

OFFICE OF
GENERAL COUNSELBEFORE THE
FEDERAL ELECTION COMMISSION

2023 JAN 24 AM 11:52

COMMITTEE TO DEFEAT THE)
 PRESIDENT)
 441 North Lee Street, Suite 205)
 Alexandria, VA 22314)
 Chairman, Ted Harvey)
)
Complainant.)
)
 v.)
)
 KATHERINE PORTER)
 PO Box 5176)
 Irvine, CA 92617)
)
)
Respondent.)
)

MUR # 8105VERIFIED COMPLAINTIntroduction

Katherine Porter (“Porter”) is a Member of the United States House of Representatives who currently represents the 47th Congressional District in Orange County California.¹ Prior to becoming a Congresswoman, Porter was a law professor at the University of California Irvine (“UC Irvine”). As a UC Irvine law professor, she took advantage of a housing benefit for university employees and purchased a home in University Hills, an academic community on the UC Irvine campus developed to provide affordable housing to “eligible full-time employees.”² The median home values in University Hills are significantly below the median home price in Irvine and there is a waiting list for this significant housing benefit.³ In fact, while Porter was being recruited by

¹ <https://porter.house.gov/about/>

² <https://icha.uci.edu/>

³ <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine>

UC Irvine in 2009, she joined the University Hills waiting list and delayed joining the faculty until housing became available in 2011.⁴ Eligibility for University Hills residency is dependent on UC Irvine employment. Porter was elected to Congress in 2018, took office in 2019, and has been on unpaid leave from UC Irvine since 2019.⁵ Thus, although Porter has not been an active “full-time” employee at UC Irvine since 2019, she continues to reap the benefits of subsidized affordable housing in a pricey housing market.

The Federal Election Campaign Act (the “Act”) prohibits a corporation from making, and a candidate from accepting, any contribution in connection with a federal election.⁶ Severance payments and fringe benefit payments from employers *may* be permissible payments to candidates on unpaid leave running for office when payments are tied exclusively to services provided as part of bona fide employment, irrespective of candidacy (i.e., part of a consistent, pre-existing policy available to all qualified employees and made on the same terms as other faculty/employees).⁷ However, payments and benefits are not “irrespective of the candidacy” if the decision to grant the payments and associated benefits is discretionary and not exclusively tied to services provided by the employee, including the nature of the proposed outside activity, and its benefit to the company overall.⁸ The decision whether to extend Porter’s leave, and the accompanying benefit is made at the *discretion* of UC Irvine’s leadership team.⁹ Without objective, non-discretionary policies allowing for (a) continuation of Porter’s unpaid leave, and (b) retention of her home at University

⁴ *Id.*

⁵ *Id.*; Hon. Katherine Porter Financial Disclosure Report, filed Apr. 30, 2022 (listing January 2020 agreement with UC Irvine for “[u]npaid leave pursuant to University of California written policy for two years”); Hon. Katherine Porter Financial Disclosure Report, filed May 15, 2019 (listing January 2019 agreement with UC Irvine for “[u]npaid leave pursuant to University of California written policy for two years”).

⁶ 11 C.F.R. § 114.2(a); 11 C.F.R. § 114.2(d).

⁷ Federal Election Commission, Advisory Opinion 2004-08 (Apr. 30, 2004).

⁸ *Id.*

⁹ <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine>

Hills¹⁰ and the accompanying residency benefit of significantly reduced mortgage payments constitutes knowing acceptance of a prohibited corporate contribution. Therefore, Complainant respectfully requests the FEC commence enforcement proceedings against Representative Katherine Porter.

Parties

1. Complainant COMMITTEE TO DEFEAT THE PRESIDENT is a Hybrid political committee on a mission to save America from the radical, dangerous policies of the Biden-Harris administration and the Democratic Party.¹¹
2. Respondent Katherine Porter is a United States Congresswoman.

Statement of Facts

3. The Regents of the University of California created the Irvine Campus Housing Authority, Inc. (“ICHA”) to develop and maintain University Hills, a highly sought after for-sale and rental housing community on the UC Irvine campus.¹²
4. University Hills was created “to provide affordable housing to eligible full-time employees.”¹³
5. The median home prices in University Hills are significantly below the median home prices in Irvine, California.¹⁴
6. University Hills homes are not sold on the open market, but instead are sold in accordance with ICHA instructions for selling a home in University Hills.¹⁵ This process involves contacting

¹⁰ As alleged herein, the decision whether to grant and extend Porter’s unpaid leave is discretionary. Even for “unpaid leave” employees, it is not clear whether they are automatically entitled to remain at University Hills or if this is a second discretionary decision

¹¹ [Carey v. FEC](#), 864 F. Supp. 2d 57, 62 (D.D.C. 2012).

