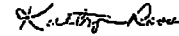


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January 3, 2019

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

VIA EMAIL: cela@fec.gov

Re: MUR 7534: Response to Complaint from Huizenga for Congress and David Nienhuis in his official capacity as treasurer, Congressman Bill Huizenga, and Natalie Huizenga.

Dear Mr. Jordan:

We are writing this letter on behalf of Huizenga for Congress and David Nienhuis in his official capacity as treasurer, Congressman Bill Huizenga, and Natalie Huizenga (collectively, the "Respondents") in response to the Complaint filed in the above-referenced matter by Ryan Bennett and the Michigan Democratic Party. As should be readily apparent, the Complaint is nothing more than a political ploy by partisan operatives to create negative publicity for Congressman Huizenga leading up to the 2018 election. This is clear by how widely they distributed the Complaint with the media, even weeks before they actually filed it.

Complainants attempt to allege that Respondents converted campaign funds for personal use, but the Complaint contains zero supporting evidence for the allegations, and instead relies entirely on conjecture and comparisons to filings from other members of the Michigan congressional delegation. But Respondent's conjecture is unsupported by facts, and comparative spending numbers of other congressional campaigns is not evidence of illegal activity.

The Federal Election Commission (the "Commission") may find "reason to believe" only if a complaint sets forth sufficient, specific facts, which, if proven true, would constitute a violation of the Act.¹ Unwarranted legal conclusions from asserted facts or mere speculation

¹ See 11 C.F.R. § 111.4(a), (d).

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will not be accepted as true.² Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence.³ As explained in more detail below, the unfounded allegations made in the Complaint cannot be accepted as true and do not support a reason to believe finding in this matter. In contrast, the Respondents have included signed and sworn affidavits rebutting the allegations. Thus, the Commission should either dismiss the Complaint on its face or find no reason to believe a violation of the Federal Election Campaign Act of 1971 (the "Act") or the Commission's regulations occurred with respect to the Respondents.

Factual Background

Congressman Bill Huizenga has represented Michigan's Second Congressional District since 2011. Huizenga for Congress (the "Committee") is his authorized campaign committee, and both his wife, Natalie, and brother, James Barry, work for the Committee and often attend campaign events.⁴ The Committee runs an active campaign year-round, organizing and participating in events across Michigan and beyond. The Committee's receipts routinely rank among the highest for a congressional committee not just in Michigan, but overall. The Second District is relatively large and encompasses much of western Michigan. It includes many rural constituencies, and campaign staff often must travel hundreds of miles roundtrip to attend campaign events, particularly for the many events held in Detroit or Lansing.

One such event that the Committee attends is Artprize, which, as explained in the Complaint, is a popular art competition and fundraiser held in Grand Rapids. During Artprize, the Committee hosts a campaign fundraiser contemporaneously with the art competition, inviting campaign supporters to dinner and/or drinks nearby. This was true in 2014, when the Committee, as is its custom, hosted campaign supporters at Osteria Rossa, a restaurant in Grand Rapids. The dinner was also attended by Congressman and Mrs. Huizenga, as well as Mr. Barry and his wife. As was made clear in the description in the Committee's FEC report, the dinner at Osteria Rossa was a campaign dinner at which campaign business was discussed. Because it was a campaign dinner, Committee funds were used, as permitted by the Act.

The Complaint attempts to set the stage for its overall theory by painting the Osteria Rossa dinner as purely personal, relying solely on a Facebook post from Mr. Barry in which he stated that they had a "fun night." But unfortunately for the Complainants, the Act and Commission regulations do not ban having fun at campaign events, nor is personal use determined by whether someone had fun. There is absolutely no evidence in the Complaint

² See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001).

³ See *id.*

⁴ Commission regulations specifically permit salary payments to family members where they are payments for "bona fide, campaign related services." 11 C.F.R. 113.1(g)(1)(i)(H).

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indicating that the expense was personal use, and, like the rest of the Complaint, is completely unfounded and approaches bad faith.

The allegations in the Complaint are completely unsupported by the facts. The Complaint compiles a kitchen sink of campaign expenditures and spins them, based on nothing at all, to fit Complainants' political narrative. This includes \$40,000 on meal expenses, hotel expenses in Washington, \$47,000 in mileage reimbursement, and \$51,000 in golf expenses. The Complaint uses these large figures for shock value, but these quoted numbers are an accumulation of multiple years, often dating back to 2011.

As discussed below, every dollar spent by the Committee was for campaign purposes and permissible under the Act. Accordingly, the Commission should decline to allow its enforcement procedure to be used for purely partisan, political purposes, and find no reason to believe a violation occurred.

