FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 7961
Leaders Only Unite PAC, *et al.*	)	
	)	

STATEMENT OF REASONS OF COMMISSIONERS SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB

This is a case about a congressman and Senate candidate who used campaign funds to rent his own property. This is not illegal if the rental rate is carefully calculated to reflect fair market value. The resolution of this case, however, raised broader issues about the personal use of campaign funds, specifically whether Members of Congress, despite statutory prohibitions on such conduct, will be allowed to personally benefit from the money they raise for their candidacies or will be able to circumvent personal use restrictions by simply moving the money to another committee under the Members' control. The Commission should have taken a strong stand against such conduct. Sadly, it did not.

In this matter, the Commission found no reason to believe that that Lou Barletta and Mary Grace Barletta made excessive contributions to Leaders Only Unite PAC (LOU PAC), no reason to believe that LOU PAC accepted excessive contributions, no reason to believe that LOU PAC converted campaign funds to personal use, and no reason to believe that Lou Barletta and Mary Grace Barletta converted campaign funds to personal use.[1] In doing so, for the first time, a majority of the Commission explicitly determined that the Federal Election Campaign Act (FECA)'s personal-use restriction does not apply to leadership PACs.[2]

[1] Certification at ¶2, MUR 7961 (Leaders Only Unite PAC, *et al.*), dated Jan. 24, 2023.

[2] A leadership PAC is a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate or an individual holding a federal office. The committee is not an authorized committee of the candidate or office holder and is not affiliated with an authorized committee of a candidate or officeholder. Members of Congress and other political leaders often establish these nonconnected committees to support other candidates for federal and nonfederal offices. *See* 52 U.S.C. §§ 30104(i)(8)(B) and 30114(c)(4). Ninety-three percent of the Members in the 117th Congress had a leadership PAC as of Election Day 2022. Amisa Ratliff, "The Congressional Fundraising Treadmill" (Feb. 10, 2023), ISSUE ONE, *found at* https://issueone.org/articles/the-

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Lou Barletta was a member of Congress from the 11th Congressional District of Pennsylvania from 2011 to 2019. Barletta established a leadership PAC, LOU PAC, in 2014. In 2018, Barletta ran unsuccessfully for U.S. Senate in Pennsylvania. Following the Senate race, LOU PAC began paying Barletta's wife, Mary Grace Barletta, for rent for a property she jointly owned with Lou Barletta. Lou Barletta converted his former authorized committee into a nonconnected committee named Yankee PAC, which transferred its remaining cash on hand balance to LOU PAC before terminating. For more than a year and a half, LOU PAC continued to pay Mary Grace Barletta for rent in differing amounts. The amounts include a February 2019 payment for $4,400, six months for $2,200, and fourteen months for $1,100. The Complaint alleges that the varying monthly rent amounts suggests that these payments exceeded the fair market value.[3]

The Commission has previously determined that a candidate may rent property to their own political committee, but the payment must be precisely fair market value. Any payment above fair market value would constitute personal use of campaign funds, while any payment below fair market value would constitute a contribution from the candidate (raising reporting issues or possible violations if the property is owned in part by other persons or through a corporation).[4]

Therefore, a critical question for the Commission in this matter was whether the rental payments were fair-market value. On this point, the unsworn Response simply asserted that "LOU PAC's expenditures constituted fair market value,"[5] and submitted that the initial payment of $4,400 was for the January and February 2019 rent, the "standard" rent of $2,200 per month was paid through August 2019, and from September 2019 through October 2020, a portion of the property was sublet, leaving $1,100 remaining in due rent. The record does not demonstrate, however, whether the *"standard"* rate of $2,200 was the fair-market value.[6] The Commission has not previously simply accepted an unsworn assertion without any documentation on the issue of fair market value. Thus, we voted to find reason to believe and to authorize an investigation to

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congressional-fundraising-treadmill-2022-election/. Despite the name "leadership PAC," 37 of 73 of the 118th Congress' *freshman* House members formed leadership PACs before they were even elected. *Id.*

[3] First Gen. Counsel's Rpt. at 2-5, MUR 7961 (Leaders Only Unite PAC, *et al.*), Nov. 1, 2022.

