



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
IRL PAC and Ed Torgas, in his)	MUR 7657
official capacity as treasurer)	
(terminated))	
South Florida First PAC)	
(f/k/a Ros-Lehtinen for Congress)	
and Antonio Argiz, in his official)	
capacity as treasurer (terminated))	
Illeana Ros-Lehtinen)	

**STATEMENT OF REASONS OF VICE CHAIR STEVEN T. WALTHER,
COMMISSIONER SHANA M. BROUSSARD,
AND COMMISSIONER ELLEN L. WEINTRAUB**

The Complaint in this matter alleges that former U.S. Representative Illeana Ros-Lehtinen converted funds contributed to her principal campaign committee and later transferred to her leadership PAC, IRL PAC, to personal use in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ We voted to approve the Office of General Counsel’s (“OGC’s”) recommendation to find reason to believe that Respondents violated the Act’s personal use restrictions.² However, the Commission was unable to garner the four votes necessary to approve the recommendation.³

We write to address what appears to be the main reason three of our colleagues declined to support OGC’s recommendations. They claim that IRL PAC’s spending, as a matter of law, is not subject to the personal use restrictions on grounds that the restrictions only apply to authorized candidate committees, not leadership PACs.⁴ As explained below, the personal use restrictions firmly apply to IRL’s PAC’s spending based on a long line of Commission precedents, and neither the Act nor Commission regulations limit the restrictions to authorized candidate committees.

¹ See Compl. ¶¶ 1-2 (Oct. 28, 2019).

² Commission Certification ¶ 2, MUR 7657 (IRL PAC, et al.) (Apr. 6, 2021).

³ *Id.* We also voted against the motion to find no reason to believe that Respondents violated the Act. *Id.*

⁴ See Statement of Reasons of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III, March 22, 2022.

Background

Ros-Lehtinen represented Florida's 27th District in the U.S. House of Representatives from 1989 until 2019, during which time her authorized campaign committee was Ros-Lehtinen for Congress ("Ros-Lehtinen Committee").⁵ In April 2017, Ros-Lehtinen announced that she would not seek re-election in 2018.⁶ On October 25, 2017, the Ros-Lehtinen Committee converted to a multicandidate committee named South Florida First PAC ("SFF PAC") and affiliated with Ros-Lehtinen's leadership PAC, IRL PAC.⁷ Less than a week later, on October 31, 2017, SFF PAC transferred its entire \$177,445 cash balance to IRL PAC and then terminated.⁸ At the time of the transfer, IRL PAC had \$5,967.39 in cash-on-hand.⁹ Ros-Lehtinen left office on January 3, 2019.¹⁰

Between December 2017 and December 2018, IRL PAC made \$74,673 in disbursements for theme park admissions, food, lodging, facility rentals, catering, and gift cards.¹¹ The Complaint alleges that these disbursements appeared to be for personal use.¹² According to the Complaint, the disbursements appeared to have no connection to Ros-Lehtinen's candidacy or duties as an officeholder.¹³ Respondents argue that the challenged disbursements were for legitimate events related to the business of Ros-Lehtinen's principal campaign committee or IRL PAC.¹⁴ Notably, they do not argue that IRL PAC's spending was not subject to the personal use prohibition.¹⁵

Legal Analysis

Under 52 U.S.C. § 30114(a) of the Act, "a contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of federal office, may be used by the candidate or individual" for, *inter alia*, "authorized expenditures in connection with the campaign for Federal office of the candidate" or "ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office."¹⁶ Subsection (b) provides that "[a] contribution or donation described in subsection (a) shall not be converted by any person to personal use."¹⁷ "Personal use" means any use of funds in a campaign account of a present or former candidate to fulfill a commitment,

⁵ First Gen. Counsel's Rpt. at 2.

⁶ Compl. ¶ 4.

⁷ *Id.* ¶ 6 (citing SFF PAC's Amended Statement of Organization (Oct. 25, 2017)). SFF PAC raised no additional contributions after its conversion to a multicandidate committee. *See* First Gen. Counsel's Rpt. at 2 & n.6.