Legal Analysis

A candidate and his or her authorized committee may not convert campaign funds to the personal use of the candidate or any other person.⁵ Commission regulations define personal use as "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."⁶ Several enumerated activities constitute personal use *per se*.⁷ If an expense is not listed as *per se* personal, the Commission must consider, on a case-by-case basis, whether that expense would exist irrespective of a candidate's campaign or official duties.⁸ These case-by-case expenses include meals, travel expenses, and vehicle use.

Commission regulations identify "[m]ortgage, rent or utility payments" as *per se* personal use.⁹ The Commission has stated that "[t]he personal use provisions of the Act and its corresponding regulations [] make clear that the rental payments for any part of any personal residence constitute *per se* personal use."¹⁰ However, because "the regulation explicitly covers only mortgages, rental payments, and utility payments," the Office of General Counsel has taken

⁵ 52 U.S.C. § 30114(b); 11 C.F.R. § 113.1(g); *see also* Advisory Opinions 2014-10, 2001-10, 2001-03, 2000-40, 2000-37, 2000-12, 1998-1, and 1997-11.

⁶ 11 C.F.R. § 113.1(g).

⁷ 11 C.F.R. § 113.1(g)(1)(i).

⁸ 11 C.F.R. § 113.1(g)(1)(ii).

⁹ 11 C.F.R. § 113.1(g)(1)(ii)(E).

¹⁰ *See* First Gen. Counsel's Rpt. at 8, MUR 7057 (Friends of Jason Chaffetz. *et al.*).

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the position that the Commission should not treat hotel stays as *per se* personal use.¹¹ In MUR 7057, OGC explained that when a candidate “books stays only occasionally when his family is in Washington ... [t]he episodic nature of the hotel stays suggests that the hotels should not be treated as a personal residence and a *per se* example of personal use.”¹² Additionally, OGC went on to explain that “[t]ravel expenses incurred by a candidate’s spouse or minor children do not constitute personal use if they are in connection with campaign-related events or events arising out of official duties.”¹³

Discussion

Meal Expenses

The Complaint alleges that the Committee spent \$37,149 in meal expenses from January 2015 through July 2018, and because that figure is purportedly higher than other members of the Michigan congressional delegation, it “is strong evidence that there is reason to believe Campaign funds were illegally converted to personal use.” To the contrary, comparative spending levels are not evidence of illegal activity. It may be evidence that a campaign holds more or larger events than others, but it certainly does not support a reason to believe finding.¹⁴

As discussed above, the dinner at Osteria Rossa that the Complainants attempt to hang their hats on as evidence of personal use was a campaign event associated with a fundraiser the Committee regularly holds. We have attached three sworn affidavits supporting this fact. The Complaint attached a Facebook post that doesn’t indicate anything other than the dinner happened. In light of this reliable, sworn evidence to the contrary, the Commission must find no reason to believe a violation occurred.

Likewise, the other meal expenses the Complaint assumes, without any support, were personal use were instead entirely for campaign purposes. The three sworn affidavits again support this fact.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 9 (citing Advisory Opinions 1996-24 and 2005-09).

¹⁴ The Commission should reject Complainant’s comparative spending level analysis as evidence of any violation. As the Commission knows well, not all campaigns are operated the same. Some campaigns are safe incumbents in districts that are heavily tilted toward one party, so the campaign does not need to raise and spend at the same levels as races in more competitive districts. Some districts are large and rural, and require much more travel than urban districts. Some candidates are seeking leadership positions in their congressional delegation, so they are expected to raise higher sums and attend fundraisers across the country, while other candidates opt to not raise funds outside their district. In other words, these are not apples to apples comparisons, and assuming one campaign has converted funds to personal simply because it raised and spent funds at a higher level than other campaigns is, for lack of a better word, ridiculous.

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Common sense also supports this fact. A review of the Committee's expenditures for meals does not indicate the type of spending that would be for personal use. For instance, the Committee reported multiple disbursements of around \$1,000 to Orange Leaf, a frozen yogurt store. It strains the imagination how one could purchase \$1,000 of frozen yogurt, multiple times, for personal use. The majority of the other disbursements are similar, large purchases, which indicate they were associated with campaign events. As stated in the sworn affidavits, the other smaller purchases were meals for campaign staff or for campaign purposes. Because these campaign meals would not have existed irrespective of Congressman Huizenga's campaign or official duties, they are not personal use under the Act, and the Commission should find no reason to believe a violation occurred.

"Living Expenses" in Washington

The Complaint alleges that because Congressman Huizenga lives in his congressional office while in Washington, any expenses for hotels in Washington, which the Complaint classifies as "living expenses," must be personal use. Specifically, the Complaint alleges that the Committee paid \$12,366 in hotel expenses between from January 2015 through July 2018. Assuming the Complaint's calculation is correct, that comes out to, on average, \$287 per month, or based on Washington's hotel prices, less than one night per month during that period.

