



FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MURs 7585/7588
Lori Trahan, <i>et al.</i>)	
)	

STATEMENT OF REASONS OF CHAIR DARA LINDENBAUM, VICE CHAIRMAN SEAN J. COOKSEY, AND COMMISSIONERS ALLEN DICKERSON AND JAMES E. "TREY" TRAINOR, III

In these Matters, the Commission was asked to determine whether there was reason to believe ("RTB") that Representative Lori Trahan of Massachusetts, her husband, and her campaign committee violated the Federal Election Campaign Act of 1971 ("FECA" or "Act"), as amended, by making and receiving excessive contributions and committing a series of reporting violations during the 2018 election cycle.¹ Although our Office of General Counsel ("OGC") recommended that the Commission find reason to believe that Respondents violated the Act and Commission regulations, after reviewing the record before us, and the allegations in the Complaint, the Commission instead found that there was no reason to believe that most of the allegations had resulted in violations of the law, and we invoked our prosecutorial discretion as to the remainder.² We provide this Statement of Reasons to explain our basis for rejecting OGC's recommendations.³

¹ 52 U.S.C. §§ 30102(h); 30104(b); 30104(b)(3)(E); 30116(a)(1)(A).

² Certification ("Cert.") at 3-4; *Heckler v. Chaney*, 470 U.S. 821, 835 (1985).

³ *Dem. Cong. Campaign Comm. v. Fed. Election Comm'n*, 831 F.2d 1131, 1135 (D.C. Cir. 1987) (establishing requirement that "[t]he Commission or the individual Commissioners" must provide a statement of reasons why the agency "rejected or failed to follow the General Counsel's recommendation").

I. Factual Background

These Matters came to the Commission's attention pursuant to two complaints filed in March 2019, which were subsequently supplemented by both complainants.⁴ OGC reviewed these complaints, as well as responses from the Trahans and Rep. Trahan's campaign committee.⁵ During the pendency of OGC's review, which was interrupted by a lack of a quorum on the Commission, the House Committee on Ethics ("Ethics Committee") reviewed a referral related to the same conduct and issued a report regarding those allegations.⁶ OGC believed that the Ethics Committee's report established the factual record in these Matters, and we agree.⁷

Lori Trahan successfully ran for Congress in 2018 and now represents Massachusetts's Third Congressional District.⁸ She has been married to her husband, David Trahan, for over fifteen years.⁹ The Trahans signed legal documents "prior to marriage to define their rights and obligations during their marriage" confirming that the Trahans' combined "wages, salary, and income" is marital property which "[e]ach party shall have equal rights in regard to the management of and disposition of," and that "any real property purchased in joint title by the Trahans reflects the intent of the parties of have a joint interest in that property."¹⁰

The generally private financial aspects of Rep. Trahan's marriage became an issue of federal concern because "[d]uring her candidacy, Representative Trahan loaned funds to [her] [c]ampaign."¹¹ Specifically, Rep. Trahan lent her campaign

⁴ First Gen'l Counsel's Report ("FGCR") at 1, MURs 7585/7585 (Trahan), Nov. 17, 2022 (noting identification of complainants and subsequent filings).

⁵ FGCR at 2-3 (summarizing complaints and responses).

⁶ Report of the Comm. on Ethics, *In the Matter of Allegations Relating to Representative Lori Trahan* ("Trahan Report"), U.S. House of Representatives Comm. on Ethics, July 16, 2020.

⁷ FGCR at 5 ("[A]n investigation has already been conducted by [the Office of Congressional Ethics ("OCE")] ...providing information, including financial records substantiating the violations"); *id.* at 34 ("Because an investigation has already been conducted by OCE and we are in possession of copies of the financial records from that investigation, the record is sufficient at this juncture to proceed directly to conciliation on the violations that are reasonably established").

⁸ Trahan Report at 4-5.

⁹ *Id.* at 5 ("Representative Trahan has been married to David Trahan since November 17, 2007").

¹⁰ *Id.* (quoting from Trahan Report Ex. 1, the Trahans' prenuptial agreement).

¹¹ *Id.* at 6.

\$371,000 in four tranches: three from her personal funds, and a final \$71,000 from a home equity loan initially obtained in 2010¹² based on value of the Trahans' shared domicile.¹³ Having obtained access to detailed accounting of the Trahans' personal finances, OGC reviewed the circumstances around these loans. It noted that Mr. Trahan made deposits to the joint account during the time that Rep. Trahan used that account to lend funds to her campaign committee, and that Mr. Trahan also made a payment on the home equity line of credit after Rep. Trahan drew on that line for her campaign.¹⁴

OGC's conclusion from this review was that money to which both husband and wife were equally entitled, was, in fact, the property of the husband.¹⁵ Therefore, prenuptial-agreement and marital-property rules aside, the money lent to the campaign was Mr. Trahan's, not Rep. Trahan's.¹⁶ Having thus legally separated Mr. Trahan from Rep. Trahan, at least financially, OGC concluded that the entire \$371,000 lent to the Trahan campaign committee was an illegal contribution from a husband to his wife.¹⁷

¹² FGCR at 9.