⁸ First Gen. Counsel's Rpt. at 3. The termination was approved on November 8, 2017. *Id.* at 3 & n.7.

⁹ *Id.* at 3.

¹⁰ *Id.* On July 3, 2019, IRL PAC filed for termination, which was approved. *Id.*

¹¹ First Gen. Counsel's Rpt. at 3.

¹² *See* Compl. ¶¶ 9-11, 18, 20-21.

¹³ *Id.* ¶¶ 6-7.

¹⁴ Response of IRL PAC at 1-3 (Nov. 22, 2019). Ros-Lehtinen and SFF PAC adopted IRL PAC's response as their own, on December 3 and 5, 2019, respectively.

¹⁵ *See id.*

¹⁶ 52 U.S.C. § 30114(a).

¹⁷ *Id.* § 30114(b)(1).

obligation, or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.¹⁸

In a long line of advisory opinions, the Commission has interpreted the Act and Commission regulations to permit principal campaign committees to convert to nonconnected committees or transfer their funds to such committees or other entities with the proviso that the personal use prohibition continues to apply to any contributions received while the committee was a principal campaign committee.¹⁹ For instance, in Advisory Opinion 1993-22 (Robert Roe), a federal officeholder, after announcing that he would not seek reelection, created a multicandidate committee and transferred all of the funds from his principal campaign committee to this new committee and terminated the campaign committee.²⁰ Notably, all of the funds of the multicandidate committee were provided only by his principal campaign committee.²¹ The advisory opinion request sought guidance from the Commission on the proposed use of funds by the multicandidate committee. While the Commission noted that certain of the proposed uses of the funds were permissible under the predecessor personal use statute, the Commission expressly stated that the retiring office holder would have to ensure that the remaining funds transferred to the multicandidate committee were not "expended for [his] personal use."²²

The Commission reached a similar conclusion in Advisory Opinion 2004-03 (Dooley for the Valley) and Advisory Opinion 2012-06 (RickPerry.org). In Advisory Opinion 2004-03 (Dooley for the Valley), the officeholder announced his decision to retire, and subsequently, his campaign committee amended its Statement of Organization to reflect its status as a multicandidate committee.²³ When the committee transitioned from a multicandidate committee, it had a large amount of cash-on-hand.²⁴ These funds, the Commission explained, remained subject to the personal use restrictions because the "the Act's restrictions on the use of campaign funds apply expressly 'to contribution[s] accepted by a candidate.'"²⁵ In Advisory Opinion 2012-06 (RickPerry.org), the Commission permitted then-Governor Perry's principal campaign committee for the 2012 presidential election to convert to a nonconnected committee and to fund the nonconnected committee's activities using its remaining primary election funds, to the extent the funds were not used for personal use.²⁶

The Commission's reasoning in these advisory opinions apply to IRL PAC's spending. All but approximately 3% of IRL PAC's cash-on-hand came from funds that were originally contributed to Ros-Lehtinen's principal campaign committee.²⁷ In particular, SSF PAC transferred \$177,445 to IRL PAC on October 31, 2017, and six days before that transfer, Ros-

¹⁸ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g); Explanation and Justification on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,863 (Feb. 9, 1995).

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

²⁰ Advisory Op. 1993-22 at 2-3 (Robert Roe).

²¹ *Id.* at 2-3.

²² *Id.* at 3.

²³ Advisory Op. 2004-03 at 1 (Dooley for Valley).

²⁴ *Id.* at 2.

²⁵ *Id.* at 2 (quoting 2 U.S.C. 439a(a)).

²⁶ *See* Advisory Op. 2012-06 at 2-4 (RickPerry.org).

²⁷ First Gen. Counsel's Rpt. at 7.