Here again, the Complaint bases this allegation solely on comparative spending numbers to other members of the Michigan delegation. There is no information in the Complaint to suggest that the Committee ever paid for hotel stays for personal use. Instead, as the attached, sworn affidavits state, the Committee only paid for Washington hotels when the Congressman's family was in town for official or campaign-related events. Just as in MUR 7057, the episodic nature of the hotel stays suggests that the hotels should not be treated as a personal residence and a *per se* example of personal use, and because they were connected to official or campaign events, the disbursements were permissible under the Act. The Commission should find no reason to believe a violation occurred for "living expenses" in Washington.

Mileage Reimbursements

The Complaint alleges that the Committee reimbursed Congressman Huizenga and his family more than \$47,000 in mileage since 2011.¹⁵ Setting aside that much of that time period is well outside of the Act's statute of limitations, all mileage reimbursements were permissible and related to campaign or official events, and all individuals reimbursed for mileage keep details logs to ensure accuracy and compliance with the Act. Like everything else in the Complaint,

¹⁵ As to the allegation that the Committee continued to reimburse mileage after it purchased a campaign vehicle, the vehicle in question is a small two-seat van which is prohibited from transporting more than the driver and a single passenger. So, any time more than two individuals travel for campaign purposes, they cannot use the van. Moreover, nothing in the Act or Commission regulations states that if a campaign purchases a vehicle, campaign staffers are prohibited from using any other vehicle or seeking reimbursement for their mileage in other vehicles. This allegation is baseless.

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there is absolutely no information to suggest that any mileage was ever reimbursed for personal use. Instead, the Complaint again relies on comparative spending levels of other congressional campaigns. We have attached sworn affidavits rebutting the allegation and stating that all mileage reimbursements were related to permissible campaign or official activities. The Commission should find no reason to believe a violation occurred for mileage reimbursements.

\$391,382 on Hotels, Transportation, and Meals

The Complaint next alleges, without evidence, that the Committee must have paid for personal expenses based on the total spending amount on hotels, transportation, and meals since January 2015. This is not a new allegation, but instead a combination and restatement of the previous ones. The allegation is supported solely by comparative spending levels and Complainants' characterization of the disbursements, which essentially amounts to "if the Committee paid for a nice hotel, it must have been personal use." This is not a cognizable legal argument. It is mere speculation, and should not be accepted as true.¹⁶

The attached, sworn affidavits show that all expenses paid by the Committee related to hotels, transportation, and meals were connected to campaign or official events. In light of this evidence, with nothing in the Complaint to suggest otherwise, the Commission must find no reason to believe a violation occurred related to hotels, transportation, and meals.

Golf Expenses

Next, the Complaint argues that the Committee violated the Act by paying for \$51,000 in golf expenses. Every year, the Committee holds one or more fundraisers at a golf club that involve meals, green fees, and sometimes overnight lodging. The Act does not prohibit holding this type of fundraiser. There is no information in the Complaint to suggest that these disbursements were for personal use. Instead, as the attached affidavits indicate, all golf-related expenses were for campaign events and are permissible under the Act. In light of this evidence, and with nothing to support the personal use allegation in the Complaint, the Commission must find no reason to believe a violation occurred.

Failure to Itemize Disbursements

Finally, the Complaint alleges that the Committee failed to properly itemize reimbursements to Congressman Huizenga and his family.¹⁷ The Commission's instructions to

¹⁶ Like all of the Committee's disbursements, each of the hotel stays listed in the Complaint as "strong evidence" of personal use was in fact connected to official campaign events and activities and permissible under the Act. For instance, the March 19, 2014 disbursement to Disney's Grand Floridian was connected to a Huizenga for Congress fundraiser. See Huizenga for Congress invitation attached as exhibit. Again, as supported by the attached affidavits, the Committee has not made any disbursements for hotel stays that were personal use.

¹⁷ The Complaint includes in its reimbursement allegation payments made to JB America, LLC. However, even a cursory review of the Committee's filings shows that payments to JB America, LLC were for campaign

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candidates could not be more direct or on point: a separate memo entry is only required “if an individual’s payment on behalf of the committee exceeds \$200 in an election cycle to a single vendor.”¹⁸ The Committee has reviewed its filings, and believes all reimbursements were fully and properly reported. The Committee has no intent to conceal any of its activity, because, as discussed above, all of its activity was legal and permissible under the Act. The Committee takes its reporting obligations seriously, and has never received an RFAI from the Commission regarding reimbursements.