¹³ *Id.* at 6 (chart breaking out loans). The home equity loan was originally reported as coming from the candidate's personal funds, rather than on the appropriate Schedule C-1 (Loans and Lines of Credit from Lending Institutions). *Id.* at 6-7. While this initial misreporting was a FECA violation, because it was corrected, and because we did not consider the underlying transaction itself to be illegal (as OGC did), *id.* at 24-26, we dismissed this reporting violation pursuant to our prosecutorial discretion. Cert. at 4, ¶ 4(d).

¹⁴ FGCR at 7-9, 13-26 (describing and analyzing the loans and concomitant transactions).

¹⁵ FGCR at 3 ("Mr. Trahan's income was the true source of the funds").

¹⁶ *Id.* at 20 ("Under Massachusetts law, the Trahans' prenuptial agreement appears to give broad property rights to Rep. Trahan over marital property, including Mr. Trahan's income earned during the marriage," but because "Rep. Trahan does not appear to have had access to or control over either Mr. Trahan's future income or even the underlying entities that paid the income — which were titled in his name (and presumably those of his partners) but not hers — when Rep. Trahan became a candidate" Massachusetts law was ousted); *id.* at 24-25 (conceding Rep. Trahan's personal control over funds derived from the home line of credit, but arguing that because Mr. Trahan made a payment back to the line of credit, "the actual circumstances" were "that Mr. Trahan became the creditor who provided a loan and thus made the contribution").

¹⁷ *Id.* at 24, 26. The constitutional purpose behind contribution limits is to avoid *quid pro quo* corruption. *Buckley v. Valeo*, 424 U.S. 1, 28 (1976) (*per curiam*); *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 192 (2014) ("Campaign finance restrictions that pursue other objectives, we have explained, impermissibly inject the Government 'into the debate over who should govern'") (quoting *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 750 (2011)). That interest is somewhat attenuated where, as here, the financial transfers occur between spouses, and especially spouses who broadly share a joint right to each other's funds. Even if there were a generalizable corruption interest at issue, it is not obvious that highly-invasive investigations into the intimate

II. Legal Analysis

- a. Representative Trahan, not Mr. Trahan, was responsible for the \$371,000 in loans, and there was no reason to believe otherwise.*

Personal funds are not subject to the candidate contribution limits.¹⁸ The Commission has explained what may be considered a candidate's personal funds, as well as the circumstances where a candidate's home equity line of credit may be used for her campaign.

Specifically, the FEC defines the "[p]ersonal funds of a candidate" as, *inter alia*, assets jointly owned with a spouse as well as any assets "the candidate ha[s] legal right of access to or control over."¹⁹ Additionally, candidates may legally access a home equity line of credit, so long as "[s]uch loan is made in accordance with applicable law and under commercially reasonable terms" and the credit was offered "in the normal course of the [lender]'s business."²⁰

The Ethics Committee's exhaustive investigation explained how the Trahans pooled and accessed funds in the joint checking account Representative Trahan used to make \$300,000 of loans to her campaign.²¹ Under the most natural reading of our regulations, funds placed in a joint checking account shared by husband and wife are unquestionably funds which the wife "ha[s] legal right of access to or control over."²²

financial arrangements of married couples is at all proportional to the government's interest. *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 (1996) ("Choices about marriage [and] family life" are "among [those] associational rights this Court has ranked as 'of basic importance in our society'" "sheltered by the [Constitution] against the State's unwarranted usurpation, disregard, or disrespect") (quoting *Boddie v. Conn.*, 401 U.S. 371, 376 (1971)).

¹⁸ *Buckley*, 424 U.S. at 53.

¹⁹ 11 C.F.R. § 100.33.

²⁰ 11 C.F.R. § 100.83(a)(1-2).

²¹ Trahan Report at 12-15 (describing in detail the setting up of the joint checking account and the discrete transactions surrounding the loans and concluding "[i]t appears that, in accordance with the agreement, the Trahans' incomes that were marital property were held in their personal and joint checking accounts, which were used interchangeably by the couple. The prenuptial agreement allows Representative Trahan to manage and dispose of all marital property, regardless of the bank account it was held in").

²² 11 C.F.R. § 100.33.

Thus, we concluded that those three loans were, in fact, made from Congresswoman Trahan's personal funds, and were not illegal contributions made by her husband.²³

The Ethics Committee's investigation also found that the home equity line of credit used for the final \$71,000 loan "was obtained in accordance with all laws and under commercially reasonable terms."²⁴ Even OGC conceded that the \$71,000 lent to the campaign "us[ed] funds obtained through [the Trahans'] home equity line of credit," was "far below her share of the jointly-owned asset," and therefore would normally count as coming from the Congresswoman's personal funds.²⁵ We reject the suggestion that a later payment on that line of credit by Mr. Trahan—a co-signer on the loan (and, again, the husband of the co-signing wife)—transformed Mr. Trahan into a creditor to Rep. Trahan.²⁶ Rep. Trahan was an equal party to a commercially reasonable line of credit, and the loan made to her campaign was below her share of that joint asset. That is all our regulations require.²⁷

²³ The terms of the Trahans' prenuptial agreement strengthen this conclusion. Indeed, while joint accounts should generally be treated as personal property of both account holders under our regulations, to have determined otherwise here would not only have misread the law but also deprived the Trahans' prenuptial agreement of legal effect, at least for purposes of the federal campaign finance laws. We do not believe that result is required by our regulations. But we also emphasize that invasive investigations of a married couple's finances are inappropriate where the lawfulness of a contribution, such as the loan at issue here, is clear.