Lehtinen for Congress converted from a principal campaign committee to the multicandidate committee, SFF PAC.²⁸ Based on the foregoing advisory opinions interpreting the Act and Commission regulations, the personal use prohibition applies to the funds that were transferred to and spent by IRL PAC regardless of its status as a leadership PAC. And for the reasons set out in the First General Counsel’s Report, the available information at this stage indicated that Respondents may have converted campaign funds to personal use in connection with certain of IRL PAC’s disbursements.²⁹

Our three colleagues who voted against OGC’s reason-to-believe recommendation argued that the personal use prohibition does not apply to IRL PAC’s spending due to its status as a leadership PAC. In their view, the funds IRL PAC spent were not in “in a campaign account.” In other words, they appear to believe that the personal use prohibition only applies to authorized candidate committees and their affiliates.³⁰ As an initial matter, as discussed above, this argument runs contrary to decades of Commission precedent. In this and many other matters, our colleagues have a disturbing habit of discarding well-established precedent the Commission has adopted by majority vote. Furthermore, a contextual examination of the Act and Commission regulations does not compel their rigid interpretation that the personal use prohibition applies solely to authorized candidate committees.

As previously stated, the Act prohibits a “contribution accepted *by a candidate*” and “any other donation received *by an individual* as support for activities of the individual as a holder of Federal office” from being “converted by any person to personal use.”³¹ A leadership PAC is typically, as it was here, a committee that is “established, financed, maintained, or controlled *by a candidate*”³² and it thus follows that a contribution to a leadership PAC is a “contribution accepted by a candidate” for purposes of the Act’s personal use prohibition. The plain language of the Act indicates that the prohibition attaches at the time the contribution is accepted by a candidate.

Leadership PACs, moreover, exist to provide a mechanism for officeholders to support other members of their caucus in order to aid the officeholder’s quest to achieve leadership positions (hence the name).³³ Donations to leadership PACs thus fall squarely within the category of donations received “by an individual as support for activities of the individual as a

²⁸ *Id.*

²⁹ *Id.* at 7-18. *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) (stating that the Commission will find reason to believe “in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation”).

³⁰ *See* Statement of Reasons of Chairman Allen Dickerson and Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III, March 22, 2022 at 2. These arguments were also previously made in an interpretative statement Commissioner Cooksey previously issued. *See* Interpretative Statement of Commissioner Sean J. Cooksey, May 6, 2021, https://www.fec.gov/resources/cms-content/documents/2021-05-06_Interpretive_Statement_of_Cmsr_Cooksey.pdf (“Interpretative Statement”).

³¹ 52 U.S.C. § 30114(a).

³² Specifically, Commission regulations define a leadership PAC as a “committee that is directly or indirectly established, financed, maintained, or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual.” 11 C.F.R. § 100.5(e)(6).

³³ *See* Explanation and Justification on Leadership PACs, 68 Fed. Reg. 67,013, 67,014 (Dec. 1, 2003).

holder of Federal office.”³⁴ The Act subjects two categories of funds to the personal use restrictions. Both categories – contributions accepted by a candidate and donations received as support for activities of an individual as a holder of federal office – describe leadership PACs. Any way one looks at it, they may not be converted to personal use.

The regulation’s definition that personal use means the “use of funds in a campaign account” does not foreclose applying the prohibition to IRL PAC categorically. “The Supreme Court has stressed time and time again that ‘in expounding a statute, [courts] must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law.’”³⁵ Although “campaign account” is not defined in the Act or regulations, other sections of the Act and Commission regulations are informative and indicate that “campaign account” has been understood to include accounts of other committees. For instance, the Act and Commission regulations subject all political committees to the same requirements that they designate at least one “campaign depository” and provide the Commission with notification of the depository.³⁶ In setting out these requirements, section 103.1-103.3’s use of the word “campaign” to describe depository is not limited to authorized candidate committees except in one instance. Subsection 103.4, unlike the first three subsections, explicitly refers to a principal campaign committee’s campaign depository.³⁷ This key distinction supports the conclusion that “campaign depository” as a general matter includes the campaign account of *any committee*, and where the regulation discusses it in connection with a candidate committee only, it explicitly states as such. While it is true that the agency’s regulations do not always evince the desired level of clarity, “ideal clarity is not the standard.”³⁸ Use of “campaign depository” in the only section of the Act and Commission regulations that require all committees to establish at least one account bolsters the conclusion that the personal use prohibition does not necessarily have the narrow interpretation our colleagues appear to advance, and it is certainly not an interpretation required by the Act and Commission regulations.

