

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 7534**

4 COMPLAINT FILED: Nov. 5, 2018

5 NOTIFICATION DATE: Nov. 13, 2018

6 LAST RESPONSE FILED: Jan. 29, 2019

7 ACTIVATION DATE: Feb. 15, 2019

8
9 **STATUTE OF LIMITATIONS:**

10 Oct. 28, 2019 – Aug. 12, 2023

11 **ELECTION CYCLES: 2014, 2016, 2018**

12 **COMPLAINANTS:**

Ryan Bennett

13 Michigan Democratic Party

14 **RESPONDENTS:**

William P. Huizenga

15 Huizenga for Congress and David Nienhuis in
16 his official capacity as treasurer

17 Natalie Huizenga

18 James Barry

19 **RELEVANT AUTHORITY:**

52 U.S.C. § 30104(b)(5)(A), 6(A)

20 52 U.S.C. § 30114(b)

21 11 C.F.R. § 104.3(b)(4)

22 11 C.F.R. § 104.9(a)

23 11 C.F.R. § 113.1(g)

24 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

25 **FEDERAL AGENCIES CHECKED:**

None

26 **I. INTRODUCTION**

27 The Complaint in this matter alleges that Congressman William P. Huizenga, his
28 principal campaign committee, Huizenga for Congress and David Nienhuis in his official
29 capacity as treasurer (the "Committee"), Natalie Huizenga (his wife), and his brother and
30 campaign manager, James Barry, violated the Federal Election Campaign Act of 1971, as
31 amended (the "Act"), by converting campaign funds to personal use. According to the
32 Complaint, Huizenga and his family members used campaign funds to pay for personal meals,
33 living expenses, personal travel and golf expenses, and improper mileage reimbursements. The

1 Complaint also alleges that the Committee failed to properly itemize reimbursement payments to
2 members of the Huizenga family. The Committee, Huizenga, and Natalie Huizenga filed a
3 Response in this matter denying all of the allegations and provided sworn affidavits of Huizenga,
4 Natalie Huizenga, and Barry.

5 As explained below, the available information does not raise a reasonable inference that
6 the Huizenga family converted campaign funds to personal use. Additionally, although the
7 Committee did fail to fully itemize numerous reimbursements, the amounts at issue on any
8 particular filing are relatively small. We therefore recommend that the Commission dismiss the
9 allegations that the Committee, Huizenga, Natalie Huizenga, and Barry violated 52 U.S.C.
10 §§ 30114(b) and 30104(b)(5)(A), 6(A), direct the Committee to work with the Reports Analysis
11 Division to amend its reports to reflect proper itemization of expenses, and close the file.

12 **II. FACTUAL BACKGROUND**

13 Huizenga is a federal candidate and officeholder in Michigan's Second Congressional
14 District, which he has represented since 2011. The Complaint alleges that Huizenga, his family,
15 and the Committee used campaign funds to pay for personal meals while Huizenga was in
16 Michigan, living expenses while Huizenga was in Washington, D.C., mileage and travel
17 reimbursements, and golf-related expenses.¹ The Complaint asserts that "[t]he substantial and
18 lavish amounts paid by the Campaign, particularly when compared to other Members of the
19 Michigan Delegation, can only be explained if they also include significant amounts of personal
20 use of Campaign funds by the Congressman and his family."²

¹ Compl. at 1 (Nov. 5, 2018).

² *Id.* at 2.

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1 In particular, the Complaint focuses on a disbursement for a 2014 dinner attended by the
2 Huizengas, Barry, and Barry's wife (the "Osteria Rossa dinner") and alleges that the dinner was
3 "just one example" of instances where the Huizenga family converted campaign funds for
4 personal use.³ The Complaint contends that the \$328.18 disbursement to Osteria Rossa, a
5 restaurant in Grand Rapids, Michigan, that the Committee reported as "campaign event:
6 Campaign Dinner Meeting,"⁴ was personal use because there is no indication that the meal was
7 in connection with a campaign event. Instead, relying on a Facebook post by Barry, the
8 Complaint asserts that the payment was for a Huizenga family dinner expense that would have
9 "existed irrespective of the Congressman's campaign or official duties."⁵ In the Facebook post,
10 which was attached to the Complaint, Barry is shown sitting on a bench outside with Huizenga
11 accompanied by the caption "My little brother Bill and me. We were in [Grand Rapids] with the
12 wives for a little dinner and ArtPrize last night. Fun night!"⁶ ArtPrize is a several week-long art
13 competition held in downtown Grand Rapids every other year.⁷

14 The Complaint moves on from its discussion of the Osteria Rossa dinner to compare the
15 Committee's aggregate spending on meals, travel, golf, and mileage reimbursements to that of
16 other Michigan Congressional representatives, concluding that Huizenga's relatively higher
17 spending in these categories of expenses constitutes "strong evidence" of personal use.⁸ To

³ See *Id.* at 3.

⁴ *Id.* at 2-3; Huizenga for Congress, Amended 2014 October Quarterly Rpt. at 71 (Nov. 13, 2014).

⁵ Compl. at 3.

⁶ *Id.* at 2, Ex. 1 (Facebook post from James Barry).

⁷ *Id.* at 2, n.10.

⁸ *Id.* at 4, 6.

- 1 • In total, the Committee reported spending \$391,382 on hotels, transportation, and
2 meal expenses, while the next highest spender reported spending \$188,106.14
3 (roughly 48% of Huizenga's spending).¹³

4 The Complaint's allegations concerning the Committee's spending revolve almost
5 exclusively around these comparisons to other Michigan Representatives' spending. The
6 Complaint posits that Huizenga's higher level of spending suggests that Huizenga and his family
7 converted campaign funds to personal use, but does not provide any additional examples
8 suggesting misuse. In statements to the press, representatives for the Michigan Democratic
9 Party, the Complainant in this matter, emphasized the Committee's comparatively high amount
10 and frequency of spending, as opposed to specific instances of potential misuse, as justification
11 for a Commission investigation to determine whether Committee funds had been converted to
12 personal use.¹⁴

13 Finally, separate from the personal use allegations, the Complaint also alleges that the
14 Committee failed to itemize \$41,000 in disbursements to Huizenga, Natalie Huizenga, Barry, and
15 Barry's company, concluding that "[b]ecause of this violation, the public, the press, and the FEC
16 do not know who, if anyone, was actually paid by the Congressman and his family with the more
17 than \$41,000 in reimbursements paid to them from campaign funds."¹⁵ The Complaint attached

¹³ *Id.* at 6, Ex. 7 (including expenses that were incurred more than five years ago as well as expenditures that were also addressed in other areas of the Complaint).

