



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

July 8, 2024

VIA EMAIL ONLY

rkelner@cov.com

Robert K. Kelner
Covington & Burling LLP
850 10th Street, NW
Washington, DC 20001

RE: MUR 8105
University of California, Irvine

Dear Mr. Kelner:

On January 25, 2023, the Federal Election Commission notified your client, University of California, Irvine, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on June 4, 2024, voted to dismiss the allegation that University of California, Irvine violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) by making a prohibited corporate contribution. Accordingly, the Commission voted to close the file effective July 8, 2024.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Any applicable Factual and Legal Analysis or Statements of Reasons available at the time of this letter's transmittal are enclosed.

If you have any questions, please contact me at (202) 694-1588 or mallen@fec.gov.

Sincerely,
Mark Allen

Mark Allen
Assistant General Counsel

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: Representative Katherine Porter MUR 8105
6 Katie Porter for Congress and
7 Alexander Warren in his official
8 capacity as treasurer
9 University of California, Irvine
10

I. INTRODUCTION

11
12 The Complaint in this matter alleges that Representative Katie Porter and her principal
13 campaign committee, Katie Porter for Congress and Alexander Warren in his official capacity as
14 treasurer (“Committee”), accepted prohibited contributions from the University of California,
15 Irvine (“UCI”), in the form of reduced rate housing in violation of the Federal Election
16 Campaign Act of 1971, as amended (the “Act”).

17 Representative Porter, the Committee, and UCI all deny the allegations. They argue that
18 Representative Porter was granted a leave of absence when she entered Congress, that this
19 indicates that it was tied to government service and not her candidacy, and that she remains a
20 full-time employee of UCI while on her leave of absence, which allows her a continued right to
21 university housing, in accordance with the Irvine Campus Housing Authority (“ICHA”)
22 governing documents during the pendency of her leave.

23 The available information indicates that UCI’s granting of Porter’s requests for a leave of
24 absence was in accordance with established procedures available to all similarly situated
25 University of California faculty and was similar to other decisions to grant leaves of absence.
26 Accordingly, the Commission dismisses the allegations that UCI made a prohibited contribution
27 in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) and the allegations that Porter and

1 the Committee accepted a prohibited contribution in violation of 52 U.S.C. § 30118(a) and
2 11 C.F.R. § 114.2(d).

3 **II. FACTUAL BACKGROUND**

4 Katherine Porter was a candidate in the 2018, 2020 and 2022 elections in the 47th
5 Congressional District in California.¹ She has been a Member of Congress since January 2019.
6 Katie Porter for Congress is her principal campaign committee.² The University of California,
7 Irvine, is part of the University of California system, which is a corporation established by
8 Article IX, Sec. 9 of the California Constitution.³

9 Porter joined the faculty at UCI in 2011, at which time she purchased a four-bedroom
10 home in University Hills for \$522,645.27.⁴ University Hills is a for-sale and rental housing
11 community on the UCI campus, managed by the ICHA and purportedly intended “to provide
12 affordable housing to eligible full-time employees.”⁵ The ICHA was incorporated in October
13 1983 as a public benefit non-profit charged with building the housing program at UCI.⁶
14 According to press reports, the median home prices in University Hills are below the median

¹ Katherine Porter, 2018 Statement of Candidacy (Mar. 31, 2017); Katherine Porter, 2020 Statement of Candidacy (Jan. 15, 2019); Katherine Porter, 2022 Statement of Candidacy (Jan. 4, 2022). On January 10, 2023, Porter filed a Statement of Candidacy for the U.S. Senate election in California in 2024. Porter states in her Response that if she is not elected to the U.S. Senate in 2024, she expects to resume teaching at UCI once her current term in Congress is complete. Porter Resp. at 4 (May 1, 2023). Porter lost the March 5, 2024, primary election. See <https://electionresults.sos.ca.gov/returns/us-senate>.

² Katie Porter for Congress, Amended Statement of Organization (Jan. 18, 2023).

³ See <https://www.ucop.edu/uc-legal/guidance/legal-status-and-role.html#:~:text=What%20is%20the%20legal%20status,9> (last visited Apr. 25, 2024).

⁴ Compl. at 5 (Jan. 24, 2023); see also Porter Resp. at 4 and UCI Resp. at 3 (May 1, 2023).

⁵ Compl. at 3; see also Porter Resp. at 4 and UCI Resp. at 3.

