

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7929
DATE COMPLAINT FILED: Oct. 4, 2021
DATE OF NOTIFICATION: Oct. 8, 2021
LAST RESPONSE RECEIVED: Nov. 22, 2021
DATE ACTIVATED: Feb. 10, 2022

ELECTION CYCLE: 2022
EXPIRATION OF SOL: June 21, 2026

COMPLAINANTS:

Kendra Arnold
Foundation for Accountability and Trust

RESPONDENTS:

DCCC
Timothy R. Persico
Sean Patrick Maloney

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(a)-(b)
52 U.S.C. § 30114(b)
11 C.F.R. § 104.3(b)
11 C.F.R. § 113.1(g)
11 C.F.R. § 113.2(e)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint in this matter alleges that DCCC and Timothy Persico in his official capacity as treasurer ("DCCC") and DCCC's Chair, Sean Patrick Maloney, violated the prohibition on the conversion of campaign funds to personal use at 52 U.S.C. § 30114(b) when DCCC purportedly purchased a plane ticket for Maloney to travel for a personal vacation. It also alleges that DCCC failed to properly report the disbursement because DCCC did not disclose that the disbursement was for Maloney's personal vacation in violation of 52 U.S.C. § 30104(a), (b) and 11 C.F.R. § 104.3(b).

1 Because the personal use prohibition does not apply to the funds of a national party
2 committee like DCCC that are not campaign funds and because the available information does
3 not indicate that DCCC paid for Maloney's personal travel, we recommend that the Commission
4 find no reason to believe that DCCC or Maloney violated the personal use prohibition.
5 Similarly, we recommend that the Commission find no reason to believe that DCCC failed to
6 properly disclose the disbursement.

7 **II. FACTUAL BACKGROUND**

8 DCCC is a national committee of the Democratic Party; its treasurer is Timothy Persico.¹
9 New York Representative Sean Patrick Maloney is its Chair.² Citing to a New York Post article,
10 the Complaint alleges that DCCC improperly paid Maloney's airfare to vacation in Europe.³
11 The Complaint and underlying article base this allegation on the fact that DCCC reported paying
12 \$813 for an Air France ticket on June 21, 2021, and Maloney's social media posts show him
13 vacationing in France and Italy three weeks later.⁴ The Complaint also contends that "DCCC's
14 answer [given for the Post Article] was 'cryptic' and vague, and did not provide facts or properly
15 address the concerns of personal use."⁵ The Complaint thus alleges that this activity violated the

¹ DCCC, Amended Statement of Organization (June 24, 2021).

² Alex Rogers, *House Democrats elect Sean Patrick Maloney as DCCC chairman*, CNNPOLITICS (Dec. 3, 2020), <https://www.cnn.com/2020/12/03/politics/sean-patrick-maloney-dccc-chair-elected/index.html>.

³ Compl. at 1 (Oct. 4, 2021) (citing Jon Levine, *DCCC Buys Flight Ticket Just Weeks Before Boss' Vacation to France*, THE NEW YORK POST (Sept. 18, 2021), <https://nypost.com/2021/09/18/dccc-buys-flight-ticket-weeks-before-boss-vacation/> ("N.Y Post Article")).

⁴ *Id.* at 1-2; *see also* DCCC, Amended August 2021 Monthly Report (Oct. 5, 2021).

⁵ Compl. at 3.

Act's personal use restriction.⁶ The Complaint also appears to allege that DCCC did not properly report the purchase of the ticket by failing to provide an adequate purpose description.⁷

In their joint Response, DCCC and Maloney contend that the personal use restrictions do not apply because a national party committee's funds are not campaign funds subject to the personal use restriction.⁸ Moreover, the Response represents that DCCC purchased the ticket "for Rep. [Adam] Schiff to travel to Europe to participate in DCCC fundraising events and meetings," although it does not provide support for this assertion or the assertion that Maloney self-funded his vacation.⁹ The Response also contends that DCCC properly reported the \$813 disbursement as "travel."