¹⁴ See Lauren Gibbons, *Michigan Dems Plan to File Complaint over U.S. Rep. Bill Huizenga's Campaign Finances*, MLIVE, (Sept. 27, 2018), <https://www.mlive.com/news/2018/09/michigan-dems-plan-complaint-o.html>; Sydney Smith, *Dems Accuse Huizenga of Lavish Campaign Spending*, HOLLAND SENTINEL, (Sept. 28, 2018), <https://www.hollandsentinel.com/news/20180928/dems-accuse-huizenga-of-lavish-campaign-spending>.

¹⁵ Compl. at 8.

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1 a spreadsheet listing 42 specific disbursements made between March 8, 2011, and March 27,
2 2018, to members of the Huizenga family, ranging in value from \$201.63 to \$6,360.60.¹⁶ In
3 particular, the Complaint notes a reimbursement payment of \$4,928 to Natalie Huizenga with a
4 stated purpose of "Reimbursement for Campaign Travel Expenses" where none of the underlying
5 payees were disclosed as memo entries beneath the reimbursement payment.¹⁷

6 The Committee, Huizenga, and Natalie Huizenga submitted a joint response, which
7 attached signed affidavits from Huizenga, Natalie Huizenga, and Barry. Respondents argue that
8 "the Complaint is nothing more than a political ploy by partisan operatives to create negative
9 publicity for Congressman Huizenga leading up to the 2018 election."¹⁸ Respondents stress that
10 the personal use allegations in general rely entirely on conjecture and comparative spending
11 analyses and argue that comparatively higher spending is not evidence of illegal activity.¹⁹

12 With respect to the Osteria Rossa dinner, Respondents describe the dinner as a campaign
13 fundraising event, stating that, "the Committee host[ed] a campaign fundraiser
14 contemporaneously with the art competition, inviting campaign supporters to dinner and/or
15 drinks nearby."²⁰ The signed affidavits submitted by Huizenga, Natalie Huizenga, and James
16 Barry are nearly identical and include a general denial of the personal use allegations as well as a
17 statement that the Osteria Rossa dinner was "connected to an official Committee event, and

¹⁶ *Id.* at Ex. 10.

¹⁷ *Id.* at 8.

¹⁸ Resp. at 1 (Jan. 29, 2018).

¹⁹ *Id.*

²⁰ *Id.* at 2.

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1 Committee business was discussed during the dinner.”²¹ Natalie Huizenga and James Barry also
2 state: “I often attend Committee events and serve in official roles for the Committee.”²²

3 The Response addresses the other categories of spending questioned in the Complaint by
4 providing blanket denials, referring to the Respondents’ Affidavits, arguing that comparative
5 spending analyses do not provide a cognizable legal argument, and by providing information
6 concerning specific campaign fundraisers that were included in the Complaint’s list of alleged
7 expenditures constituting personal use.²³ Respondents specifically address Huizenga’s numerous
8 disbursements to Orange Leaf, a frozen yogurt store, by explaining that the large dollar amount
9 of the expenses and “common sense” make it clear that they are associated with fundraising
10 rather than personal frozen yogurt purchases, and provided a flyer concerning a 2014 spring
11 training baseball fundraiser at Walt Disney World.²⁴ Respondents also minimize the
12 Committee’s aggregate spending on hotels, noting that Huizenga’s Washington D.C. hotel
13 expenses amount to the cost of one hotel night per month, and stating that “the Committee only
14 paid for Washington hotels when the Congressman’s family was in town for official or
15 campaign-related events.”²⁵ The Response claims that some of the mileage reimbursements
16 listed in the exhibits to the Complaint were outside the Act’s statute of limitations, and states that

²¹ See Affs. of William P. Huizenga, Natalie Huizenga, and James Barry (collectively, “Respondent Affs.”).

²² *Id.*

²³ *Id.*; Resp. at 5-6.

²⁴ Resp. at 5, n.16 (referencing the 2014 flyer, which was attached as an unlabeled exhibit). Publicly available information appears to confirm that the Committee has hosted fundraising events at Orange Leaf. See, e.g., Kent Cty. Republican Comm., *Huizenga Fro-Yo Birthday Party*, KENTGOP.ORG (Feb. 9, 2018), http://www.kentgop.org/huizenga_birthday_20180209.

²⁵ Resp. at 5.

1 “all individuals reimbursed for mileage keep details [sic] logs to ensure accuracy and compliance
2 with the Act.”²⁶ The Response also notes that the campaign vehicle in question was a van
3 designed to primarily transport equipment and could only accommodate one or two passengers,
4 meaning that “anytime more than two individuals travel for campaign purposes, they cannot use
5 the van.”²⁷ Respondents observe that many of the expenses listed in the section of the Complaint
6 concerning Hotels, Transportation, and Meals were duplicative of expenses listed in other
7 sections.²⁸

8 With regard to Complainant’s assertion that the Committee has failed to itemize
9 reimbursements, Respondents claim to have “reviewed its filings, and believes that all
10 reimbursements were fully and properly reported” but do not specifically address the unitemized
11 expenses referenced in the Complaint.²⁹ Respondents also suggest that to the extent violations
12 exist, dismissal or referral to the Reports Analysis Division is more appropriate than enforcement
13 action, citing the Commission’s handling of similar issues in MUR 7057 (Friends of Jason
14 Chaffetz).³⁰

15 **III. LEGAL ANALYSIS**

16 **A. Personal Use**

17 The Act provides that funds in a campaign account may be used for expenditures arising
18 from a candidate’s campaign for federal office or a federal officeholder’s official duties, as well

²⁶ *Id.* at 5.