⁶ <https://icha.uci.edu/about-icha/facts-and-history/>.

1 home prices in Irvine, California.⁷ Governing documents indicate that University Hills homes
2 are subject to unique restrictions. Specifically, University Hills homes are not sold on the open
3 market, but instead are sold in accordance with ICHA instructions for selling a home in
4 University Hills.⁸ The ICHA sales office considers whether a home intended for sale has
5 undergone capital improvements and sets the Maximum Resale Price (“MRP”) at which a home
6 may be sold.⁹ Homes for sale are offered by ICHA to various categories of UCI staff and
7 recruits in accordance with the ICHA’s priorities list.¹⁰ The person purchasing the home does
8 not purchase the land on which the home sits; rather they are granted a long-term sublease for the
9 land.¹¹ According to the Complaint, loans are available to University Hills buyers through the
10 UCI Office at rates lower than rates on the open market.¹² A person owning or renting in
11 University Hills may be required to vacate their property if: (a) they voluntarily resign their
12 position; (b) their contract with the University expires and is not renewed; or (c) their
13 employment is terminated by the University.¹³

14 Porter was elected to Congress in 2018 and took office in January 2019. According to
15 Porter’s financial disclosure reports, Porter requested and was granted an unpaid leave of

⁷ See Compl. at 3 (citing Seema Mehta, *What to Know about Katie Porter’s housing situation at UC Irvine*, LOS ANGELES TIMES (Sept. 13, 2022), <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine> .

⁸ See Compl. at 3 (citing ICHA document titled “Selling a Home in University Hills” (“ICHA Home Sale Guide”), <https://icha.uci.edu/wp-content/uploads/2017/06/Selling-a-Home-in-University-Hills-FINAL.pdf>.

⁹ ICHA Home Sale Guide.

¹⁰ *Id.* <https://www.latimes.com/politics/story/2022-09-13/katie-porter-housing-agreement-with-uc-irvine> .

¹⁰ See Compl. at 3 (citing ICHA document titled “Selling a Home in University Hills” (“ICHA Home Sale Guide”), <https://icha.uci.edu/wp-content/uploads/2017/06/Selling-a-Home-in-University-Hills-FINAL.pdf>

¹¹ See UCI Resp. at 3 (citing ICHA Abstract of Lease by Homebuyers, <https://web.archive.org/web/20200921061705/http://icha.uci.edu/wp-content/uploads/2016/10/Abstract-of-Lease-for-Home-Buyers.pdf>, superseded at <https://icha.uci.edu/wp-content/uploads/2023/04/Abstract-of-Lease-2023.pdf>).

¹² Compl. at 4.

¹³ See Katie Porter Response at 5 (citing ICHA Ground Sublease Agreement, Section 3.06(b)).

1 absence from UCI.¹⁴ Since that time, Representative Porter has requested renewals of her unpaid
2 leave of absence to correspond with her time in Congress, which have also been granted.¹⁵

3 The Complaint alleges that UCI's decisions to grant Porter extended unpaid leave and to
4 allow her to continue to live in her University Hills home resulted in prohibited corporate
5 contributions to Porter and the Committee.¹⁶ The Complaint contends that these decisions were
6 discretionary and subjective and points to a lack of evidence of other leaves of absence for
7 similar duration and the lack of an objective pre-existing policy concerning extended leaves of
8 absence or the continuation of housing benefits while on a leave of absence.¹⁷

9 The Committee, Porter, and UCI each filed separate responses. The Response from
10 Representative Porter states that UCI's leave policy is governed by the University of California's
11 Academic Personnel Manual (the "APM"), which applies uniformly to all academic personnel in
12 the University of California system and that Section 759 governs leaves of absence.¹⁸ Porter
13 additionally states that APM Section 750 provides that a "Leave of absence may be granted to
14 academic appointees for consultation or other services to governmental agencies."¹⁹ Porter's
15 Response further notes that the policy was updated in 2022 to state that:

¹⁴ See Compl. at 5 (citing U.S. House of Representatives, 2021 Financial Disclosure Statement of Katherine Porter (Apr. 30, 2022), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2022/10053760.pdf; U.S. House of Representatives, 2018 Financial Disclosure Statement of Katherine Porter (May 15, 2019), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2018/10027062.pdf).

¹⁵ See Compl. at 5.