III. LEGAL ANALYSIS

A. The Commission Should Find No Reason to Believe that DCCC or Maloney Violated the Personal Use Restriction

Candidates and their authorized committees are permitted to use campaign funds for a variety of specific purposes, including otherwise-authorized expenditures in connection with the candidate's campaign for federal office, ordinary and necessary expenses incurred in connection with the duties of a federal officeholder, and "any other lawful purpose," but the Act prohibits any person from converting campaign funds to "personal use."¹⁰ Conversion to personal use

⁶ *Id.* at 2-3.

⁷ *Id.*

⁸ Resp. at 2-3 (Nov. 22, 2021).

⁹ *Id.*

¹⁰ 52 U.S.C. § 30114(a)-(b); 11 C.F.R. §§ 113.1(g), 113.2; *see also* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995) (explaining that "candidates have wide discretion over the use of campaign funds").

occurs when campaign funds are used to fulfill any commitment, obligation, or expense of any person “that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.”¹¹ The Act and Commission regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use, including “a vacation or other noncampaign-related trip.”¹²

However, the prohibition on the conversion to personal use applies to *campaign* funds of a candidate.¹³ And the Commission has determined that the personal use provisions do not apply to the funds of national party committees like DCCC.¹⁴ The Complaint does not allege, nor is there information indicating, that DCCC paid for the ticket with the campaign funds of any candidate. The Complaint therefore does not appear to allege facts that would, if true, establish a violation of the Act.

Moreover, the available information does not support finding reason to believe that DCCC purchased the ticket for the personal use of Maloney. The fact that DCCC purchased airfare with Air France within a few weeks of Maloney’s vacation to France is consistent with

¹¹ 52 U.S.C. § 30114(b)(2); *see* 11 C.F.R. § 113.1(g).

¹² 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). When travel is for a mixed purpose, the Commission conducts a case-by-case analysis examining whether the travel expenses would have existed irrespective of the candidate’s campaign or duties as a holder of Federal office. Explanation and Justification for Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,869 (Feb. 9, 1995); 11 C.F.R. § 113.1(g)(1)(ii).

¹³ *See* 11 C.F.R. § 113.1(g) (“Personal use means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation, or expense of any person that would exist irrespective of the candidate’s campaign or duties as a federal office holder.”).

¹⁴ *See* Factual & Legal Analysis at 2, MUR 6105 (Republican National Committee) (“The RNC states that it used its own funds to make the expenditures for the clothing and accessories, and not the funds in the campaign account of any candidate, which is required for Section [30114] to apply. We have no information to the contrary. As such, no candidate funds were converted to ‘personal use[.]’”).

the possibility that DCCC paid for his vacation. But that timing, standing alone, is insufficient to warrant finding reason to believe given Respondents' direct representation that the disbursement was to pay for Schiff to travel for fundraising events, and we are not aware of any information that contradicts either that representation or the representation that "Maloney self-funded his vacation, meaning he did not use any DCCC funds to pay for it."¹⁵ Though unsupported, these unqualified assertions appear to be the kind of specificity that the Complaint described as lacking in DCCC's answers in connection with the Post Article.¹⁶ Further, the probative weight of the airfare purchase is diminished given the large volume and frequency of DCCC's travel disbursements overall,¹⁷ which increases the likelihood that an unrelated disbursement for travel would coincide with Maloney's personal vacation. Although DCCC is prohibited from soliciting contributions from foreign nationals,¹⁸ it may solicit contributions from American citizens who are abroad,¹⁹ which Respondents assert was the purpose of the trip.²⁰

¹⁵ Resp. at 2.

¹⁶ Compl. at 3 (arguing that "[a] simple denial in this case is not sufficient to address the appearance of personal use").

¹⁷ In 2021, DCCC made nearly 4,000 disbursements for "travel" totaling over \$1 million. *See FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00000935&two_year_transaction_period=2022&min_date=01%2F01%2F2021&max_date=12%2F31%2F2021&disbursement_description=travel (last visited May 27, 2022) (reflecting "4,210 entries" for "travel" in DCCC reported disbursements in 2021).