²⁷ *Id.* at 5, n. 15.

²⁸ *Id.* at 6.

²⁹ *Id.* at 7.

³⁰ *Id.* at 7.

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1 as “for any other lawful purpose.”³¹ Notwithstanding this broad discretion, however, the Act
2 also provides that campaign funds “shall not be converted by any person to personal use,” and
3 defines personal use as using funds “to fulfill any commitment, obligation, or expense of a
4 person that would exist irrespective of the candidate’s election campaign or individual’s duties as
5 a holder of Federal office.”³² The Act and its implementing regulations enumerate certain types
6 of disbursements that are *per se* personal use.³³ These include household food items or supplies;
7 tuition payments other than those associated with training campaign staff; mortgage, rent, or
8 utility payments for any part of a personal residence of the candidate; admission to a sporting
9 event or other form of entertainment unless part of a specific campaign or officeholder activity;
10 dues, fees, or gratuities at a recreational facility unless they are part of the costs of a specific
11 fundraising event; salary payments to the candidate’s family unless the family member is
12 providing *bona fide* services and the payments are not in excess of the fair market value; and
13 vacations.³⁴ For all other disbursements, the regulation provides that the Commission shall
14 determine on a case-by-case basis whether a given disbursement is personal use by applying the
15 “irrespective test” formulated in the statute.³⁵ Meal, travel, and vehicle expenses are examples of
16 disbursements that may be determined to be personal use after applying the irrespective test.³⁶

³¹ 52 U.S.C. § 30114(a)(6); 11 C.F.R. § 113.2(e) (campaign funds may be used “for any lawful purpose” unless prohibited as personal use).

³² 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); *see* 11 C.F.R. § 113.2.

³³ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

³⁴ 52 U.S.C. § 113.1(g)(1)(i)(A), (D), (E)(1), (F)-(H), (J).

³⁵ 11 C.F.R. § 113.1(g)(1)(ii).

³⁶ *Id.*

1 The Complaint makes a credible argument that the Osteria Rossa dinner may have been a
2 personal dinner based on the fact that the meal was documented on personal social media pages,
3 on the absence of participants who were not a part of Huizenga's family, and on the lack of any
4 apparent campaign purpose to the meal.³⁷ While Natalie Huizenga and Barry's official roles
5 with the campaign could suggest a campaign purpose for the meal, as they attest was the case
6 with respect to the dinner, the presence of Barry's wife along with the absence of non-familial
7 campaign staff, suggest that this meal was a function of their familial relationships and not their
8 official roles.³⁸ Additionally, Respondents' explanations concerning this dinner are both
9 conflicting and unhelpful. The Response describes the Osteria Rossa dinner as a campaign
10 event.³⁹ Each affidavit, however, describes the dinner as being "connected to an official
11 Committee event," not the event itself, and claims that "Committee business was discussed
12 during the dinner."⁴⁰ Nevertheless, the dinner itself is valued at \$328.00 and took place four
13 years before the complaint was filed.⁴¹ By itself, the Osteria Rossa dinner alone cannot support
14 the allegations of systemic personal use contained in the Complaint.

³⁷ See Compl. at 2, Ex. 1.

³⁸ Natalie Huizenga, the spouse of Huizenga states that she "often attend[s] Committee events and serve[s] in official roles for the Committee." Natalie Huizenga Aff. Barry has identified himself as a campaign manager in statements to the press and has filed complaints before the Commission in his official capacity as Huizenga's campaign manager. See Smith, *supra* n.14

³⁹ Resp. at 2.

⁴⁰ Respondent Affs.

⁴¹ Compl. at 3.

1 The remaining personal use allegations are based entirely on the fact that Huizenga
2 spends more on meals, events, and travel than other members of the Michigan delegation.⁴²
3 These expenses all fall into categories of expenditures that are not *per se* personal use, and
4 instead require inquiry into whether they “would exist irrespective of the candidate’s election
5 campaign or individual’s duties as a holder of Federal office.”⁴³ There is nothing on the face of
6 the expenses suggesting personal use, though Respondents provided little helpful information to
7 assist the Commission in determining whether the numerous listed expenses were made for
8 lawful purposes. They submitted nearly identical blanket declarations denying that any expenses
9 were for personal use, but with the exception of a 2014 event flyer, did not provide specific
10 evidence of campaign or officeholder activity.⁴⁴ Similarly, Respondents stated that their mileage
11 reimbursements were appropriate because they kept mileage logs but did not provide any data
12 from those mileage logs or the logs themselves.⁴⁵ A more fulsome response from the Committee
13 could have provided a more definitive resolution of the allegations.

14 Given the broad discretion available to candidates and committees to spend campaign
15 funds for lawful purposes relating to the campaign and to a candidate’s status as a federal
16 officeholder, the comparative analysis of spending in this matter, without additional information,

⁴² *Id.* at 4-7.

⁴³ 52 U.S.C. § 30114(b); *see supra* n. 32.

⁴⁴ Respondent Affs.

⁴⁵ Resp. at 5.

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1 does not raise a reasonable inference that campaign funds were converted to personal use.⁴⁶
2 Recently, the Commission dismissed a matter in which the complaint alleged that expenditures
3 were for personal use because they were allegedly excessive in comparison to those of other
4 committees; the Commission noted that "there is nothing inherently suggestive about the fact
5 that the Committee reported spending more on [disputed expenditures] than other committees."⁴⁷
6 Here, without additional specificity regarding the potential personal use, the Complaint's
7 comparative spending analysis does not provide sufficient reason to believe that the identified
8 disbursements constitute personal use.

9 Accordingly, because the available information fails to give rise to a reasonable inference
10 that Respondents converted campaign funds to personal use, we recommend that the
11 Commission dismiss the allegations that Huizenga, the Committee, Natalie Huizenga, and Barry
12 violated 52 U.S.C. § 30114(b).