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at 5-7.

¹⁸ Porter Resp. at 3 (citing APM, Section 759 (2021 redline of Dec. 14, 2000 version), https://www.ucop.edu/academic-personnel-programs/_files/apm/apm-759-sys-review/apm-759-sys-rev-redline-copy.pdf; APM, Section 759 (July 1, 2022), https://ucop.edu/academic-personnel-programs/_files/apm/apm-759.pdf).

¹⁹ *Id.* (citing APM, Section 750 (July 1, 2021), https://ucop.edu/academic-personnel-programs/_files/apm/apm-750.pdf).

1 [g]ood cause in this section may, in appropriate circumstances,
2 include, but is not limited to, leaves for: service to
3 non-profit/nongovernmental organizations, innovation and
4 entrepreneurship activities, a visiting appointment at another
5 institution, professional development, or medical reasons [], when
6 an appointee’s paid leave has been exhausted. When a request for
7 a leave without pay involves service or activities with an entity or
8 organization outside the University, the request may be approved
9 when the purpose for the leave is one that will enhance the
10 academic appointee’s contributions to the University after
11 completion of the leave.²⁰
12

13 According to Porter’s Response, the updates to the APM further clarified that “Academic
14 appointees on an approved leave of absence without pay under APM Section 759 remain
15 University employees and must continue to comply with University policies on conflict of
16 commitment and outside activities.”²¹ She further contends that documents governing her
17 University Hills home permit her to remain in her home while she is on leave because she has
18 not experienced a permanent change in her employment status.²² Finally, Porter contends that
19 other faculty members have taken similar leaves of absence for similar duration.²³

20 The UCI Response states that Porter’s leave was in accordance with established policy
21 and her leave of absence was similar to other leaves of absence granted within the University of
22 California system.²⁴ Specifically, UCI contends that the leave requests were granted in
23 accordance with the APM and after consideration of similar leave requests granted by UCI and
24 by other UC institutions.²⁵ UCI further asserts that whether a faculty member may remain in

²⁰ *Id.* (citing APM, Section 759 (July 1, 2022), https://ucop.edu/academic-personnel-programs/_files/apm/apm-759.pdf).

²¹ *Id.*

²² *Id.* at 1, Exhibit A (attaching the land sub-lease documents for Porter’s home).

²³ *Id.* at 2.

²⁴ UCI Resp. at 4-5.

²⁵ *Id.* at 6.

1 University Hills housing is a function of the agreement between the faculty member and the
2 ICHA, a separate legal entity that administers the University Hills community.²⁶ UCI contends
3 that Porter’s retention of University Hills housing did not factor in its consideration of whether to
4 grant leave.²⁷ UCI states that, as a tenured law professor, Ms. Porter holds “an indefinite
5 appointment that can be terminated only for cause or under extraordinary circumstances.”²⁸

6 UCI also contends that it did not grant Katie Porter leave to campaign; rather, leave was
7 granted for her to serve in Congress.²⁹ Accordingly, UCI argues, it cannot be said that UCI acted
8 in a way to influence a federal election.

9 Finally, the Committee incorporates Porter’s Response as its own, but also argues that it
10 never should have been notified that it was a respondent in this matter because the Complaint did
11 not identify it as a respondent.³⁰

12 **III. LEGAL ANALYSIS**

13 Under the Act, corporations are prohibited from contributing to candidates and their
14 authorized committees, and candidates and authorized committees are prohibited from
15 knowingly receiving or accepting such contributions.³¹ A “contribution” is “anything of value
16 made by any person for the purpose of influencing any election for Federal office.”³²

17 The Complaint alleges that Porter has received, and is continuing to receive, prohibited
18 in-kind contributions from UCI because UCI’s decision to grant Porter leaves of absence resulted

²⁶ *Id.* at 3.

²⁷ *Id.* at 9.

²⁸ *Id.* at 2.

²⁹ *Id.*

³⁰ Committee Resp. (Aug. 11, 2023).

³¹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(d).

³² 52 U.S.C. § 30101(8)(A)(i).

