *Id.* at 2.

<sup>13</sup> *Id.* at 4, Ex. A. Balter filed a 2019 House Financial Disclosure Statement on August 13, 2019, disclosing income of \$32,556 in the preceding year and income of \$35,193 for the current year. *See* Balter 2019 House Financial Disclosure Statement (Aug. 13, 2019), [http://clerk.house.gov/public\\_disc/financial-pdfs/2019/10027698](http://clerk.house.gov/public_disc/financial-pdfs/2019/10027698) ("2019 House Financial Disclosure Statement"). Thereafter, on the same day that the Commission notified Respondents of the Complaint by email, the Committee filed an amended 2019 House Financial Disclosure Statement on July 29, 2020, disclosing income of \$35,193 in 2018 and no income in 2019. *See* Balter Amended 2019 House Financial Disclosure Statement (July 29, 2020), [http://clerk.house.gov/public\\_disc/financial-pdfs/2019/10036154.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2019/10036154.pdf). While the Response asserts that Balter's 2018 income was \$35,198, her 2018 federal tax return and amended 2019 House Financial Disclosure Statement discloses that her 2018 income was \$35,193. For purposes of this Report, we are using \$35,193 as the amount of Balter's income in 2018.

<sup>14</sup> Resp. at 5. The Committee's 2020 disclosure reports disclose payments to Balter described as salary or payroll totaling \$11,370.88 between April 20, 2020, and August 25, 2020.

<sup>15</sup> Compl. at 3.

<sup>16</sup> *See* Committee 2019 July Quarterly Report at 179-80 (July 15, 2019); Committee 2019 October Quarterly Report at 189-90 (Oct. 15, 2019).

1 Commission's Reports Analysis Division ("RAD") questioned the salary payments in a Request  
2 for Additional Information ("RAI") explaining that such payments are not permitted to a  
3 candidate before the filing deadline for access to the primary election ballot for the Federal office  
4 that the candidate seeks. In response to this RAI, Balter reimbursed the entire \$11,114.96 to the  
5 Committee on September 29, 2019.<sup>17</sup>

### 6 **III. LEGAL ANALYSIS**

7 Under the Act, a contribution accepted by a candidate may be used by the candidate for  
8 otherwise authorized expenditures in connection with the campaign for federal office of the  
9 candidate.<sup>18</sup> However, a contribution shall not be converted by any person to personal use.<sup>19</sup>  
10 "Personal use" means any use of funds in a campaign account of a present or former candidate to  
11 fulfill a commitment, obligation, or expense of any person that would exist irrespective of the  
12 candidate's campaign or duties as a federal officeholder.<sup>20</sup>

13 The Act and Commission's regulations enumerate certain expenses that are considered  
14 *per se* "personal use" and thus prohibited, including salary payments to a candidate that do not  
15 meet specified criteria.<sup>21</sup> A candidate's principal campaign committee may pay a salary to the

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<sup>17</sup> See RAI to the Committee on its 2019 July Quarterly Report (Aug. 6, 2019); Committee 2019 October Quarterly Report at 176 (Oct. 15, 2019).

<sup>18</sup> 52 U.S.C. § 30114(a)(1).

<sup>19</sup> *Id.* § 30114(b)(1).

<sup>20</sup> *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g).

<sup>21</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i)(I).

1 candidate that will not constitute personal use of campaign funds so long as it does not exceed the  
2 lesser of the minimum salary paid to a Federal officeholder holding the Federal office that the  
3 candidate seeks or the earned income that the candidate received during the year prior to  
4 becoming a candidate.<sup>22</sup> Moreover, the committee shall not pay salary to a candidate before the  
5 filing deadline for access to the primary election ballot for the Federal office that the candidate  
6 seeks, as determined by state law.<sup>23</sup> During the time period in which a principal campaign  
7 committee may pay a salary to a candidate, such payment must be computed on a pro-rata basis.<sup>24</sup>  
8 If the candidate wins the primary election, his or her principal campaign committee may pay him  
9 or her a salary from campaign funds through the date of the general election.<sup>25</sup> The payment of  
10 salary to candidates that do not meet these conditions is considered *per se* personal use.<sup>26</sup>

11 As an initial matter, we address the issue of what salary baseline amount should be used  
12 for the calculation of whether Balter's salary was excessive. The Complaint states that the  
13 Commission should use Balter's 2019 salary, which was minimal, as the baseline. But the  
14 Complaint is mistaken. Balter filed her Statement of Candidacy with the Commission on  
15 April 17, 2019. Since Balter became a candidate in 2019, the Commission would use her 2018

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<sup>22</sup> 11 C.F.R. § 113.1(g)(1)(i)(I). Any earned income that a candidate receives from salaries or wages from any other source, however, shall count against the minimum salary paid to a federal officeholder holding the seat sought by the candidate. *Id.* Upon request of the Commission, the candidate must provide evidence of earned income. *Id.*

<sup>23</sup> 11 C.F.R. § 113.1(g)(1)(i)(I).