¹² <https://icha.uci.edu/>

¹³ <https://icha.uci.edu/>

¹⁴ <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine>

¹⁵ <chrome-extension://efaidnbmnnibpcajpcgjclefindmkaj/https://icha.uci.edu/wp-content/uploads/2017/06/Selling-a-Home-in-University-Hills-FINAL.pdf>

the ICHA sales office and asking for the Maximum Resale Price (“MRP”).¹⁶ Capital improvements may be taken into consideration in the MRP.¹⁷ ICHA then offers the home to various categories of UC Irvine staff and recruits by its priorities list.¹⁸

7. Thirteen recent sales in University Hills ranged in sale prices from \$318,500 to \$1,087,000 (based on varying home sizes).¹⁹

8. A general search of recent home sales in Irvine, California showed significantly higher sales prices.²⁰

9. For example, a 2 bedroom/2 bath, 1605 sq. ft. house in Irvine California (not University Hills) sold for \$1,100,000.²¹ Two separate 3 bedroom/2 bath, 1510 sq. ft. homes sold in University Hills for \$474,500 and \$496,500.²²

10. Additionally, certain loans are available to University Hills buyers through the UC Office of Loan Programs. The current rates with the UC Office of Loan Programs are 3.25% (current standard Mortgage Origination Program) and 5.25% (current 5/1 Mortgage Origination Program).²³

11. This is compared to non-program rates ranging from 5.5% to 6.625% (based on a \$400,000 purchase price with 20% down).²⁴

12. Porter was recruited to join UC Irvine’s School of Law faculty in 2009.²⁵

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ https://www.realtor.com/realestateandhomes-search/University-Hills_Irvine_CA/show-recently-sold

²⁰ https://www.realtor.com/realestateandhomes-search/Irvine_CA

²¹ *Id.*

²² https://www.realtor.com/realestateandhomes-search/University-Hills_Irvine_CA/show-recently-sold

²³ <https://www.ucop.edu/loan-programs/>

²⁴ https://www.realtor.com/mortgage/rates/Irvine_CA

²⁵ <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine>

13. University Hills residency is such a significant employment benefit that Porter joined the University Hills housing waiting list and delayed her employment until housing became available in 2011.²⁶

14. In 2011, Porter purchased a four-bedroom home in University Hills for \$522,645.²⁷

15. At that time, the median home value in Irvine, California was \$656,800.²⁸

16. Porter's University Hills home was assessed by the housing authority in January 2021 and determined to have a MRP of \$659,369—an increase of \$136,724 over her initial purchase price.²⁹

17. In comparison, in July 2022, the median home price in Irvine, California was nearly \$1.4 million.³⁰

18. Thus, Porter's residency in University Hills is a significant financial benefit in terms of reduced mortgage payments.

19. Porter was elected to Congress in 2018 and took office January 2019.³¹

20. At this time, Porter requested and was granted an unpaid leave of absence from UC Irvine.³²

21. Unpaid leaves which total more than one year must be approved by the Vice Provost.³³

22. There does not, however, appear to be an objective policy for such approvals, and thus, the decision whether to grant extended leaves appears to be in the discretion of one individual.

²⁶ *Id.*

²⁷ *Id.*; Financial Disclosure Report, filed 4/30/2022 (showing mortgage liability in the amount of \$250,001-\$500,000), chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2021/10047095.pdf

²⁸ <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine>

²⁹ <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine>

³⁰ *Id.*

³¹ *Id.*

³² *Id.*; Hon. Katherine Porter Financial Disclosure Report, filed Apr. 30, 2022 (listing January 2020 agreement with UC Irvine for “[u]npaid leave pursuant to University of California written policy for two years”); Hon. Katherine Porter Financial Disclosure Report, filed May 15, 2019 (listing January 2019 agreement with UC Irvine for “[u]npaid leave pursuant to University of California written policy for two years”).