1 in Porter’s ability to remain in her current house at University Hills on the UCI campus and pay
2 her mortgage at her current mortgage rate, when she should have been forced to sell her house,
3 move to a different location, and obtain a higher mortgage at a less favorable rate. The
4 Complaint alleges that these “payments and benefits are not ‘irrespective of the candidacy’ if the
5 reason for granting the payments and benefits is discretionary and not exclusively tied to services
6 provided by the employee.”³³

7 The Commission has considered whether college faculty members on unpaid leave could
8 continue to receive employee benefits while candidates in several advisory opinions, but has not
9 addressed officeholders.³⁴ In Advisory Opinion 2014-14 (Trammell) the Commission
10 considered a request from a college professor who was a candidate in the upcoming general
11 election. The candidate had taken an unpaid leave of absence for the duration of his campaign,
12 and received fringe benefits pursuant to a memorandum of understanding (“MOU”) with his
13 college.³⁵ That MOU provided for the continuation of fringe benefits for which the candidate
14 was eligible prior to the leave of absence, and provided that the college would continue to pay
15 for a portion of those benefits for the duration of the unpaid leave.”³⁶

16 The facts as presented in the Trammel request indicated that although the college’s
17 Provost was afforded some discretion in determining whether to grant or deny a request for

³³ Compl. at 9.

³⁴ On the same day the Commission considered Advisory Opinion 2014-14 (Trammell), it also considered Advisory Opinion 2014-15 (Brat), which presented identical circumstances. Because these advisory opinions are substantively identical, for ease of discussion, this Factual and Legal Analysis will only cite to Advisory Opinion 2014-14 (Trammell).

³⁵ *Id.* at 1-2.

³⁶ *Id.*

1 unpaid leave, the continuation of benefits fell under the college's pre-existing policy, which
2 allowed the continuation of the fringe benefits at issue.³⁷

3 In determining that an improper contribution had not occurred, the Commission in
4 Advisory Opinion 2014-14 (Trammell) first noted that the unpaid leave of absence that was the
5 subject of the MOU did not raise the issue of possible corporate contributions.³⁸ The
6 Commission next considered the permissibility of the related payments for the continuation of
7 fringe benefits and concluded that they were permissible. First, the college's policy of granting
8 sabbaticals for a variety of purposes and generally approving payment of fringe benefits during
9 those sabbaticals indicated the college was affording the candidate the same treatment it afforded
10 other employees who were granted leave for other reasons.³⁹ Second, the college had affirmed
11 that the continuation of employee benefits during leaves of absence was a form of conditional
12 compensation for employees who garner faculty rank.⁴⁰ Third, the college's plan to provide
13 materially identical payment agreements to both the candidate and his similarly situated
14 opponent appeared to be part of a consistent policy available to all qualifying employees.⁴¹

³⁷ *Id.* A leave of absence could be granted by the Provost for such reasons and for such duration as the Provost believed were in the best interests of the applicant and of the college. The Provost determined whether to approve a faculty member's request for a leave of absence, based on the reason for and duration of the leave. Examples of appropriate reasons for approved leave included medical reasons, government or military service, and professional advancement that also benefits the college and its students. *Id.*

³⁸ *Id.* at 3.

³⁹ *Id.* at 4.

⁴⁰ *Id.*

⁴¹ *Id.*

1 Accordingly, the Commission concluded that the payments were not prohibited corporate
2 contributions.⁴²

3 The Complaint contends that the factors identified in Advisory Opinion 2014-14
4 (Trammell) are not applicable because, it alleges, UCI's leave policy was more akin to the
5 subjective leave of absence request in Advisory Opinion 2000-01 (Taveras), which the
6 Commission deemed impermissible.⁴³ In that advisory opinion, the Commission concluded that
7 a proposal to pay a candidate one-half of his salary while he was on leave to campaign would
8 result in a corporate contribution to the candidate because the time used to campaign was not
9 bona fide compensable leave, such as vacation time or other earned leave time.⁴⁴ The available
10 information does not establish that there is reason to believe that UCI made, and Porter accepted,
11 a prohibited in-kind contribution. As the Commission noted in Advisory Opinion 2014-14
12 (Trammell), a grant of unpaid leave in and of itself cannot be considered a contribution.⁴⁵
13 Accordingly, there must be some benefit resulting from the grant of the unpaid leave of absence
14 for there to potentially be a corporate contribution. Where the Commission has considered this
15 question, the benefit at issue was something of value being conveyed from an employer to an
16 employee, whether salary or fringe benefits.⁴⁶ The Complaint does not point to any instance of
17 either UCI or ICHA providing a benefit for Porter in the form of providing salary or fringe
18 benefits while Porter is on unpaid leave. Rather, the Complaint argues that the grant of an

⁴² *Id.*

⁴³ *Id.* at 11.