13 **B. Failure to Itemize Reimbursements**

14 Political committees must itemize and report the name and address of each person to
15 whom they make expenditures or other disbursements that aggregate more than \$200 per
16 calendar year (for unauthorized committees) or per election cycle (for authorized committees).⁴⁸

⁴⁶ 52 U.S.C. § 30114(a)(6); 11 C.F.R. § 113.2(e); Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (explanation and justification); *compare with* Statement of Reasons, Comm'rs Wold, Mason & Thomas at 2, MUR 4850 (Deloitte & Touche LLP) ("We cannot allow mere conjecture (offered by a political opponent's campaign) to serve as a basis to launch an investigation").

⁴⁷ See Factual & Legal Analysis at 7, MUR 7494 (John Culberson, et al.) (dismissing allegations of personal use where complainant failed to link questioned expenditures to actual personal use).

⁴⁸ 52 U.S.C. § 30104(b)(5)(A), 6(A); 11 C.F.R. §§ 104.3(b)(4)(i), 104.9(a).

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1 Committees must report the date, amount, and purpose of each disbursement.⁴⁹ For
2 reimbursements, the Commission requires “a memo entry identifying the ultimate payee . . . for
3 any reimbursement of expenses (other than travel and subsistence expenses) if the individual’s
4 payments to the vendor on behalf of the committee aggregate more than \$200 in a calendar year
5 (or election cycle for authorized committees).”⁵⁰ When the reimbursement is for travel advances
6 that exceed \$500, a memo entry is required for each payment to a specific vendor by that
7 individual on behalf of the authorized committee if total payments to that vendor by the political
8 committee (or by the individual on behalf of the committee) aggregate more than \$200 in an
9 election cycle.⁵¹ Each memo entry must include the name and address of the vendor, as well as
10 the date, amount, and purpose of the payment.⁵²

11 The Complaint identified 42 disbursements to Huizenga and his family totaling
12 \$41,591.00, each of which exceeded \$200.⁵³ In its Response, the Committee stated that it
13 “believes all reimbursements were fully and properly reported,” referred to the Commission’s
14 decision in MUR 7057,⁵⁴ and noted that it has never received a Request for Additional

⁴⁹ See FEC Campaign Guide for Congressional Candidates at 98, 101 (June 2014) (“Candidate Guide”).

⁵⁰ Interpretative Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40625 (Jul. 8, 2013) (“Ultimate Payee Reporting Rule”); Candidate Guide at 98, 101.

⁵¹ Factual & Legal Analysis at 2, MUR 6897 (Allen Weh for Senate); *see* Ultimate Payee Reporting Rule; 11 C.F.R. § 102.9(b)(2)(i); Candidate Guide at 101; Advisory Op. 1996-20 (Lucas for Congress) at 4, n.3.

⁵² Candidate Guide at 101.

⁵³ Compl. at Ex. 10. Some of the reimbursements listed by Complainant occurred more than five years ago and are outside the applicable statute of limitations. After removing reimbursements with expired statutes of limitations, 25 reimbursements totaling \$31,905.33 remain. *See* Compl., Ex. 10.

⁵⁴ Resp. at 7 (citing Certification, MUR 7057 (Friends of Jason Chaffetz)). The complaint in MUR 7057 noted aggregate annual amounts of un-itemized expenditures but did not identify specific reimbursements meriting investigation. *See* Compl. at attach. A, MUR 7057. Here, the complaint has listed 42 specific disbursements that on their face appear to require itemization.

1 Information from the Reports Analysis Division.⁵⁵ Respondents also indicated a willingness to
2 work with the Reports Analysis Division to amend their reports, as needed.⁵⁶

3 On its face, certain of the Committee's reimbursements appear to require itemization
4 because they are reimbursements to an individual who advanced personal funds to pay
5 committee expenses aggregating more than \$200 (or \$500 for travel and subsistence expenses).⁵⁷
6 For example, on February 8, 2018, Natalie Huizenga received a reimbursement for \$6,360.60
7 with the description "Plane Tickets Reimbursement for Campaign Event" but in its filings, the
8 Committee did not provide any memo entries concerning what airline provider Mrs. Huizenga
9 used to purchase airline tickets.⁵⁸ Similarly, on December 20, 2016, Natalie Huizenga received
10 an unitemized reimbursement of \$3,840.33 for "Inauguration Hotel" but the Committee did not
11 provide a memo entry identifying the hotel she paid.⁵⁹ As noted in the Complaint, on March 16,
12 2017, the Committee reported a reimbursement of \$4,928 to Natalie Huizenga for reimbursement
13 for "Campaign Travel Expenses" but did not provide any memo entries noting any underlying
14 payees.⁶⁰

15 In light of the overall circumstances, including that the potential unitemized amounts at

⁵⁵ Resp. at 7. The lack of prior corrective action is likely attributable to the fact that the Committee's errors on any one particular filing were relatively small and did not meet internal standards for referral or to send a Request for Additional Information. See Reports Analysis Division Review and Referral Procedures for the 2017-2018 Election Cycle, 96-103.

⁵⁶ Resp. at 7.

⁵⁷ Ultimate Payee Reporting Rule.

⁵⁸ Compl. at Ex. 10; Huizenga for Congress, 2018 April Quarterly Rpt. at 70 (Apr. 15, 2018).

⁵⁹ Compl. at Ex. 10; Huizenga for Congress, Amended 2016 Year End Rpt. at 10 (Mar. 10, 2017).

⁶⁰ Compl. at 8, Ex. 10.