<sup>24</sup> *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").

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*; *see also* Personal Use E&J, 67 Fed. Reg. at 76,972.

1 salary for the purpose of calculating her potential campaign salary.<sup>27</sup> According to Balter's  
2 amended 2019 House Financial Disclosure Statement, her 2018 income was \$35,193.<sup>28</sup> Balter  
3 also submitted a 2018 federal income tax return with her Response, which reflects that she earned  
4 \$35,193.<sup>29</sup> The salary for a member of the U.S. House of Representatives during the 2020  
5 election was \$174,000 per year.<sup>30</sup> Thus, Balter's income was less than the amount of salary paid  
6 to a member of the U.S. Congress in 2020 and the Committee is limited to paying Balter a  
7 maximum salary of \$35,193, payable on a pro-rata basis.

8         The next issue is whether the Committee has made salary payments to Balter totaling  
9 more than \$35,193 in the period since the primary election candidate filing deadline of April 2,  
10 2020. At the time that the Complaint was filed, the Committee had reported making salary  
11 payments to Balter totaling \$6,213.71. As of the Committee's 2020 Year-End Report, the  
12 Committee has made salary payments to Balter totaling \$18,086.10.<sup>31</sup> Thus, the Committee has  
13 not exceeded the total amount of salary payments permitted by the Act and Commission's  
14 regulations, which in this instance is Balter's income in 2018 or \$35,193.

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<sup>27</sup> See 11 C.F.R. § 113.1(g)(1)(i)(I).

<sup>28</sup> See Amended 2019 House Financial Disclosure Statement.

<sup>29</sup> Resp., Ex. A.

<sup>30</sup> See <https://crsreports.congress.gov/product/pdf/RS/97-1011>. The Complaint cites to MUR 5787 (Kalyn Free for Congress) and MUR 7068 (Mowrer for Iowa).

<sup>31</sup> A portion of the Committee's salary payments to Balter was made after the November 3, 2020, general election. Specifically, the Committee paid \$1,289.30 to Balter on November 5, 2020, and \$268.75 on November 20, 2020. See Amended 2020 Post-General Report at 862, 866 (Dec. 7, 2020). Salary payments may be made to candidates through the date of the general election. See 11 C.F.R. § 113(g)(1)(i)(I). The memo entry for each salary payment on the Committee's 2020 disclosure reports states "NY State Filing Deadline 4/2/20; Salary Eligibility Date is 4/3/20." However, the memo entry for the November 20, 2020, salary payment also includes the language "Paid Through 11/3/20." See Amended 2020 Post-General Report at 866. This memo entry suggests that the November 20, 2020, payment corresponded to work performed through November 3, 2020. *Cf.* Factual and Legal Analysis at 6, MUR 7068 (Mowrer) (apportioning a salary payment made shortly after the general election into a permissible portion covering the period through the election and an impermissible portion covering after the election).

1           As discussed earlier, the Committee made salary payments totaling \$11,114.96 to Balter in  
2 2019, which were impermissible because those payments were made before the qualifying  
3 deadline to run in the primary election for Congress from New York, but were subsequently  
4 refunded. Under the circumstances of this matter, we recommend that the Commission exercise  
5 its prosecutorial discretion and dismiss the allegation that the Committee and Balter violated  
6 52 U.S.C. § 30114(b) and 11 C.F.R. § 113.1(g)(1)(i)(I).<sup>32</sup>

#### 7 **IV. RECOMMENDATIONS**

- 8           1. Dismiss the allegation that Friends of Dana Balter and Sterling Talob Waters in  
9 his official capacity as treasurer violated 52 U.S.C. § 30114 and 11 C.F.R.  
10 § 113.1(g)(1)(i)(I) by converting campaign funds to personal use in connection  
11 with salary payments to the candidate;
- 12           2. Dismiss the allegation that Dana Balter violated 52 U.S.C. § 30114(b) and  
13 11 C.F.R. § 113.1(g)(1)(i)(I) by converting campaign funds to personal use in  
14 connection with salary payments to the candidate;
- 15           3. Approve the attached Factual and Legal Analysis;
- 16           4. Approve the appropriate letters; and  
17  
18  
19

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<sup>32</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).