⁴⁴ Advisory Opinion 2000-01 (Tavares) at 3 (citing 11 C.F.R. § 100.7(a)(3)(iii) (now codified at 11 C.F.R. § 100.54(c)) (no contribution results where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time.)).

⁴⁵ *See, e.g.*, Advisory Opinion 2014-14 (Trammell) at 3.

⁴⁶ *See, e.g.*, Advisory Opinion 1992-03 (Reynolds Metal) (fringe benefits); Advisory Opinion 2000-01 (Taveras) (salary); Advisory Opinion 2014-14 (Trammell) (fringe benefits).

1 extended, unpaid leave of absence by UCI, allowed Porter to continue to own a home in
2 University Hills, which is managed by a separate entity, to her financial benefit.⁴⁷

3 The Complaint contends that UCI’s policies in determining whether to grant leave
4 afforded it too much discretion to avoid the making of a prohibited contribution. However, as
5 the Commission also noted in Advisory Opinion 2014-14 (Trammell), “[a]though the College
6 exercises its discretion when considering requests for leave, the facts before us suggest that
7 payments for continued benefits are issued pro forma once the request is granted.”⁴⁸ Such also
8 appears to be the case with respect to Representative Porter’s ability to maintain her residence in
9 University Hills. Rather than Representative Porter remaining in her home as a result of a
10 “decision,” it appears to be a natural occurrence of the grant of unpaid leave, and thus
11 non-discretionary.⁴⁹

12 Similar to the facts in Advisory Opinion 2014-14 (Trammell), the University of
13 California system had a policy in place that was available to all similarly situated faculty.⁵⁰
14 Although the policy afforded UCI some discretion in determining whether to grant a leave of
15 absence, and some discretion in determining the duration of that leave of absence, the available
16 information indicates that UCI made its decision in accordance with the policy and by
17 identifying other faculty whose leave of absence requests for other employment had been granted

⁴⁷ See Compl. at 11.

⁴⁸ Advisory Opinion 2014-14 (Trammell) at 3.

⁴⁹ UCI Resp. at 9.

⁵⁰ Porter Resp. at 3 (citing APM, Sections 750 and 759); UCI Resp. at 4-5 (citing APM, Sections 750 and 759). Section 750 of the AMP allows for leave to be granted to academic appointees for consultation or other services to governmental agencies. See <https://www.ucop.edu/academic-personnel-programs/files/apm/apm-750.pdf> (last visited Apr. 25, 2024). Section 759 of the APM allows for unpaid leave to be granted to academic appointees for other good causes not covered by APM Sections 700 – 752. See <https://www.ucop.edu/academic-personnel-programs/files/apm/apm-759.pdf> (last visited Apr. 25, 2024).

1 by UCI.⁵¹ Once Porter was elected to a term in Congress, it does not appear unreasonable for
2 UCI to grant Porter unpaid leave for the duration of that term.

3 The available information also does not establish either that UCI's decisions to grant
4 Porter's requests for leaves of absence were made in order to influence her election to federal
5 office, as the leave request was granted after the election was over. Rather, the available
6 information indicates that continued access to University Hills housing is an incidental
7 consequence of Porter's leave of absence. ICHA is a separate legal entity and while UCI's
8 decision to grant Porter a leave of absence affects ICHA's ability to compel Porter to sell her
9 University Hills home due to ICHA's governing documents,⁵² UCI does not appear to have any
10 control over ICHA's determination of Porter's eligibility to remain in University Hills housing.⁵³
11 Accordingly, the available information does not indicate that UCI provided Porter with anything
12 beyond an agreement to continue to hold a faculty position for her during an unpaid leave of
13 absence in which she served in the United States Congress, a decision seemingly consistent with
14 UCI's stated standards for granting unpaid leave.

15 Accordingly, the Commission dismisses the allegations that UCI made a prohibited
16 corporate contribution in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) and the
17 allegations that Porter and the Committee accepted a prohibited corporate contribution in
18 violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d).

⁵¹ UCI Resp. at 5.

⁵² *See* Porter Resp. at 5 (citing ICHA Ground Sublease Agreement, Section 3.06(b)).

⁵³ UCI Resp. at 10.