1 issue on any one particular filing are relatively modest,⁶¹ we recommend that the Commission
2 exercise its prosecutorial discretion and dismiss the allegations that the Committee violated 52
3 U.S.C. § 30104(b)(5)(A), (6)(A)⁶² but also direct the Committee to work with the Reports
4 Analysis Division to amend its reports where required.⁶³

5 **IV. RECOMMENDATIONS**

- 6 1. Dismiss the allegations that William P. Huizenga, Huizenga for Congress and
7 David Nienhuis in his official capacity as treasurer, Natalie Huizenga, and James
8 Barry violated 52 U.S.C. § 30114(b) by converting campaign funds to personal
9 use;
- 10 2. Dismiss the allegations that Huizenga for Congress and David Nienhuis in his
11 official capacity as treasurer violated 52 U.S.C. § 30104(b)(5)(A), (6)(A) by
12 failing to itemize disbursements and direct the Committee to work with the
13 Reports Analysis Division to amend its reports;
- 14 3. Approve the attached Factual and Legal Analysis;
- 15 4. Approve the appropriate letters; and

⁶¹ Cf. Factual & Legal Analysis, MUR 6897 (Allen Weh for Senate) (EPS dismissal concerning 80 un-itemized reimbursements totaling over \$70,000 that accrued over two filing quarters where committee amended its disclosure reports to include most previously excluded payee information).

⁶² See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: William P. Huizenga MUR 7534
Huizenga for Congress and David Nienhuis in
his official capacity as treasurer
Natalie Huizenga
James Barry

I. I. INTRODUCTION

The Complaint in this matter alleges that Congressman William P. Huizenga, his principal campaign committee, Huizenga for Congress and David Nienhuis in his official capacity as treasurer (the "Committee"), Natalie Huizenga (his wife), and his brother and campaign manager, James Barry, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by converting campaign funds to personal use. According to the Complaint, Huizenga and his family members used campaign funds to pay for personal meals, living expenses, personal travel and golf expenses, and improper mileage reimbursements. The Complaint also alleges that the Committee failed to properly itemize reimbursement payments to members of the Huizenga family. The Committee, Huizenga, and Natalie Huizenga filed a Response in this matter denying all of the allegations and provided sworn affidavits of Huizenga, Natalie Huizenga, and Barry.

As explained below, the record does not indicate that the Huizenga family converted campaign funds to personal use. Additionally, although the Committee did fail to fully itemize numerous reimbursements, the amounts at issue on any particular filing are relatively small. Therefore, the Commission dismisses the allegations that the Committee, Huizenga, Natalie Huizenga, and Barry violated 52 U.S.C. §§ 30114(b) and 30104(b)(5)(A), 6(A), and directs the

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1 Committee to work with the Reports Analysis Division to amend its reports to reflect proper
2 itemization of expenses, and close the file.

3 **II. FACTUAL BACKGROUND**

4 Huizenga is a federal candidate and officeholder in Michigan's Second Congressional
5 District, which he has represented since 2011. The Complaint alleges that Huizenga, his family,
6 and the Committee used campaign funds to pay for personal meals while Huizenga was in
7 Michigan, living expenses while Huizenga was in Washington, D.C., mileage and travel
8 reimbursements, and golf-related expenses.¹ The Complaint asserts that "[t]he substantial and
9 lavish amounts paid by the Campaign, particularly when compared to other Members of the
10 Michigan Delegation, can only be explained if they also include significant amounts of personal
11 use of Campaign funds by the Congressman and his family."²

12 In particular, the Complaint focuses on a disbursement for a 2014 dinner attended by the
13 Huizengas, Barry, and Barry's wife (the "Osteria Rossa dinner") and alleges that the dinner was
14 "just one example" of instances where the Huizenga family converted campaign funds for
15 personal use.³ The Complaint contends that the \$328.18 disbursement to Osteria Rossa, a
16 restaurant in Grand Rapids, Michigan, that the Committee reported as "campaign event:
17 Campaign Dinner Meeting,"⁴ was personal use because there is no indication that the meal was
18 in connection with a campaign event. Instead, relying on a Facebook post by Barry, the
19 Complaint asserts that the payment was for a Huizenga family dinner expense that would have

¹ Compl. at 1 (Nov. 5, 2018).

² *Id.* at 2.

³ *See Id.* at 3.

⁴ *Id.* at 2-3; Huizenga for Congress, Amended 2014 October Quarterly Rpt. at 71 (Nov. 13, 2014).

1 “existed irrespective of the Congressman’s campaign or official duties.”⁵ In the Facebook post,
2 which was attached to the Complaint, Barry is shown sitting on a bench outside with Huizenga
3 accompanied by the caption “My little brother Bill and me. We were in [Grand Rapids] with the
4 wives for a little dinner and ArtPrize last night. Fun night!”⁶ ArtPrize is a several week-long art
5 competition held in downtown Grand Rapids every other year.⁷

6 The Complaint moves on from its discussion of the Osteria Rossa dinner to compare the
7 Committee’s aggregate spending on meals, travel, golf, and mileage reimbursements to that of
8 other Michigan Congressional representatives, concluding that Huizenga’s relatively higher
9 spending in these categories of expenses constitutes “strong evidence” of personal use.⁸ To
10 support its allegations, the Complaint includes the following comparison of the Committee’s
11 reported spending from January 1, 2015, through July 13, 2018, to spending by other members of
12 the Michigan delegation:

- 13 • The Committee reported spending \$37,149.29 from 2015 to 2018 in meal expenses in
14 Michigan while the next highest spender reported spending \$21,153.84 (roughly 57%
15 of Huizenga’s spending).⁹

⁵ Compl. at 3.

⁶ *Id.* at 2, Ex. 1 (Facebook post from James Barry).

⁷ *Id.* at 2, n.10.

⁸ *Id.* at 4, 6.

⁹ *Id.* at 3, Ex. 3.

- 1 • The Committee reported spending \$12,366.50 from 2015 to 2018 in D.C. hotel
2 expenses while the next highest spender reported spending \$9,479.29 (roughly 76%
3 of Huizenga's spending).¹⁰
- 4 • The Committee reported spending \$32,189.82 from 2015 to 2018 in golf-related
5 expenses while the next highest spender reported spending \$28,024.85 (roughly 87%
6 of Huizenga's spending).¹¹
- 7 • The Committee reported spending \$32,048.01 from 2015 to 2018 in mileage
8 reimbursements to family members while the next highest spender reported spending
9 \$3,112.01 (roughly 10% of Huizenga's spending).¹²
- 10 • In total, the Committee reported spending \$391,382 on hotels, transportation, and
11 meal expenses, while the next highest spender reported spending \$188,106.14
12 (roughly 48% of Huizenga's spending).¹³

13 The Complaint's allegations concerning the Committee's spending revolve almost
14 exclusively around these comparisons to other Michigan Representatives' spending. The
15 Complaint posits that Huizenga's higher level of spending suggests that Huizenga and his family
16 converted campaign funds to personal use, but does not provide any additional examples
17 suggesting misuse.