In MUR 7057, the Complaint alleged that a congressional committee failed to properly itemize \$68,000 in reimbursements over a nine-year period.¹⁹ OGC recommended that the Commission find no reason to believe a violation occurred because “[t]he record [did] not indicate that any reimbursements were for payments aggregating more than \$200 per vendor during the relevant periods. The Commission voted 5-1 to adopt OGC’s recommendation.”²⁰

The allegations here are the similar. They cover an extended period of time, and there is no information in the record to indicate that more than \$200 was paid to a single vendor during the relevant periods. The Commission should adopt the same approach it took in MUR 7057 and find no reason to believe a violation occurred. However, even if the Commission determines that the Committee should amend its reports to include more information regarding reimbursements, this does not warrant further enforcement action, and the matter should instead be dismissed and/or referred to the Reports Analysis Division.

Conclusion

In attenuated and unsubstantiated arguments, Complainants have not submitted a single piece of evidence to support their allegations. In contrast, Respondents have submitted sworn affidavits rebutting each and every allegation. In light of this, we respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately find no reason to believe a violation occurred.

Thank you for your prompt consideration of this matter, and please do not hesitate to contact us directly at (202) 572-8663 with any questions.

Respectfully submitted,

consulting and bonda fide service provided as the Committee’s campaign manager, and those payments were well within the fair market value for the service provided.

¹⁸ Fed. Election Comm’n Campaign Guide at 99 (2014); *see also* 11 C.F.R. 102.9(b).

¹⁹ *Id.* at 11.

²⁰ Certification, MUR 7057 (Friends of Jason Chaffetz. *et al.*) (Dec. 12. 2016).

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Charles R. Spies
Derek H. Ross
*Counsel to Huizenga for Congress and David
Nienhuis in his official capacity as treasurer,
Congressman Bill Huizenga, and Natalie Huizenga.*

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AFFIDAVIT OF CONGRESSMAN BILL HUIZENGA

My name is BILL HUIZENGA. I have personal knowledge of the facts set forth herein, and state as follows:

1. I am a the United States Congressman representing Michigan's Second Congressional District, and Huizenga for Congress (the "Committee") is my principal campaign committee.

2. I have reviewed the Complaint in MUR 7534 and the allegations therein.

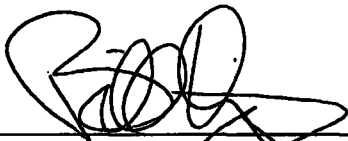
3. I was present at the dinner at Osteria Rossa in 2014 that the Complaint terms "fun night." The dinner was connected to an official Committee event, and Committee business was discussed during the dinner.

4. To the best of my knowledge, all Committee disbursements, including but not limited to payments for meals, travel, hotels, mileage reimbursement, and golf were connected to official Committee events or other permissible purposes under federal law.

5. To the best of my knowledge, I have never received a reimbursement for an expense that would have existed irrespective of my candidacy or duties as a federal officeholder.

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

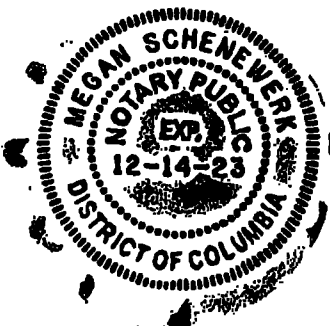
Executed on this 3rd day of Jan, 2019.




Congressman Bill Huizenga

City: Washington, DC

State: _____



District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 3rd day of JANUARY, 2019


Megan Schenewerk, Notary Public, D.C.
My commission expires December 14, 2023.

1400455-101001

AFFIDAVIT OF JAMES BARRY

My name is JAMES BARRY. I have personal knowledge of the facts set forth herein, and state as follows:

1. Congressman Bill Huizenga is my brother, and Huizenga for Congress (the "Committee") is his principal campaign committee.
2. I often attend Committee events and serve in official roles for the Committee.
3. I have reviewed the Complaint in MUR 7534 and the allegations therein.
4. I was present at the dinner at Osteria Rossa in 2014 that the Complaint terms "fun night." The dinner was connected to an official Committee event, and Committee business was discussed during the dinner.
5. To the best of my knowledge, all Committee disbursements, including but not limited to payments for meals, travel, hotels, mileage reimbursement, and golf were connected to official Committee events or other permissible purposes under federal law.
6. To the best of my knowledge, I have never received a reimbursement for an expense that would have existed irrespective of my brother's candidacy or duties as a federal officeholder.
7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 2nd day of January 2019.



James Barry

City: Holland

State: MI

1000-144480-1



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Evening: Family Time @ Walt Disney World

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7:00PM: Group Dinner & Disney Fireworks Show

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Americans for Spring Training

PDS Compliance

2470 Daniels Bridge Rd.- Suite 121

Athens, GA 30606

For more information or to RSVP contact:

Ashlee Reid Morehouse at 202-735-5509 or

ashlee@omstrat.com

Andrew Theodore at 703-619-7031 or

andrew@theodorecompany.com

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