[4] Advisory Opinion 1995-08 at 3 (Stupak) ("You have suggested that the rental amount charged may be below the usual and normal charge for rental of the building. Although this avoids the payment of excessive rent and, hence, personal use of campaign funds, the undercharging for rent would constitute something of value to the committee and would thus be an in-kind contribution from your spouse and you.").

[5] LOU PAC and Lou Barletta Resp. at 2 n.2

[6] It would have been helpful to know, for example, whether comparable rental properties were rented for a similar rate.

determine the fair-market value.[7] Finding reason to believe is not a determination that the law was violated, simply that we had a credible allegation that merited investigation.[8]

A majority of the Commission, however, found that there was no reason to believe a violation of law had occurred. In doing so, they announced a substantive departure from Commission precedent on the personal-use prohibition's application to leadership PACs.

Our position on this matter – grounded firmly in the Act and Commission precedent – is that the personal-use prohibition *does* apply to leadership PACs.[9] Under 52 U.S.C. § 30114(a), "a contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of federal office, may be used by the candidate or individual" for, among other things, "authorized expenditures in connection with the campaign for Federal office of the candidate" or "ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office,"[10] with one important proviso: Subsection (b) provides that "[a] contribution or donation described in subsection (a) shall not be converted by any person to personal use."[11] "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 officeholder.[12]

A contribution to a leadership PAC *is* a "contribution accepted by a candidate" for purposes of the Act's personal-use prohibition. The plain language of the Act indicates that the prohibition attaches at the time the contribution is accepted by a candidate. The Act prohibits a "contribution accepted by a candidate" and "any other donation received by an individual as support for activities of the individual as a holder of Federal office" from being "converted by any person to personal use."[13] A leadership PAC is typically, as it was here, a committee that is "established, financed, maintained, or controlled *by a candidate*."[14]

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[7] Certification at ¶1, MUR 7961 (Leaders Only Unite PAC, *et al.*), dated Jan. 24, 2023.

[8] Federal Election Commission, *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12545 (Mar. 16, 2007) ("A 'reason to believe' finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.").

[9] *See, e.g.*, Stmt. of Reasons of Vice Chair Steven T. Walther & Comm'rs Shana M. Broussard & Ellen L. Weintraub, MUR 7657 (IRL PAC), dated Mar. 24, 2022 (voting to find reason to believe that former Rep. Illeana Ros-Lehtinen converted funds transferred to leadership PAC to personal use in violation of the Act).

[10] 52 U.S.C. § 30114(a).

[11] *Id.* § 30114(b)(1).

[12] *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g); Explanation and Justification on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,863 (Feb. 9, 1995).

[13] 52 U.S.C. § 30114(a).

[14] Specifically, Commission regulations define a leadership PAC as a "committee that is directly or indirectly established, financed, maintained, or controlled by a candidate for Federal office or an individual holding Federal

Leadership PACs exist to provide a mechanism for officeholders to support other members of their caucus in order to aid the officeholder's quest to achieve leadership positions (hence the name).[15] Donations to leadership PACs thus additionally fall squarely within the category of donations received "by an individual as support for activities of the individual as a holder of Federal office."[16]

The Act subjects two categories of funds to the personal-use restrictions. Both categories – contributions accepted by a candidate and donations received as support for activities of an individual as a holder of federal office – describe leadership PACs. In this case, moreover, Barletta took the funds that he had accepted as a candidate into his authorized committee and transferred them (after converting the authorized committee into the nonconnected Yankee PAC), to LOU PAC – demonstrating again that these were funds accepted by a candidate. It was not necessary to reach the question of the status of funds originally accepted by a leadership PAC. Any way one looks at them, the funds at issue here may not be converted to personal use.