¹⁰ *Id.* at 4, Ex. 4 (contending that Huizenga's higher spending indicates that the expenditures were for personal use and that Huizenga purchased hotel rooms "on nights when he did not want to sleep in his office").

¹¹ *Id.* at 7, Ex. 8.

¹² *Id.* at 4-6, Ex. 5 (noting that Huizenga continued to seek reimbursements after purchasing a campaign vehicle and likening the reimbursements to those at issue in an indictment against former-Congressman Aaron Schock).

¹³ *Id.* at 6, Ex. 7 (including expenses that were incurred more than five years ago as well as expenditures that were also addressed in other areas of the Complaint).

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1 Finally, separate from the personal use allegations, the Complaint also alleges that the
2 Committee failed to itemize \$41,000 in disbursements to Huizenga, Natalie Huizenga, Barry, and
3 Barry's company, concluding that "[b]ecause of this violation, the public, the press, and the FEC
4 do not know who, if anyone, was actually paid by the Congressman and his family with the more
5 than \$41,000 in reimbursements paid to them from campaign funds."¹⁴ The Complaint attached
6 a spreadsheet listing 42 specific disbursements made between March 8, 2011, and March 27,
7 2018, to members of the Huizenga family, ranging in value from \$201.63 to \$6,360.60.¹⁵ In
8 particular, the Complaint notes a reimbursement payment of \$4,928 to Natalie Huizenga with a
9 stated purpose of "Reimbursement for Campaign Travel Expenses" where none of the underlying
10 payees were disclosed as memo entries beneath the reimbursement payment.¹⁶

11 The Committee, Huizenga, and Natalie Huizenga submitted a joint response, which
12 attached signed affidavits from Huizenga, Natalie Huizenga, and Barry. Respondents argue that
13 "the Complaint is nothing more than a political ploy by partisan operatives to create negative
14 publicity for Congressman Huizenga leading up to the 2018 election."¹⁷ Respondents stress that
15 the personal use allegations in general rely entirely on conjecture and comparative spending
16 analyses and argue that comparatively higher spending is not evidence of illegal activity.¹⁸

17 With respect to the Osteria Rossa dinner, Respondents describe the dinner as a campaign
18 fundraising event, stating that, "the Committee host[ed] a campaign fundraiser

¹⁴ Compl. at 8.

¹⁵ *Id.* at Ex. 10.

¹⁶ *Id.* at 8.

¹⁷ Resp. at 1 (Jan. 29, 2018).

¹⁸ *Id.*

1 contemporaneously with the art competition, inviting campaign supporters to dinner and/or
2 drinks nearby.”¹⁹ The signed affidavits submitted by Huizenga, Natalie Huizenga, and James
3 Barry are nearly identical and include a general denial of the personal use allegations as well as a
4 statement that the Osteria Rossa dinner was “connected to an official Committee event, and
5 Committee business was discussed during the dinner.”²⁰ Natalie Huizenga and James Barry also
6 state: “I often attend Committee events and serve in official roles for the Committee.”²¹

7 The Response addresses the other categories of spending questioned in the Complaint by
8 providing blanket denials, referring to the Respondents’ Affidavits, arguing that comparative
9 spending analyses do not provide a cognizable legal argument, and by providing information
10 concerning specific campaign fundraisers that were included in the Complaint’s list of alleged
11 expenditures constituting personal use.²² Respondents specifically address Huizenga’s numerous
12 disbursements to Orange Leaf, a frozen yogurt store, by explaining that the large dollar amount
13 of the expenses and “common sense” make it clear that they are associated with fundraising
14 rather than personal frozen yogurt purchases, and provided a flyer concerning a 2014 spring
15 training baseball fundraiser at Walt Disney World.²³ Respondents also minimize the
16 Committee’s aggregate spending on hotels, noting that Huizenga’s Washington D.C. hotel
17 expenses amount to the cost of one hotel night per month, and stating that “the Committee only
18 paid for Washington hotels when the Congressman’s family was in town for official or

¹⁹ *Id.* at 2.

²⁰ *See Affs. of William P. Huizenga, Natalie Huizenga, and James Barry (collectively, “Respondent Affs.”).*

²¹ *Id.*

²² *Id.*; Resp. at 5-6.

²³ Resp. at 5, n.16 (referencing the 2014 flyer, which was attached as an unlabeled exhibit).

1 campaign-related events.”²⁴ The Response claims that some of the mileage reimbursements
2 listed in the exhibits to the Complaint were outside the Act’s statute of limitations, and states that
3 “all individuals reimbursed for mileage keep details [sic] logs to ensure accuracy and compliance
4 with the Act.”²⁵ The Response also notes that the campaign vehicle in question was a van
5 designed to primarily transport equipment and could only accommodate one or two passengers,
6 meaning that “anytime more than two individuals travel for campaign purposes, they cannot use
7 the van.”²⁶ Respondents observe that many of the expenses listed in the section of the Complaint
8 concerning Hotels, Transportation, and Meals were duplicative of expenses listed in other
9 sections.²⁷

10 With regard to Complainant’s assertion that the Committee has failed to itemize
11 reimbursements, Respondents claim to have “reviewed its filings, and believes that all
12 reimbursements were fully and properly reported” but do not specifically address the unitemized
13 expenses referenced in the Complaint.²⁸ Respondents also suggest that to the extent violations
14 exist, dismissal or referral to the Reports Analysis Division is more appropriate than enforcement
15 action, citing the Commission’s handling of similar issues in MUR 7057 (Friends of Jason
16 Chaffetz).²⁹

²⁴ Resp. at 5.