³³ <https://ap.uci.edu/policies-procedures/app/7-18/>

23. The discretionary nature of UC Irvine’s decision to allow Porter to remain on extended leave (and thus to remain in University Hills while on unpaid leave) is further supported by research and a memo (by a donor to Porter’s campaign in 2018) “outlining the case for extending Porter’s leave, suggesting that there are no limits on how long such an arrangement could continue.”³⁴

24. Employees on leave must, however, reapply every year, and the decision whether to extend the leave is made at the discretion of UC Irvine leadership.³⁵

25. While a UC Irvine spokesperson said over the last ten years, eight other faculty took unpaid leaves of 3+ years, this is the first time a UC Irvine faculty member has been elected to Congress.³⁶

26. UC Irvine expressly maintains that while Porter took an unpaid leave of absence, she is still an “employee,” making her eligible to remain in University Hills.³⁷

27. While Porter and her campaign appear to believe there is “long-standing university policy” that all faculty on approved unpaid leaves may remain in University Hills housing,³⁸ the only publicly published UC Irvine policies relate to unpaid leave itself (discretionary approval by the vice provost), but not the unpaid leave’s relation to housing at University Hills.³⁹

28. The ICHA website does not provide any clearly established, pre-existing policies for residency in University Hills when on unpaid leave.⁴⁰

³⁴ <https://apnews.com/article/2022-midterm-elections-california-congress-university-of-irvine-dcf583bdfde38b029a473311435810f>

³⁵ <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine>

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See <https://icha.uci.edu/>; <https://ap.uci.edu/policies-procedures/app/7-18/>; <https://ap.uci.edu/policies-procedures/app/7-14/>

⁴⁰ <https://icha.uci.edu/>

29. On the other hand, the ICHA website expressly provides a section for sabbaticals and renting University Hills homes when on sabbatical.⁴¹

30. Additionally, for unfurnished apartment rentals, renting faculty lose eligibility when they are no longer employed full-time. Specifically, this policy reads as follows:

LOSS OF RENTAL ELIGIBILITY

Rental eligibility is contingent upon the Qualified Employee's continued full-time employment with UCI. If the employee ceases to be employed full-time by UCI, neither Qualified Employee nor any additional occupant (e.g., family or an approved UCI employee roommate) may continue to reside in the rented premises beyond the time limitations listed below.⁴²

31. These comparable policies indicate ICHA knows how to make such policies but either chose not to make such a policy as to unpaid leave or failed to consider that option.

32. Thus, upon information and belief, there is no pre-existing, non-discretionary policy regarding housing at University Hills during unpaid leave.

33. The consistent lack of citation to any non-discretionary policies for (a) approving extended, unpaid leave, and (b) allowing faculty on unpaid leave to remain in University Hills, can only lead to the conclusion that both decisions are discretionary, and thus result in an impermissible corporate benefit to Porter.

COUNT I

Accepting Corporate Contribution in Violation of Federal Election Campaign Act
11 C.F.R. § 114.2(d)

34. Complainant re-alleges the allegations of the foregoing paragraphs as if set forth fully herein.

35. Corporations, including non-profits, are prohibited from contributing to federal candidates and candidates are prohibited from knowingly accepting or receiving such contributions.⁴³

⁴¹ <https://icha.uci.edu/sabbaticals/>

⁴² <https://icha.uci.edu/find-housing/for-rent-housing-2/unfurnished-apartments-eligibility/>

⁴³ 11 C.F.R. § 114.2(a); 11 C.F.R. § 114.2(d).

36. 11 C.F.R. § 114.2(d) provides “[a] candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section.”⁴⁴

37. “Contributions” include any gift, subscription, loan (subject to certain exceptions), advance, deposit of money, or anything of value made by any person for the purpose of influencing any election for Federal office.⁴⁵

38. Severance payments and fringe benefit payments from employers may be permissible payments to *candidates* on unpaid leave running for office when payments are tied exclusively to services provided as part of bona fide employment, irrespective of candidacy (i.e., part of a consistent, pre-existing policy available to all qualified employees and made on the same terms as other faculty/employees).⁴⁶

39. Employment related payments made by an employer to a candidate are considered impermissible contributions unless “(A) The compensation results from bona fide employment that is genuinely independent of the candidacy; (B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and (C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.”⁴⁷

40. In Advisory Opinion 2004-08, the FEC concluded that an employer may provide its former president and general manager severance pay and health insurance benefits for six months to a year without violating the corporate contribution prohibition. In its analysis, the FEC noted that if

⁴⁴ 11 C.F.R. § 114.2(d).

