



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

Statement of Chairman Steven T. Walther Campaign Travel Regulations November 19, 2009

The new travel regulations that we are considering today are mandated by the Honest Leadership and Open Government Act of 2007 (HLOGA), which was signed into law by President Bush on September 14, 2007. The statutory provisions in HLOGA relating to travel became effective immediately at that time.

Although a couple of years have now passed since HLOGA was signed into law, I wanted to take a short trip down memory lane. The Commission first adopted a Notice of Proposed Rulemaking (NPRM) in this proceeding on October 18, 2007, which was only a little bit over a month after the law was enacted. Comments were due in November 2007 and then on December 14, three months to-the-day after the enactment of HLOGA, the Commission approved HLOGA travel regulations. The Commission did not, however, adopt at that time an accompanying Explanation & Justification (E&J) for publication in the Federal Register. Unfortunately, two weeks later, at the end of the 2007, I and two other Commissioners who were recess appointments (Bob Lenhard and Hans von Spakovsky) had to leave our positions on the Commission when Congress ended its session and the Commission entered into a period of dormancy, with only two out of six Commissioners continuing to serve. The dormancy lasted almost six months, from January 1, 2008 until June 24, 2008, and as a consequence the travel regulations that had been approved by the Commission in 2007 never took effect.

We are now finally adopting travel regulations, this time *with* an accompanying E&J. Today, we are considering two alternative draft E&Js. The first draft E&J reflects the rules that the Commission adopted back in 2007. I supported the rules back when we adopted them in December 2007 and I support them now. Prior to the passage of HLOGA, the Commission's rules allowed candidates and other passengers travelling on behalf of candidates in many instances to reimburse providers of non-commercial airplane travel at the "lowest unrestricted and non-discounted first-class or coach fare." This same rule also applied to passengers travelling on behalf of other types of political committees, such as party committees, separate segregated funds (SSFs) or nonconnected committees. The thrust of HLOGA was to require Senate and Presidential candidates to pay for non-commercial travel – that is, travel on corporate jets – at the rate that it would cost to charter the jet rather than at the first-class or coach rate. HLOGA prohibits House candidates from flying on corporate jets entirely. In the words of Senator Harry Reid,

HLOGA requires “Senators to pay fair market value for charter flights, which puts an end to the abuses of corporate travel.”

Although the new charter rate requirement in HLOGA only explicitly applies to non-commercial travel by candidates and their authorized committees, when the Commission approved the original set of rules in 2007, the Commission decided to apply the charter rate more broadly to non-commercial travel for all political committees, such as party committees and nonconnected committees, in addition to candidates’ authorized committees. We did this because it was felt by the majority of Commissioners at the time that Congress had intended that the charter rate was the appropriate “fair market rate” for non-commercial plane travel and that the first-class or coach fare was simply too low. If we were to retain the first-class or coach fare for some committees but not for others, there would be a fair bit of tension in our rules because for the same exact flight, the “fair market rate” under our rules would be the charter rate for candidates but the first-class rate for party committee representatives. I supported applying the charter rate to all campaign travelers in 2007 and I still support that now.

Back in 2007, there were three other Commissioners who agreed with me that it made sense to have one set of rules that applied the charter rate across the board to all campaign travelers (one of those commissioners being Commissioner Weintraub). At the time, however, we vigorously debated whether we should, instead, only apply the charter rate to candidates and their authorized committees. We now have a different Commission and, specifically, three of my current colleagues believe that the Commission’s rules should be strictly limited to the specific statutory provisions and should therefore apply only to candidates. That is precisely the rule that is reflected in the second E&J that is on today’s agenda.

First, the rule reflected in the second E&J tracks carefully and precisely the provision contained in HLOGA – nothing less and nothing more. This rule adheres to the statute and the legislative mandate that the Commission was given by Congress. For the most part, the rules that were approved back in 2007 have remained intact, but the application of those rules has been limited in scope to only apply to candidates and their authorized committees. For everyone else – for party committees, for SSFs, for nonconnected committees, and even for Senate leadership PACs (which are not explicitly included in HLOGA) – the old rule (that is the first-class and coach rate rule) remains in place.

Second, the rule in the second E&J is consistent with many of the comments the Commission received in response to the NPRM, including comments received from then-Senator Obama and Senator Feingold, in their joint comment, explaining that the “unmistakable purpose of these provisions” in HLOGA “was to require Senators to reimburse the owner of a corporate jet at the full charter rate.” Senators Obama and Feingold even went on to indicate that they “have no objection to other travelers continuing to provide separate reimbursement to the owners of aircraft under the Commission’s *current* rules” The Campaign Legal Center and Democracy 21 agreed and indicated their support for “retain[ing] the existing reimbursement rate

structure for non-candidate travel.” Other commenters also argued that if Congress had wanted to change the rate for party committees and nonconnected committees in HLOGA, Congress could have easily done so.

Third, I believe that it is the Commission’s responsibility to provide guidance, both in the form of regulations that can be easily accessed through the Code of Federal Regulations and in the E&J, which provides a guidepost to the community on how to interpret our regulations.

I still support the first E&J reflecting the rule that we adopted back in 2007, and I will call for a vote on that E&J first. Our staff in the Office of General Counsel and my colleagues, Commissioner Weintraub and Commissioner Bauerly, and their staffs put a lot of work into this E&J and the document does a fantastic job of explaining the rule we adopted back in 2007. That said, I will also support the second E&J because I understand and appreciate the position that many commenters took back in 2007 and the position that my colleagues take now in terms of the scope mandated by HLOGA.

In my opinion, although I don’t believe that this is the very best way to proceed – I would prefer to apply the charter rate across the board – it is nevertheless still a rational and reasonable approach, and one that fully comports with the statute, so I will support it. Simply put, the Commission has an obligation to get HLOGA travel regulations on the books so that we can turn our attention to other Commission priorities.