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**BY ELECTRONIC MAIL: [CELA@FEC.GOV](mailto:CELA@FEC.GOV)**

Roy Q. Lockett, Esq.  
Acting Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

**Re: MUR 7957**

Dear Mr. Lockett:

We write as counsel to U.S. Representative Marie Newman, Marie Newman for Congress, and Holly Giarraputo in her official capacity as treasurer (“Respondents”), in response to the Complaint filed by the executive director of the Foundation for Accountability and Civic Trust dated January 31, 2022 (“Complaint”) in the above-referenced matter.

The Complaint should be summarily dismissed. It fails to allege specific facts that, even if true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended (“the Act”). It presents no Commission regulation that Respondents could have breached in hiring Iymen Chehade to provide services to Representative Newman’s 2022 campaign. To the contrary, it recites facts demonstrating that the payments would not have occurred irrespective of Representative Newman’s federal candidacy or officeholder status, and that Mr. Chehade has indeed provided services to the campaign.

The Complaint is simply a transparent attempt to use the Commission to publicize allegations, unrelated to the Act and outside Commission jurisdiction, which Representative Newman is defending in the appropriate forum, and which themselves have no merit.<sup>1</sup> Based on the facts and law discussed below, the Commission should dismiss the Complaint.

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<sup>1</sup> The matter of Representative Newman’s contract with Mr. Chehade is before the U.S. House Committee on Ethics in Review No. 21-3052, referred by the Office of Congressional Ethics. *See* Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Marie Newman (Jan. 24, 2022), <https://ethics.house.gov/press-releases/statement-chairman-and-ranking-member-committee-ethics-regarding->

## FACTUAL BACKGROUND

Before Representative Newman became a candidate in the 2020 election, she entered into an employment agreement with Mr. Chehade, an academic and foreign policy expert, by which she would hire him if she ran for Congress and was elected. After her election to Congress, Representative Newman did not hire Mr. Chehade. He then sued her for breach of contract, and the parties quickly settled the case. Recognizing that Mr. Chehade's experience and expertise in foreign policy issues could be profitably employed in her campaign, Representative Newman as part of the settlement agreed that her campaign would hire him to provide written briefings on these same issues. The Complaint specifically references briefing papers that Mr. Chehade provided and does not dispute that he provided them.<sup>2</sup>

## LEGAL DISCUSSION

The Complaint alleges that the campaign's payments to Mr. Chehade are not legitimate campaign expenditures and, therefore, constitute a prohibited personal use of campaign funds.<sup>3</sup> The claim of prohibited personal use is the only allegation the Complaint makes as to the Act and Commission regulations — and it is entirely meritless.

### I. The Payments to Mr. Chehade Would Not Exist Irrespective of Candidacy

The Act and Commission regulations give candidates, officeholders, and committees broad discretion in making campaign expenditures.<sup>4</sup> They prohibit “personal use,” which “means 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.”<sup>5</sup> The Act and Commission regulations list specific expenditures that are considered per se personal use of campaign funds, which include salary payments only when made to the candidate's family or the candidate herself, and even then only

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[representative-54](https://ethics.house.gov/sites/ethics.house.gov/files/documents/Rep.%20Newman%27s%20Response.pdf). Representative Newman's response to the referral may be found at <https://ethics.house.gov/sites/ethics.house.gov/files/documents/Rep.%20Newman%27s%20Response.pdf>.

<sup>2</sup> See Complaint at 7-8. The Complaint's central claim — that Representative Newman hired Mr. Chehade so that he would not cooperate with a review by the Office of Congressional Ethics — is contradicted by fact, unsupported by evidence, and outside the Commission's jurisdiction. See 11 C.F.R. § 111.4(d)(3). First, the settlement's terms were agreed upon before Representative Newman knew that an OCE review was pending. Second, Representative Newman fully cooperated with the OCE review, belying any claim that she somehow sought to impede it. Third, both parties had ample reason to avoid the burdens and uncertainties of continued litigation, regardless of any ethics investigation that might occur.

<sup>3</sup> See Complaint at 10.

<sup>4</sup> See 52 U.S.C. §30114(a)(6) (expressly allowing campaign funds to be used “for any ... lawful purpose” besides personal use); 11 C.F.R. §113.2. The Commission does not interpret the “lawful purpose” clause as a doorway through which to evaluate compliance with other, unrelated laws outside its own jurisdiction. See, e.g., Factual and Legal Analysis, MUR 6263 (Committee to Re-Elect Artur Davis) (declining to consider whether a federal candidate's use of campaign funds to engage in exploratory activities for nonfederal office complied with applicable state law).