²⁴ Trahan Report at 15, n.147.

²⁵ FGCR at 24.

²⁶ *Id.* at 25.

²⁷ 11 C.F.R. § 100.83.

In sum, Mrs. Trahan made loans to her campaign from her personal funds.²⁸ There is nothing illegal about that and we voted accordingly.²⁹

b. The remaining recordkeeping and reporting violations were not worth the time and resources of the federal government.

In the course of its review, OGC found that the Trahan committee failed to timely deposit the Congresswoman's check for the fourth loan within the appropriate ten-day period.³⁰ This is true, but the check was ultimately deposited.³¹ This allegation, like the admitted reporting error which the Trahan committee has already corrected,³² is simply not worth the expenditure of additional federal resources.³³

²⁸ In coming to this conclusion, we agree with the Ethics Committee, which also concluded that these four loans did not violate FECA. Trahan Report at 15 ("Because Massachusetts law allows for prenuptial agreements like the Trahans', and the prenuptial agreement provided Representative Trahan, long before she was a candidate, equal rights to manage and dispose of Mr. Trahan's salary and income, the Committee found Mr. Trahan's salary and income satisfied the definition of a candidate's personal funds under FECA"); *id.* at 16 ("[T]he Committee found the \$71,000 loan did not result in an excessive contribution from Mr. Trahan to the Campaign").

This agreement comes from an independent analysis of the same facts and the same law, and it should be unsurprising that we agree with the Ethics Committee. But it is noteworthy that OGC looked at the same evidence and came to the opposite conclusion. This is doubtless a cautionary tale about the overly complicated nature of our campaign finance rules, where even experts cannot seem to consistently agree even when apprised of all the facts.

²⁹ OGC also alleged that the Trahan committee did not merely misreport the source of the loans (*i.e.* attributing them to Representative Trahan's personal funds rather than her husband), because the loans were reported as being received on the day they were written rather than the day they were cashed. FGCR at 29. We concluded that this was not a FECA violation. As even OGC conceded, it is our ordinary policy to "mak[e] the date of conveyance" of a check "the date of receipt." *Id.* We declined to create a different rule solely for the circumstances of the Trahan committee.

³⁰ See 52 U.S.C. § 30102(h).

³¹ On September 2, 2018—over four years ago.

³² *Supra* at n.13.

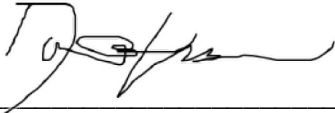
³³ *Heckler*, 470 U.S. at 831 ("[T]he agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another...An agency generally cannot act against each technical violation of the statute it is charged with enforcing").

CONCLUSION

The federal government should pause before scrutinizing the minute financial arrangements of married couples. This is so even where one of the spouses has been elected to federal office. And in the rare circumstances where such an investigation is justified, the government should take care not to assume that assets jointly owned or controlled by a husband and wife are solely the property of one spouse.³⁴ Moreover, both prudence and humility suggest that where an expert body, with full knowledge of the facts, has found that no wrongdoing occurred, we should be hesitant to countermand that finding. Our Office of General Counsel was doubtless sincere in recommending enforcement in the face of a contrary judgment by the Ethics Committee, but we believe the Committee was correct, and are glad that a conflict that would have further muddied federal campaign finance law has been avoided.

For those reasons, and those given above, we rejected the recommendations of our General Counsel, found no reason to believe that the most serious allegations were true, and dismissed the remaining technical violations in the exercise of our prosecutorial discretion.

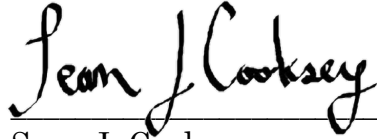
³⁴ *Cf.* Statement of Chairman Dickerson and Comm’r Broussard Regarding Advisory Opinion 2022-07 (Swalwell) (“The question of whether a candidate’s spouse is technically available to provide childcare is an inherently subjective inquiry and...well outside the Commission’s purview.”).



Dara Lindenbaum
Chair

February 22, 2023

Date



Sean J. Cooksey
Vice Chairman

February 22, 2023

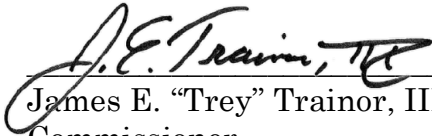
Date



Allen Dickerson
Commissioner

February 22, 2023

Date



James E. "Trey" Trainor, III
Commissioner

February 22, 2023

Date