1           5.    Close the file.  
2

3                                    Lisa J. Stevenson  
4                                    Acting General Counsel

5  
6                                    Charles Kitcher  
7                                    Acting Associate General Counsel for Enforcement  
8

9  
10    April 1, 2021  
11    Date

*Peter G. Blumberg by MA*  
                                  Peter G. Blumberg  
                                  Acting Deputy Associate General Counsel for  
                                  Enforcement

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15                                    *Mark Allen*  
16                                    \_\_\_\_\_  
17                                    Mark Allen  
18                                    Assistant General Counsel  
19

20  
21                                    *Delbert K. Rigsby*  
22                                    \_\_\_\_\_  
23                                    Delbert K. Rigsby  
                                  Attorney

24    Attachment  
25        Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Friends of Dana Balter and Sterling Talob Waters  
in his official capacity as treasurer  
Dana Balter

MUR 7764

**I. INTRODUCTION**

The Complaint alleges that salary payments made to federal candidate Dana Balter by her authorized committee, Friends of Dana Balter and Sterling Talob Waters in his official capacity as treasurer (“Committee”), exceeded the amount permitted by law and constitute a prohibited personal use of campaign funds.<sup>1</sup> For the reasons set forth below, the Commission exercises its prosecutorial discretion and dismisses the allegation that the Committee and Balter violated the personal use provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.

**II. FACTUAL SUMMARY**

Dana Balter was the Democratic Party nominee for U.S. Congress for the 24th Congressional District of New York in 2020.<sup>2</sup> Balter filed her Statement of Candidacy with the Commission on April 17, 2019.<sup>3</sup> Friends of Dana Balter is her principal campaign committee.<sup>4</sup> The primary election filing deadline for becoming a candidate for U.S. Congress in New York was April 2, 2020.<sup>5</sup>

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<sup>1</sup> Compl. at 1 (July 24, 2020).

<sup>2</sup> The primary election was held on June 23, 2020. Balter lost the general election on November 3, 2020.

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1           The Complaint alleges that the Committee paid a salary to Balter in 2020 that “exceeds  
2 the amount permitted” under the Act and Commission regulations and that the excess amount  
3 constitutes the personal use of campaign funds by Balter.<sup>6</sup> The Complaint alleges that the salary  
4 amount that Balter can be paid is based on the amount of her earned income in the year prior to  
5 the election, which is 2019.<sup>7</sup> The Complaint states that according to Balter’s 2020 Financial  
6 Disclosure Statement filed with the United States House of Representatives (“House Financial  
7 Disclosure Statement”), she disclosed income of \$3,000 in 2019, consisting of \$2,300 from  
8 Syracuse University and \$700 from the Republic of Kazakhstan.<sup>8</sup> Based on the Committee’s  
9 2020 July Quarterly Report, the Complaint alleges that, as of July 24, 2020, the Committee paid  
10 Balter a total salary amount of \$6,213.71, which is \$3,213.71 in excess of the amount that she  
11 could receive and represents personal use of campaign funds.<sup>9</sup>

12           According to its disclosure reports, some of which were filed after the Complaint, the  
13 Committee made the following biweekly salary payments to Balter totaling \$18,086.10 during  
14 2020:

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<sup>6</sup> Compl. at 1.

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<sup>8</sup> Compl. at 3. *See* Balter 2020 House Financial Disclosure Statement (May 23, 2020), [http://clerk.house.gov/public\\_disc/financial-pdfs/2020/10035624.pdf](http://clerk.house.gov/public_disc/financial-pdfs/2020/10035624.pdf).

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<b>Committee Salary Payments to Dana Balter</b>	
<b>Payment Date</b>	<b>Amount</b>
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 2 In response, Respondents assert that the \$6,213.71 in salary that the Committee paid to  
 3 Balter as of the time of the Complaint was permissive, not excessive, and made in compliance  
 4 with the Act and Commission’s regulations.<sup>10</sup> Respondents claim that the amount of salary to be  
 5 paid is based upon earned income in the year prior to filing the Statement of Candidacy with the  
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 7 standard for determining the amount of money that the Committee could pay Balter is based

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1 upon her earned income in 2018, not 2019 as alleged in the Complaint.<sup>12</sup> Further, Respondents  
2 assert that Balter earned a salary of \$35,198 in 2018 and submitted a copy of Balter’s 2018  
3 federal tax return.<sup>13</sup> Respondents claim that as of August 25, 2020, the date of the response, the  
4 Committee has made salary payments to Balter totaling \$12,296.70, which is less than the  
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11 Report and payments totaling \$4,395.20 on its 2019 October Quarterly Report.<sup>16</sup> The