⁴⁵ 11 C.F.R. § 100.52(a); 11 C.F.R. § 114.1(a).

⁴⁶ Federal Election Commission, Advisory Opinion 2004-08 (Apr. 30, 2004).

⁴⁷ 11 C.F.R. § 113.1(g)(6)(iii). *See also* Federal Election Commission, Advisory Opinion 2011-27 (Feb. 7, 2012).

the payments satisfied the criteria in 11 C.F.R. § 113.1(g)(6)(iii), the payments would not be deemed an impermissible corporate contribution.⁴⁸

41. Factually, Advisory Opinion 2004-08 allowed a severance package to a former employee who resigned his position to become a federal candidate because the severance package satisfies the 3 criteria in 11 C.F.R. § 113.1(g)(6)(iii)—the payments were tied exclusively to services provided as part of his bona fide employment and was irrespective of the candidacy (package does not exceed that paid to any other similarly situated employee). The Advisory Opinion further held that payments may not be “irrespective of the candidacy” if the decision to grant a request for partial leave is solely in the discretion of the company and based on factors not exclusively tied to services provided by the employee, including the nature of the proposed outside activity, and its benefit to the firm overall. In this Opinion, the history of the severance program demonstrated that the company has a regular business practice of providing severance packages to departing long-term executives and employees, 4 out of 7 former employees who had terminated employment since 1987 (when the severance policy was instituted) received some severance package, and the stated factors in deciding whether to offer severance include relatively objective considerations such as job performance, position, and length of service. Further, the proposed severance packages were proportionate with past severance packages offered. Thus, the proposed package met the requirements of 11 C.F.R. § 113.1(g)(6)(iii) and would not be a prohibited corporate contribution.

42. FEC Advisory Opinion 2011-27 determined that a US House candidate could receive a severance payment from his former employer, New Mexico Voices for Children, without the payment being considered an impermissible contribution because the payment was considered to be made “irrespective of the candidacy.” In this opinion, the former employee did not have a

⁴⁸ Federal Election Commission, Advisory Opinion 2004-08 (Apr. 30, 2004).

written employment contract. While he wanted to take a leave of absence while he campaigned or reduce his work schedule, the non-profit thought it better if he resigned so the non-profit could avoid any appearance that it held influence over the candidate's campaign. The candidate agreed to resign, and the Board agreed to make a severance payment amounting to 3 months of his salary so long as the FEC determined it was not a "contribution" to the employee's campaign. The non-profit maintained a written policy manual for its employees, but the manual did not address severance packages and the board had discretion to decide whether a leaving employee would get a severance package. Before 2007 (when candidate became executive director), the non-profit granted severance packages occasionally. After the candidate became executive director, the non-profit instituted an unwritten policy of providing severance payments to employees who were asked to leave the organization involuntarily because the separation deemed to be in the non-profit's best interest. In its analysis, the Commission found the non-profit's proposed severance is based on the candidate's past "bona fide employment" and would be made "exclusively in consideration" of this past employment and would be in line with severance payments provided by the non-profit to "similarly qualified employees for the same work over the same period of time." Thus, the proposed severance will be made "irrespective of the candidacy" and will not constitute a contribution.⁴⁹

43. FEC Advisory Opinions 2014-14 and 2014-15 determined two competing federal candidates who were college faculty members in Virginia could continue to receive fringe benefits payments from their employer college during their unpaid leave to run for Congress. Both candidates won their party nominations and the college continued to pay fringe benefits for both candidates (including medical, life, and disability insurance; tuition reduction, exchange, and

⁴⁹ Federal Election Commission, Advisory Opinion 2011-27 (Feb. 7, 2012).

remission) under its pre-existing policy for employees during a leave of absence. The benefits would continue until the candidates either returned to work or resigned to take office. The Commission found the college's payment of fringe benefits to be part of a consistent policy available to all employees, including those who take unpaid leave for non-political purposes.⁵⁰

44. These opinions, however, involved only the candidacy period and would not appear to apply to the period when one of the candidates became a federal officeholder since the benefits involved ended when the candidates returned to work or resigned to take office.⁵¹ Thus, these opinions are not directly on point, nor establish a basis for permanent receipt of benefits for federal officeholders/candidates.