¹⁸ 52 U.S.C. § 30121.

¹⁹ *See* Advisory Op. 2016-10 (Caroline Goodson Parker) (explaining that the U.S. citizen living abroad may solicit contributions from other U.S. citizens living abroad).

²⁰ *See* Resp. at 2 (stating that purpose of Schiff's trip was to prepare for fundraising events with American citizens living in Europe); N.Y. Post Article ("A rep for the DCCC told The Post the Air France ticket was purchased 'to conduct DCCC business with Americans living overseas' and that they didn't pay for Maloney's trip.").

Accordingly, the Complaint fails to allege facts that would constitute a violation of the personal use prohibition, and the available information does not support an inference that DCCC purchased the ticket for Maloney's personal use. We recommend that the Commission find no reason to believe that DCCC or Maloney violated 52 U.S.C. § 30114(b).

B. The Commission Should Find No Reason to Believe that DCCC Failed to Adequately Disclose the Airfare Purchase

The Complaint also alleges that DCCC did not adequately disclose the airfare purchase.²¹ Commission regulations define "purpose" as a "brief statement or description of why the disbursement was made."²² "The 'purpose of disbursement' entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear."²³ The Commission has determined that the description of the purpose should be sufficient to allow "a person not associated with the committee [to] easily discern why the disbursement was made when reading the name of the recipient and the purpose."²⁴ Examples of sufficient statements of purpose include, but are not limited to, dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs.²⁵

DCCC provided sufficient information about the airfare purchase in its disclosure report by describing the disbursement's purpose as "travel," which is a "description[]" which meet[s] the

²¹ Compl. at 2-3 (citing 11 C.F.R. § 104.3).

²² 11 C.F.R. § 104.3(b)(3)(i)(A).

²³ Statement of Policy: "Purpose of Disbursement" Entries for Filings with the Commission, 72 Fed. Reg. 887, 887 (Jan. 9, 2007) ("Purpose Statement of Policy") (citing 11 C.F.R. § 104.3(b)(3)(i)(B), (4)(i)(A)).

²⁴ *Id.* at 888.

²⁵ 11 C.F.R. § 104.3(b)(3)(i)(B).

requirements of' 11 C.F.R. § 104.3(b)(3).²⁶ In addition, as explained above, the available information also does not indicate that the actual purpose of the airfare purchase was for Maloney's personal use.²⁷ Accordingly, we recommend that the Commission find no reason to believe that DCCC violated 52 U.S.C. § 30104(a)-(b) and 11 C.F.R. § 104.3(b) by providing an inadequate purpose description when reporting the airfare purchase.

IV. RECOMMENDATIONS

1. Find no reason to believe that Sean Patrick Maloney and DCCC and Timothy Persico in his official capacity as treasurer violated 52 U.S.C. § 30114(b);
2. Find no reason to believe that DCCC and Timothy Persico in his official capacity as treasurer violated 52 U.S.C. § 30104(a)-(b) and 11 C.F.R. § 104.3(b);
3. Approve the attached Factual and Legal Analysis;
4. Approve the appropriate letters; and
5. Close the file.

Lisa J. Stevenson
 Acting General Counsel

Date: May 31, 2022

Charles Kitcher
 Charles Kitcher
 Associate General Counsel for
 Enforcement

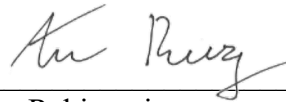
Peter G. Blumberg
 Peter Blumberg
 Assistant General Counsel

²⁶ *Id.*; see also *Purposes of Disbursement*, FEC, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursements/> (last visited May 27, 2022) (listing "travel" as an "adequate purpose[]" of disbursement").

²⁷ See *supra* pages 4-5.

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A handwritten signature in black ink, appearing to read "Aaron Rabinowitz", written over a horizontal line.

Aaron Rabinowitz
Attorney