²⁵ *Id.* at 5.

²⁶ *Id.* at 5, n. 15.

²⁷ *Id.* at 6.

²⁸ *Id.* at 7.

²⁹ *Id.* at 7.

1 **III. LEGAL ANALYSIS**

2 **A. Personal Use**

3 The Act provides that funds in a campaign account may be used for expenditures arising
4 from a candidate's campaign for federal office or a federal officeholder's official duties, as well
5 as "for any other lawful purpose."³⁰ Notwithstanding this broad discretion, however, the Act
6 also provides that campaign funds "shall not be converted by any person to personal use," and
7 defines personal use as using funds "to fulfill any commitment, obligation, or expense of a
8 person that would exist irrespective of the candidate's election campaign or individual's duties as
9 a holder of Federal office."³¹ The Act and its implementing regulations enumerate certain types
10 of disbursements that are *per se* personal use.³² These include household food items or supplies;
11 tuition payments other than those associated with training campaign staff; mortgage, rent, or
12 utility payments for any part of a personal residence of the candidate; admission to a sporting
13 event or other form of entertainment unless part of a specific campaign or officeholder activity;
14 dues, fees, or gratuities at a recreational facility unless they are part of the costs of a specific
15 fundraising event; salary payments to the candidate's family unless the family member is
16 providing *bona fide* services and the payments are not in excess of the fair market value; and
17 vacations.³³ For all other disbursements, the regulation provides that the Commission shall
18 determine on a case-by-case basis whether a given disbursement is personal use by applying the

³⁰ 52 U.S.C. § 30114(a)(6); 11.C.F.R. § 113.2(e) (campaign funds may be used "for any lawful purpose" unless prohibited as personal use).

³¹ 52 U.S.C. § 30114(b). Permitted uses of campaign funds include, among other things, charitable donations and any other lawful purpose that is not personal use. *Id.* § 30114(a)(1)-(6); *see* 11 C.F.R. § 113.2.

³² 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

³³ 52 U.S.C. § 113.1(g)(1)(i)(A), (D), (E)(1), (F)-(H), (J).

1 “irrespective test” formulated in the statute.³⁴ Meal, travel, and vehicle expenses are examples of
2 disbursements that may be determined to be personal use after applying the irrespective test.³⁵

3 The Complaint claims that the Osteria Rossa dinner may have been a personal dinner
4 based on the fact that the meal was documented on personal social media pages, on the absence
5 of participants who were not a part of Huizenga’s family, and on the lack of any apparent
6 campaign purpose to the meal.³⁶ While Natalie Huizenga and Barry’s official roles with the
7 campaign could suggest a campaign purpose for the meal, as they attest was the case with respect
8 to the dinner, the presence of Barry’s wife along with the absence of non-familial campaign staff,
9 could also suggest that this meal was a function of their familial relationships and not their
10 official roles.³⁷ The Response describes the Osteria Rossa dinner as a campaign event.³⁸ Each
11 affidavit, however, describes the dinner as being “connected to an official Committee event,” not
12 the event itself, and claims that “Committee business was discussed during the dinner.”³⁹
13 Nevertheless, the dinner itself is valued at \$328.00 and took place four years before the
14 complaint was filed.⁴⁰ By itself, the Osteria Rossa dinner alone cannot support the allegations of
15 systemic personal use contained in the Complaint.

³⁴ 11 C.F.R. § 113.1(g)(1)(ii).

³⁵ *Id.*

³⁶ *See* Compl. at 2, Ex. 1.

³⁷ Natalie Huizenga, the spouse of Huizenga states that she “often attend[s] Committee events and serve[s] in official roles for the Committee.” Natalie Huizenga Aff. Barry has identified himself as a campaign manager in statements to the press and has filed complaints before the Commission in his official capacity as Huizenga’s campaign manager. *See* Smith, *supra* n.14

³⁸ Resp. at 2.

³⁹ Respondent Affs.

⁴⁰ Compl. at 3.

1 The remaining personal use allegations are based entirely on the fact that Huizenga
2 spends more on meals, events, and travel than other members of the Michigan delegation.⁴¹
3 These expenses all fall into categories of expenditures that are not *per se* personal use, and
4 instead require inquiry into whether they “would exist irrespective of the candidate’s election
5 campaign or individual’s duties as a holder of Federal office.”⁴² There is nothing on the face of
6 the expenses suggesting personal use. Respondents submitted nearly identical blanket
7 declarations denying that any expenses were for personal use, but with the exception of a 2014
8 event flyer, did not provide specific evidence of campaign or officeholder activity.⁴³ Similarly,
9 Respondents stated that their mileage reimbursements were appropriate because they kept
10 mileage logs but did not provide any data from those mileage logs or the logs themselves.⁴⁴ A
11 more fulsome response from the Committee could have provided a more definitive resolution of
12 the allegations.

13 Given the broad discretion available to candidates and committees to spend campaign
14 funds for lawful purposes relating to the campaign and to a candidate’s status as a federal
15 officeholder, the comparative analysis of spending in this matter, without additional information,
16 does not indicate that campaign funds were converted to personal use.⁴⁵ Recently, the
17 Commission dismissed a matter in which the complaint alleged that expenditures were for

⁴¹ *Id.* at 4-7.

⁴² 52 U.S.C. § 30114(b); *see supra* n. 32.

⁴³ Respondent Affs.

⁴⁴ Resp. at 5.

⁴⁵ 52 U.S.C. § 30114(a)(6); 11.C.F.R. § 113.2(e); Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) (explanation and justification); *compare with* Statement of Reasons, Comm’rs Wold, Mason & Thomas at 2, MUR 4850 (Deloitte & Touche LLP) (“We cannot allow mere conjecture (offered by a political opponent’s campaign) to serve as a basis to launch an investigation . . .”).

