

March 18, 2021

Federal Election Commission
Commission Secretary

By email to personalsecurityrule@fec.gov

Re: Use of Campaign Funds by Members of Congress for Personal and Residential Security

Commissioners:

On behalf of our law firm, Sandler Reiff Lamb Rosenstein & Birkenstock, P.C. (“Sandler Reiff”), we submit these comments on the Commission’s Draft Interpretive Rule on Use of Campaign Funds by Members of Congress for Personal and Residential Security (the “Proposed Interpretive Rule”).

Sandler Reiff represents the campaign committees of a number of Members of Congress that would be directly impacted by the Proposed Interpretive Rule. Some of these Members receive messages threatening bodily harm or death to themselves and/or to members of their families on a daily basis. We make these comments in our capacity as attorneys with expertise in this area and we are not submitting these comments on behalf of any particular client.

While we applaud the Commission’s effort to provide this critical guidance to Members of Congress at this time when the political environment is intensely toxic, and threats to the security and even the lives of Members and their families are plainly evident and growing, we urge the Commission issue a broader interpretation than that proposed in the Proposed Interpretive Rule.

Under the Proposed Interpretive Rule, in order for campaign funds to be used for security expenses, there must be:

Non-Structural Security Upgrades

1. “reasonably specific and ongoing threats of physical harm exist as to members of Congress due to their status as federal officeholders;
2. the U.S. Capitol Police, the Office of the Sergeant at Arms of the U.S. House of Representatives, or the Office of the Sergeant at Arms of the U.S. Senate (collectively, “U.S. Capitol Law Enforcement Offices”) has recommended that members of Congress use residential security systems; and

3. the use of campaign funds for residential security is for the installation or upgrading of residential security systems at the member's home, including necessary lighting and wiring enhancements necessary for the proper functioning of a residential security system."

Personal Security Personnel

1. "reasonably specific and ongoing threats of physical harm exist as to members of Congress due to their status as federal officeholders;
2. one or more of the U.S. Capitol Law Enforcement Offices has recommended that members of Congress use personal security personnel due to the heightened threat environment facing members of Congress generally or that the individual member use personal security personnel due to a specific threat to the member related to his or her officeholder status; and
3. the use of campaign funds for personal security personnel is for the member or the member's immediate family, including a spouse, minor children, or other relatives residing with the member."

We urge the Commission to adopt several modifications to these criteria to better fit the reality of how these threats emerge, and particularly how they must be dealt with *quickly*. The Commission correctly cited Rep. Gregg Harper's comment on Advisory Opinion 2017-07: these threats very much require a "proactive rather than reactive response."

These changes include:

- I. Expand the types of threats included.** The Proposed Interpretive Rule allows for campaign funds to be used for either residential or personal security only when there are "reasonably specific *and* ongoing threats" to a Member. A threat should not, however, need to be "ongoing" in order to justify used of campaign funds for security. The current Proposed Interpretive Rule would preclude taking proactive precautions when *one* threat is received, regardless of how credible it may be.

Additionally, threats against a Member's family clearly should be actionable using campaign funds in the same way that they are for a Member.

- II. Expand the types of harm included.** While the Proposed Interpretive Rule solely allows for campaign funds to be used to proactively protect against "physical harm," there are many additional types of harm with which a Member can be faced, including financial harms (such as theft), and mental harms that occur *as a result of others* receiving threats.

III. Include protection of agents of the Member of Congress or their campaign as a permissible use of campaign funds in this area. The Proposed Interpretive Rule is restricted solely to protecting Members of Congress; however, their families routinely receive threats as well. In addition, official and campaign staff – from Chiefs of Staff to campaign managers to spokespeople – also receive threats that require the same proactive precautions as those that a Member receives.

We can see no policy interest that would be furthered by excluding these other individuals from the protections that would be allowed by these rules. These individuals – while not being Members of Congress or their families – should not be left out of this analysis, as long as the threat arises due to their capacity with a campaign or official office.

In light of those fundamental premises, our proposed framework would be (substantive changes in **bold**):

Non-Structural Security Upgrades

1. “reasonably specific **or** ongoing threats of **physical** harm exist as to members of Congress, **their families, or their agents** due to their status as federal officeholders **or as federal candidates**;
2. the U.S. Capitol Police, the Office of the Sergeant at Arms of the U.S. House of Representatives, ~~or~~ the Office of the Sergeant at Arms of the U.S. Senate (collectively, “U.S. Capitol Law Enforcement Offices”) **or a bona fide private security consultant** has recommended that members of Congress **or affected individuals** use residential security systems; and
3. the use of campaign funds for residential security is for the installation or upgrading of residential security systems at the **individual’s** home, including necessary lighting and wiring enhancements necessary for the proper functioning of a residential security system.”

Personal Security Personnel

1. “reasonably specific **or** ongoing threats of **physical** harm exist as to members of Congress, **their families, or their agents** due to their status as federal officeholders **or direct association with their campaign**;

2. one or more of the U.S. Capitol Law Enforcement Offices **or a bona fide personal security consultant** has recommended that members of Congress **or affected individuals** use personal security personnel due to the heightened threat environment facing members of Congress generally or that the individual ~~member~~ use personal security personnel due to a specific threat ~~to the member~~ related to his or her officeholder status **or direct association with the member's campaign**; and
3. the use of campaign funds for personal security personnel is for the member or the member's immediate family, including a spouse, minor children, or other relatives residing with the member, **or for their agents because of their direct association with the member's campaign.**"

There is no better or more important "bona fide campaign or political purpose" (to borrow from the House Committee on Ethics' guidance) for a committee's use of its resources than ensuring the safety of its candidate. In these extraordinary times where Members of Congress and their families and agents obviously face real and growing threats, whether online or in person, or now even on the grounds of the Capitol itself, it is clear that a much greater need for spending on security and protection than the Proposed Interpretive Rule allows for "would exist irrespective of the candidate's campaign or duties as a Federal officeholder."

We implore the Commission to broaden the scope of the Proposed Interpretive Rule to meet these new, terrifying realities.

Sincerely,



Neil Reiff



Dara Lindenbaum



David Mitrani