This interpretation is supported by a pending petition for rulemaking submitted by two non-profit organizations and five former members of Congress[17] and backed by, among others, a bipartisan group of 58 former members of Congress, including five former U.S. ambassadors, five former Cabinet Secretaries, and two former governors.[18]

Moreover, a long line of Commission precedent provides that principal campaign committees may convert to nonconnected committees or transfer their funds to such committees or other entities *with the condition* that the personal-use prohibition continues to apply to any contributions received while the committee was a principal campaign committee.[19] For example, in Advisory Opinion 2012-06 (RickPerry.org), the Commission permitted then-Governor Perry's principal campaign committee for the 2012 presidential election to convert to a nonconnected committee and to fund the nonconnected committee's activities using its remaining primary election funds, to the extent the funds were not used for personal use.[20] Under this precedent, the personal-use prohibition continues to apply to the funds accepted by Barletta for his campaign committee, which converted to Yankee PAC and then transferred those funds to LOU PAC.

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office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual." 11 C.F.R. § 100.5(e)(6).

[15] *See* Explanation and Justification on Leadership PACs, 68 Fed. Reg. 67,013, 67,014 (Dec. 1, 2003).

[16] 52 U.S.C. § 30114(a).

[17] *See* REG 2018-02, Leadership PACs' Personal Use.

[18] *See* Comment by Issue One's ReFormers Caucus on REG 2018-02 (Nov. 16, 2018).

[19] *See, e.g.*, Advisory Op. 2012-06 (RickPerry.org); Advisory Op. 2004-03 at 2-4 (Dooley for the Valley); Advisory Op. 1993-22 at 2-3 (Robert Roe); Advisory Op. 1994-31 (Gallo); Advisory Op. 1986-05 (Barnes for Congress Committee).

[20] See Advisory Op. 2012-06 at 2-4 (RickPerry.org).

In this matter, a majority of the Commission adopted a Factual and Legal Analysis that expressly provides that the personal-use prohibition is "limited in scope to funds held by a candidate's authorized committee."[21] We disagree.

For the reasons stated above, we believe that current law prohibits personal use of the funds in leadership PACs, particularly where the funds originated as contributions accepted by a candidate.[22] While this interpretation has been the subject of disagreement among commissioners in the past,[23] commissioners have been unanimous in recommending that Congress clarify and extend the personal use provisions to all political committees. [24] The Commission's decision in this matter makes it all the more imperative that Congress do so.

03-03-2023
Date

Shana M. Broussard
Commissioner

03-03-2023
Date

Ellen L. Weintraub
Commissioner

[21] Factual & Legal Analysis at 9, MUR 7961 (Leaders Only Unite PAC, *et al.*), dated Jan. 24, 2023.

[22] Advisory Opinion 2008-17 (KITPAC), which the Factual & Legal Analysis in this matter cites for the opposite proposition, at 9, did not present the facts at issue here: specifically, funds that originated as contributions accepted by a candidate. Neither that advisory opinion nor the regulation it relies upon (11 C.F.R. § 113.1(g)(6)) overrule (or even address) the provision of the Act that applies personal-use restrictions to "a contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of federal office," as is the case with the funds at issue in this matter. *See* 52 U.S.C. § 30114(a).

Moreover, an alternative draft, which no commissioner voted for, would have plainly stated: "KITPAC may pay Senator Bond's co-author because neither the Act nor the Commission's regulations contains a personal use prohibition for non-authorized committees or non-connected multicandidate committees." Draft B (Advisory Opinion 2008-17 (KITPAC)) at 5, Agenda Document No. 08-43, Open Meeting of Dec. 18, 2008, *found at* http://www.fec.gov/agenda/2008/mtgdoc08-43.pdf. The draft that was ultimately adopted, Draft C, was put forth as a compromise, thereby avoiding a blanket conclusion that the personal use prohibition does not apply to leadership PACs. Commissioner Weintraub did not support the compromise out of concern that even though the blanket language was specifically deleted, the draft would be misconstrued as saying more than it did. Sadly, that has come to pass.

[23] *See, e.g.*, MUR 7657 (IRL PAC).

[24] *See, e.g.*, Leg. Recommendations of the Fed. Election Comm'n 2022, at 12 (Dec. 15, 2022), *available at* https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf ("Congress should amend the Federal Election Campaign Act's prohibition of the personal use of campaign funds to extend its reach to all political committees").