45. FEC Advisory Opinion 2000-01 involved an attorney candidate who wished to receive a partially paid leave of absence from his firm during his candidacy. Here, the firm decision was deemed subjective. The decision to pay $\frac{1}{2}$ salary included factors that are not "exclusively in consideration of services you provide as part of" employment. Thus, the Commission found the individual may not receive a partial salary from his law firm during the period in which he is a candidate for federal office and not performing services for the firm.⁵²

46. Thus, unless there are non-subjective, non-discretionary policies that allow for (a) extended, unpaid leave, and (b) continued residency at, and use of the mortgage benefit for, University Hills for faculty on extended, unpaid leave, UC Irvine's decisions to continue unpaid leave and allow Porter to remain at University Hills results in a significant monetary benefit to Porter in violation of the prohibition on corporate contributions to federal candidates, and Porter's knowing acceptance of such.

⁵⁰ Federal Election Commission, Advisory Opinions 2014-14 and 2014-15 (Oct. 23, 2014).

⁵¹ *Id.*

⁵² Federal Election Commission, Advisory Opinion 2000-01 (March 6, 2000).

47. As explained in detail above, eligibility for residency at University Hills is dependent on employment status at UC Irvine.

48. Although Porter stopped teaching at UC Irvine in or around 2018/2019, Porter has kept her residency at University Hills—a substantial financial benefit in terms of reduced mortgage payments.

49. Upon information and belief, UC Irvine's decisions to (a) grant Porter extended, unpaid leave, and (b) allow her to continue living at University Hills while on unpaid leave, were both discretionary, as there is no evidence that her unpaid leave (and associated housing benefit) results from *bona fide* employment that is genuinely independent of the candidacy, is exclusively in consideration of services provided by Porter as a part of her employment, and the compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same time period.

50. Although alleged by UC Irvine spokesman Tom Vasich,⁵³ Complainant has seen no evidence of other faculty obtaining extended unpaid leave for three plus years, particularly where such leave was to engage in other activities for which compensation is provided (Congressional salary).

51. Complainant has seen no evidence of other faculty keeping University Hills residence for three plus years after stopping active, full-time employment, or when accepting other active, full-time employment not at the university.

52. Complainant has seen no non-discretionary, objective, pre-existing policies regarding (a) granting extended, unpaid leaves, or (b) continuation of housing benefits while on unpaid leave.

⁵³ <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine>

53. While upon information and belief there is an unpaid leave policy whereby the vice provost is required to approve unpaid leave for more than a year, there does not appear to be any objective factors for the vice provost to consider.

54. To the contrary, a past donor to Porter wrote a memo to the vice provost “outlining the case for extending Porter’s leave, suggesting there are no limits on how long such an arrangement could continue.”⁵⁴

55. This further supports the existence of a discretionary, subjective determination that bears upon Porter’s housing benefit.

56. By granting Porter extended, unpaid leave and allowing her to remain in University Hills, Porter has knowingly accepted a corporate contribution in violation of 11 C.F.R. § 114.2(d).

Conclusion

For the reasons set forth above, Complainant Committee to Defeat the President respectfully requests the Federal Election Commission commence enforcement proceedings against Respondent Katherine Porter.

Respectfully submitted this 20th day of January, 2023.

/s/ Dan Backer
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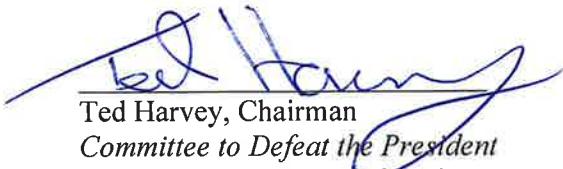
⁵⁴ <https://apnews.com/article/2022-midterm-elections-california-congress-university-of-irvine-dcf583bdfde38b029a473311435810f>

VERIFICATION

I declare under penalty of perjury the foregoing is true and correct to the best of my personal knowledge.

Respectfully submitted,

Dated January 20, 2023


 Ted Harvey, Chairman
Committee to Defeat the President
 441 North Lee Street, Suite 205
 Alexandria, VA 22314

COMPLETED BEFORE A NOTARY PUBLIC

State of Colorado

City of Highlands Ranch

County of Douglas

ORLINDA M BLAYLOCK
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024009778
MY COMMISSION EXPIRES 07/29/2026

Subscribed, signed, and sworn to before me on this 20 day of JAN, 2022, 07/29/2023

My Commission expires on 07/29/2026.