To be clear, our three colleagues did not have to find that contributions received by leadership PACs are *per se* subject to the personal use prohibition to conclude that IRL PAC’s spending in this matter was subject to the prohibition. Whether contributions received by a leadership PAC are subject to the personal use prohibition is not the precise question facing the

³⁴ 52 U.S.C. § 30114(a).

³⁵ *Del. Dep’t of Nat. Res. & Envl. Control v. EPA*, 895 F.3d 90, 97 (D.C. Cir. 2018) (quoting *U.S. Nat. Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993)). See *United States v. Citgo Petroleum Corp.*, 801 F.3d 477,485 (5th Cir. 2015) (“Regulations, like statutes, must be ‘construed so that effect is given to all [their] provisions, so that no part will be inoperative or superfluous, void or insignificant.’” (alteration in original) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009))).

³⁶ The Act states that “each political committee shall designate one or more . . . depository institutions . . . as its campaign depository” and must “maintain at least one checking account and such other accounts as the committee determines.” 52 U.S.C. § 30102(h) (emphasis added). Similarly, Part 103 of Commission regulations, 11 C.F.R. § 103.1-103.4, which has the heading, “Campaign Depositories,” implements the statute, and subsection 103.1 provides that “[e]ach committee shall notify the Commission of the campaign depository(ies) it has designated.” 11 C.F.R. § 103.1. Subsection 103.3 then sets out the requirements that treasurers must follow in depositing receipts into a “campaign depository.” See 11 C.F.R. § 103.1-103.3.

³⁷ 11 C.F.R. § 103.4 (“Any campaign depository designated by the principal campaign committee of a political party’s candidate for President shall be the campaign depository for that political party’s candidate for the office of Vice President.”).

³⁸ *CREW v. FEC*, 316 F. Supp. 3d 349, 411 n.48 (D.D.C. 2018) (quoting *Van Hollen, Jr. v. FEC*, 811 F.3d 486, 497 (D.C. Cir. 2016)).

Commission in this matter. Here, it is undisputed that IRL PAC's funds originated from contributions made to a principal campaign committee, and consistent with the Commission's prior guidance on this issue, as reflected in its advisory opinions, the funds remained subject to the personal use prohibition after they were transferred to the leadership PAC.

In his Interpretative Statement, Commissioner Cooksey cites Advisory Opinion 2008-17 (KITPAC) for the proposition that the "Commission's established legal rule is that leadership PACs are not subject to the Act's personal-use restriction because they are neither authorized candidate committees nor affiliated with them."³⁹ A single advisory opinion, issued on facts materially different from this matter, can hardly be read, as Commissioner Cooksey claims, as reflecting an established agency rule that leadership PACs are, as a matter of law, not subject to the personal use restriction. In Advisory Opinion 2008-17 (KITPAC), the leadership PAC of a sitting U.S. Senator sought guidance on whether the Act and Commission regulations permitted it to compensate the Senator's co-author \$25,000 for the co-author's work on a manuscript.⁴⁰ The request explained that the Senator wanted to "publish the book purely to advance the ideas and philosophies important to his campaign and leadership PAC, and not to benefit himself personally."⁴¹ There was no information before the Commission suggesting that the leadership PAC's funding came from contributions originally received by the Senator's principal campaign committee.⁴² Of note, two of the Commissioners who cited Advisory Opinion 2008-17 (KITPAC) as support for their argument that the personal use prohibition only applies to funds raised by authorized candidate committees, not leadership PACs, also voted to support the Commission's unanimous Advisory Opinion 2012-06 (RickPerry.org),⁴³ which relied on the established agency principle that the personal use prohibition continues to apply to contributions that were received by a principal campaign committee even after the funds are transferred to another committee or if the principal campaign committee converts to another committee.⁴⁴

³⁹ Interpretative Statement at 2; *see also* Concurring Statement of Chairman Lee E. Goodman and Commissioners Matthew S. Petersen and Caroline C. Hunter 5, Advisory Op. 2014-06 (Ryan for Congress) (citing Advisory Op. 2008-17 (KITPAC) for the same proposition).