1 personal use because they were allegedly excessive in comparison to those of other committees;
2 the Commission noted that “there is nothing inherently suggestive about the fact that the
3 Committee reported spending more on [disputed expenditures] than other committees.”⁴⁶ Here,
4 without additional specificity regarding the alleged personal use, the Complaint’s comparative
5 spending analysis does not provide reason to believe that the identified disbursements constitute
6 personal use.

7 Accordingly, because the record fails to indicate that Respondents converted campaign
8 funds to personal use, the Commission dismisses the allegations that Huizenga, the Committee,
9 Natalie Huizenga, and Barry violated 52 U.S.C. § 30114(b).

10 **B. Failure to Itemize Reimbursements**

11 Political committees must itemize and report the name and address of each person to
12 whom they make expenditures or other disbursements that aggregate more than \$200 per
13 calendar year (for unauthorized committees) or per election cycle (for authorized committees).⁴⁷
14 Committees must report the date, amount, and purpose of each disbursement.⁴⁸ For
15 reimbursements, the Commission requires “a memo entry identifying the ultimate payee . . . for
16 any reimbursement of expenses (other than travel and subsistence expenses) if the individual’s
17 payments to the vendor on behalf of the committee aggregate more than \$200 in a calendar year
18 (or election cycle for authorized committees).”⁴⁹ When the reimbursement is for travel advances

⁴⁶ See Factual & Legal Analysis at 7, MUR 7494 (John Culberson, *et al.*) (dismissing allegations of personal use where complainant failed to link questioned expenditures to actual personal use).

⁴⁷ 52 U.S.C. § 30104(b)(5)(A), 6(A); 11 C.F.R. §§ 104.3(b)(4)(i), 104.9(a).

⁴⁸ See FEC Campaign Guide for Congressional Candidates at 98, 101 (June 2014) (“Candidate Guide”).

⁴⁹ Interpretative Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40625 (Jul. 8, 2013) (“Ultimate Payee Reporting Rule”); Candidate Guide at 98, 101.

1 that exceed \$500, a memo entry is required for each payment to a specific vendor by that
2 individual on behalf of the authorized committee if total payments to that vendor by the political
3 committee (or by the individual on behalf of the committee) aggregate more than \$200 in an
4 election cycle.⁵⁰ Each memo entry must include the name and address of the vendor, as well as
5 the date, amount, and purpose of the payment.⁵¹

6 The Complaint identified 42 disbursements to Huizenga and his family totaling
7 \$41,591.00, each of which exceeded \$200.⁵² In its Response, the Committee stated that it
8 “believes all reimbursements were fully and properly reported,” referred to the Commission’s
9 decision in MUR 7057,⁵³ and noted that it has never received a Request for Additional
10 Information from the Reports Analysis Division.⁵⁴ Respondents also indicated a willingness to
11 work with the Reports Analysis Division to amend their reports, as needed.⁵⁵

12 On its face, certain of the Committee’s reimbursements appear to require itemization
13 because they are reimbursements to an individual who advanced personal funds to pay
14 committee expenses aggregating more than \$200 (or \$500 for travel and subsistence expenses).⁵⁶

⁵⁰ Factual & Legal Analysis at 2, MUR 6897 (Allen Weh for Senate); *see* Ultimate Payee Reporting Rule; 11 C.F.R. § 102.9(b)(2)(i); Candidate Guide at 101; Advisory Op. 1996-20 (Lucas for Congress) at 4, n.3.

⁵¹ Candidate Guide at 101.

⁵² Compl. at Ex. 10. Some of the reimbursements listed by Complainant occurred more than five years ago and are outside the applicable statute of limitations. After removing reimbursements with expired statutes of limitations, 25 reimbursements totaling \$31,905.33 remain. *See* Compl., Ex. 10.

⁵³ Resp. at 7 (citing Certification, MUR 7057 (Friends of Jason Chaffetz)). The complaint in MUR 7057 noted aggregate annual amounts of un-itemized expenditures but did not identify specific reimbursements meriting investigation. *See* Compl. at attach. A, MUR 7057. Here, the complaint has listed 42 specific disbursements that on their face appear to require itemization.

⁵⁴ Resp. at 7.

⁵⁵ Resp. at 7.

⁵⁶ Ultimate Payee Reporting Rule.

1 For example, on February 8, 2018, Natalie Huizenga received a reimbursement for \$6,360.60
2 with the description “Plane Tickets Reimbursement for Campaign Event” but in its filings, the
3 Committee did not provide any memo entries concerning what airline provider Mrs. Huizenga
4 used to purchase airline tickets.⁵⁷ Similarly, on December 20, 2016, Natalie Huizenga received
5 an unitemized reimbursement of \$3,840.33 for “Inauguration Hotel” but the Committee did not
6 provide a memo entry identifying the hotel she paid.⁵⁸ As noted in the Complaint, on March 16,
7 2017, the Committee reported a reimbursement of \$4,928 to Natalie Huizenga for reimbursement
8 for “Campaign Travel Expenses” but did not provide any memo entries noting any underlying
9 payees.⁵⁹

10 In light of the overall circumstances, including that the potential unitemized amounts at
11 issue on any one particular filing are relatively modest,⁶⁰ the Commission exercises its
12 prosecutorial discretion and dismisses the allegations that the Committee violated 52 U.S.C. §
13 30104(b)(5)(A), (6)(A)⁶¹ but also directs the Committee to work with the Reports Analysis
14 Division to amend its reports where required.

⁵⁷ Compl. at Ex. 10; Huizenga for Congress, 2018 April Quarterly Rpt. at 70 (Apr. 15, 2018).

⁵⁸ Compl. at Ex. 10; Huizenga for Congress, Amended 2016 Year End Rpt. at 10 (Mar. 10, 2017).

⁵⁹ Compl. at 8, Ex. 10.

⁶⁰ *Cf.* Factual & Legal Analysis, MUR 6897 (Allen Weh for Senate) (EPS dismissal concerning 80 unitemized reimbursements totaling over \$70,000 that accrued over two filing quarters where committee amended its disclosure reports to include most previously excluded payee information).

⁶¹ *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).