<sup>5</sup> 11 C.F.R. § 113.1(g). See also 52 U.S.C. § 30114(b)(2).

when certain criteria are not met.<sup>6</sup> The Commission considers other disbursements on a case-by-case basis, asking whether they “would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”<sup>7</sup>

Over three decades, the Commission has maintained that it will not consider campaign expenditures to be personal use so long as the candidate, officeholder, or committee “can reasonably show that the expenses at issue resulted from campaign or officeholder activities.”<sup>8</sup> Employing a campaign advisor in an arm’s length transaction, when he demonstrably provides services to the campaign, is the classic case of an expense that the Commission leaves to the discretion of the candidate and the campaign.

Thus, the Commission’s regulations permit no interpretation that would find the campaign’s hiring of Mr. Chehade to be a prohibited personal use of campaign funds. The payments would not exist irrespective of Representative Newman’s campaign and officeholder status. As the Commission has made clear, the campaign enjoys wide discretion to hire Mr. Chehade to provide specialized foreign policy advice, as the Complaint acknowledges he has done.<sup>9</sup> Yet, even if the campaign had elected not to seek work from Mr. Chehade, but had simply paid him to settle the suit, then there would still be no prohibited personal use. The suit arose entirely from Representative Newman’s election to office in 2020. Had she not run for Congress, and had she not been elected, the suit would not have occurred, the settlement would not have occurred, and the payments to Mr. Chehade would not have occurred.

The Commission has spoken clearly on this issue: “If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.”<sup>10</sup> Because the payments to Mr. Chehade plainly arose from campaign or officeholder activities, and because the Complaint admits as much, the Commission should dismiss the complaint.

## **II. Mr. Chehade Received Bona Fide Pay for Bona Fide Services**

In an apparent attempt to salvage its fatally defective personal use allegation, the Complaint tries to claim that the campaign’s payments to Mr. Chehade somehow exceeded fair market value.<sup>11</sup> This allegation can be immediately dismissed for two reasons. First, as discussed above, the campaign could have paid Mr. Chehade merely to settle the suit, which would not have existed irrespective of Representative Newman’s candidacy and election to office. Second, the personal use regulations evaluate salary payments for their fair market value only in the case of the candidate’s family members,<sup>12</sup> and Mr. Chehade is not related to Representative Newman. The

<sup>6</sup> See 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

<sup>7</sup> *Id.*; see generally MUR 7778 (Lake for Congress Committee, *et al.*).

<sup>8</sup> Explanation and Justification for Final Rules on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

<sup>9</sup> See Complaint at 7-8.

<sup>10</sup> 60 Fed. Reg. at 7867.

<sup>11</sup> See, e.g., Complaint at 10.

<sup>12</sup> See 11 C.F.R. §113.1(g)(1)(i)(H).

Commission does not serve as a wage-and-price board, policing the level of compensation to staff and vendors when the candidate herself derives no personal financial benefit. To do otherwise would run counter to the Commission's overriding objective to ensure that candidates do not receive in-kind contributions through goods and services provided at less than the usual and normal charge.<sup>13</sup>

Finally, the Complaint provides no evidence that Mr. Chehade receives more than fair market value for the specialized services he provides. It acknowledges that he is providing value to the campaign,<sup>14</sup> and it fails to provide any metric to question the campaign's assignment of value. The Complaint also fails to acknowledge the core, longstanding principle that candidates and their committees have wide discretion over the spending of campaign funds in connection with their election.<sup>15</sup>

### CONCLUSION

Thus, the Complaint alleges no fact that, if true, would constitute a violation of the Act. The Complaint's allegations are, in fact, consistent with compliance: they establish that the payments to Mr. Chehade would not have occurred irrespective of Representative Newman's federal candidacy and officeholder status, and they establish that Mr. Chehade has indeed provided services to the campaign in a highly specialized field. For these reasons, the Commission should dismiss the Complaint.

Very truly yours,



Brian G. Svoboda  
Karl J. Sandstrom  
Counsel to Respondents

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<sup>13</sup> See, e.g., 11 C.F.R. §§ 100.52, 100.54.

<sup>14</sup> See Complaint at 7-8.

<sup>15</sup> 60 Fed. Reg. at 7867.