⁴⁰ Advisory Op. 2008-17 at 2 (KITPAC).

⁴¹ *Id.*

⁴² For the same reason, the instant matter is distinguishable from Advisory Opinion 2014-06 (Ryan for Congress) and MUR 7477 (Steve Chabot), which Commissioner Cooksey also discusses in his Interpretative Statement. *See* Interpretative Statement at 3.

⁴³ *Compare* Commission Certification, Advisory Op. 2012-06 (RickPerry.org) (Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision), *with* Commission Certification, Advisory Op. 2014-06 (Ryan for Congress) *and* Concurring Statement of Chairman Lee Goodman and Commissioners Matthew S. Petersen and Caroline Hunter (noting that the personal use restrictions do not apply to leadership PACs).

⁴⁴ Commissioner Cooksey also cites four sets of legislative recommendations approved by the Commission as support for his argument. Interpretative Statement at 2 & n.6. Those recommendations stated that the Act makes "it illegal for an individual to use contributions accepted by a candidate or a candidate's committee for his or her own personal use" but "no corresponding provision covers individuals who convert *contributions received by* party committees, separate segregated funds, leadership PACs, and other political committees to their own personal use. *See, e.g.,* Legislative Recommendations of the Federal Election Commission 2013 at 12 (Dec. 17, 2013) (emphasis added). Thus, those recommendations did not concern the fact pattern presented here. Moreover, the description quoted by Commissioner Cooksey has not been the position of the Commission since 2013. The item regarding "Conversion of Campaign Funds" was deleted from the Commission's 2014 legislative recommendations to Congress. When the Commission voted to restore that item in 2016, the recommendation made no mention of leadership PACs. This version has carried through to the Commission's most recent legislative recommendations, adopted May 6, 2021 by the Commission's current lineup of commissioners.

Moreover, Advisory Opinion 2008-17 (KITPAC) has not been cited favorably, or at all, by any other advisory opinion since it was issued.

Conclusion

In the Ethics Reform Act of 1989, Congress proudly adopted the anti-corruption measure of barring retiring officeholders from pocketing their leftover campaign funds.⁴⁵ Enforcing the personal use prohibition in this matter would have furthered Congress' goal. Instead, our colleagues' novel legal theory frustrates this goal and creates precedent that is contrary to longstanding Commission interpretation. Retiring members of Congress can now sidestep the personal use prohibition by merely reorganizing their principal campaign committees – a simple matter of checking a new box on a form – and/or transferring their principal campaign committee funds to their leadership PACs. It used to be the case that the Commission avoided interpreting the law in a manner that would allow circumvention of the Act's prohibitions and limitations.⁴⁶ Our job is to administer the law that Congress passed, not eviscerate it.

Accordingly, for all of these reasons and for the reasons provided in the First General Counsel's Report, we supported OGC's recommendation to find reason to believe that Respondents violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.

March 24, 2022

Date



Steven T. Walther
Vice Chair

March 24, 2022

Date



Shana M. Broussard
Commissioner

March 24, 2022

Date



Ellen L. Weintraub
Commissioner

⁴⁵ See Explanation and Justification on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,862-63 (Feb. 9, 1995) (noting that when Congress first enacted the personal use prohibition in 1979, it included a grandfather provision that exempted Senators and Representatives in Congress on January 8, 1980 from the personal use prohibition but later repealed this grandfather provision and subjected anyone serving in Congress after January 1993 to the personal use prohibition).

⁴⁶ See, e.g., First Gen. Counsel's Rpt. at 24-34, Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (May 21, 1991) (rejecting the argument that the unlimited transfer provision allowed a national party committee to transfer funds to a state party committee that used the funds to support a federal candidate in excess of the coordinated party expenditure limits); Commission Certification at 1-2, MURs 3087/3204 (Nat'l Republican Senatorial Comm.) (Aug. 2, 1994) (ratifying earlier reason-to-believe findings).