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2 for Additional Information (“RAFI”) explaining that such payments are not permitted to a  
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### 6 **III. LEGAL ANALYSIS**

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8 otherwise authorized expenditures in connection with the campaign for federal office of the  
9 candidate.<sup>18</sup> However, a contribution shall not be converted by any person to personal use.<sup>19</sup>  
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12 Commission should use Balter's 2019 salary, which was minimal, as the baseline. But the  
13 Complaint is mistaken. Balter filed her Statement of Candidacy with the Commission on April  
14 17, 2019. Since Balter became a candidate in 2019, the Commission would use her 2018 salary

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<sup>22</sup> 11 C.F.R. § 113.1(g)(1)(i)(I). Any earned income that a candidate receives from salaries or wages from any other source, however, shall count against the minimum salary paid to a federal officeholder holding the seat sought by the candidate. *Id.* Upon request of the Commission, the candidate must provide evidence of earned income. *Id.*

<sup>23</sup> 11 C.F.R. § 113.1(g)(1)(i)(I).

<sup>24</sup> *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").

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*; *see also* Personal Use E&J, 67 Fed. Reg. at 76,972.

1 for the purpose of calculating her potential campaign salary.<sup>27</sup> According to Balter's amended  
2 2019 House Financial Disclosure Statement, her 2018 income was \$35,193.<sup>28</sup> Balter also  
3 submitted a 2018 federal income tax return with her Response, which reflects that she earned  
4 \$35,193.<sup>29</sup> The salary for a member of the U.S. House of Representatives during the 2020  
5 election was \$174,000 per year.<sup>30</sup> Thus, Balter's income was less than the amount of salary paid  
6 to a member of the U.S. Congress in 2020 and the Committee is limited to paying Balter a  
7 maximum salary of \$35,193, payable on a pro-rata basis.

8       The next issue is whether the Committee has made salary payments to Balter totaling  
9 more than \$35,193 in the period since the primary election candidate filing deadline of April 2,  
10 2020. At the time that the Complaint was filed, the Committee had reported making salary  
11 payments to Balter totaling \$6,213.71. As of the Committee's 2020 Post-General Report, which  
12 is the latest report filed with the Commission, the Committee has made salary payments to Balter  
13 totaling \$18,086.10.<sup>31</sup> Thus, the Committee has not exceeded the total amount of salary

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<sup>27</sup> See 11C.F.R. § 113.1(g)(1)(i)(I).

<sup>28</sup> See Amended 2019 House Financial Disclosure Statement.

<sup>29</sup> Resp., Ex. A.

<sup>30</sup> See <https://crsreports.congress.gov/product/pdf/RS/97-1011>. The Complaint cites to MUR 5787 (Kalyon Free for Congress) and MUR 7068 (Mowrer for Iowa).

<sup>31</sup> A portion of the Committee's salary payments to Balter was made after the November 3, 2020, general election. Specifically, the Committee paid \$1,289.30 to Balter on November 5, 2020, and \$268.75 on November 20, 2020. See Amended 2020 Post-General Report at 862, 866 (Dec. 7, 2020). Salary payments may be made to candidates through the date of the general election. See 11 C.F.R. § 113(g)(1)(i)(I). The memo entry for each salary payment on the Committee's 2020 disclosure reports states "NY State Filing Deadline 4/2/20; Salary Eligibility Date is 4/3/20." However, the memo entry for the November 20, 2020, salary payment also includes the language "Paid Through 11/3/20." See Amended 2020 Post-General Report at 866. This memo entry suggests that the November 20, 2020, payment corresponded to work performed through November 3, 2020. *Cf.* Factual and Legal Analysis at 6, MUR 7068 (Mowrer) (apportioning a salary payment made shortly after the general election into a permissible portion covering the period through the election and an impermissible portion covering after the election).



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1 payments permitted by the Act and Commission's regulations, which in this instance is Balter's  
2 income in 2018 or \$35,193.

3 As discussed earlier, the Committee made salary payments totaling \$11,114.96 to Balter in  
4 2019, which were impermissible because those payments were made before the qualifying  
5 deadline to run in the primary election for Congress from New York, but were subsequently  
6 refunded. Under the circumstances of this matter, the Commission exercises its prosecutorial  
7 discretion and dismisses the allegation that the Committee and Balter violated 52 U.S.C.  
8 § 30114(b) and 11 C.F.R. § 113.1(g)(1)(i)(I).<sup>32</sup>

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<sup>32</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).