

C A M P A I G N F O R ACCOUNTABILITY

May 16, 2017

BY FAX: 202-226-0997

Omar Ashmawy
Staff Director and Chief Counsel
Office of Congressional Ethics
1017 Longworth HOB
Washington, D.C. 20515

RE: Request for Investigation of Rep. Rodney Frelinghuysen

Dear Mr. Ashmawy:

Campaign for Accountability (“CfA”) respectfully requests that the Office of Congressional Ethics (“OCE”) investigate whether Rep. Rodney Frelinghuysen (R-NJ) violated House ethics rules when he warned a banking executive that a member of an activist group opposing the congressman worked at his bank.

Factual Background

On May 15, 2017, WNYC reported that in March, through his campaign committee, Rep. Frelinghuysen sent a fundraising appeal to Joseph O’Dowd, a board member of the New Jersey based Lakeland Bank, warning him that a senior vice president and assistant general counsel at the bank was a member of an activist group that opposed him.¹ The employee, Saily Avelenda, later resigned, at least in part due to “the pressure she received over her political involvement.”²

The fundraising appeal explained that generous financial support was needed because “there are organized forces – both national and local – who are already hard at work to put a stop to an agenda of limited government, economic growth, stronger national security.”³ A handwritten asterisk appeared over the word local and at the bottom of the letter, a handwritten note – in the same ink and writing as the congressman’s signature – stated, “P.S. One of the ringleaders works in your bank!” A copy of a news article quoting Ms. Avelenda was attached to the letter.⁴

¹ Nancy Solomon, Frelinghuysen Targets Activist in Letter to Her Employer, *WNYC*, May 15, 2017, available at <http://www.wnyc.org/story/frelinghuysen-targets-activists-letter-boss/>.

² *Id.*

³ *Id.*

⁴ *Id.*

Ms. Avelenda is a member of NJ11th for Change, which has been pressuring Rep. Frelinghuysen to meet with constituents and oppose President Trump's agenda. As the chairman of the House Appropriations Committee, Rep. Frelinghuysen is one of the most powerful members of the House of Representatives. As a result, perhaps not surprisingly, Ms. Avelenda's supervisor confronted her with the both the fundraising letter and the news article, and required her to provide a written explanation to the bank's CEO about her activities and to declare herself a friend of the bank.⁵

Lending further credence to the fact that Rep. Frelinghuysen's actions led the bank to reprimand Ms. Avelenda to placate him, is the bank's own "Code of Ethics", which includes a section entitled "Participation in Public Affairs." In pertinent part, the code states:

It is the philosophy of the Company to encourage on the part of its Employees a full awareness of and interest in civic and political responsibility. Each Employee shall have the opportunity to support community activities or the political process, as he or she desires.⁶

The policy further provides:

Nothing contained in this section is intended to discourage Persons from active personal involvement in the political process, including the making of personal political contributions, or to otherwise limit the rights and obligations of Persons as responsible citizens.⁷

Therefore, it is clear that, as Ms. Avelenda stated, "[her] congressman put them in a situation, and put me in a really bad situation as the constituent, and used his name, used his position, and used his stationery to try to punish me."⁸

Violations

Tortious Interference with Business Relations

Rep. Frelinghuysen's message warning Ms. Avelenda's employer about her political activities may constitute tortious interference with business relations. The tort is

⁵ Amber Phillips, 'P.S.' One of the ring leaders works in your bank!': Is this Congressman's Fundraising Letter a Threat?, *Washington Post*, May 15, 2017, available at https://www.washingtonpost.com/news/the-fix/wp/2017/05/15/p-s-an-anti-trump-activist-works-for-your-bank-ethics-experts-say-this-congressmans-fundraising-letter-sounds-like-a-threat/?utm_term=.40bd8222afcf.

⁶ Lakeland Bank Corp. Inc., *Code of Ethics*, p. 9, available at <https://www.lakelandbank.com/assets/1426278783-Code-of-Ethics-Policy.pdf>.

⁷ *Id.*

⁸ Solomon, *WNYC*, May 15, 2017.

defined as a third party intentionally acting to cause one party on a business relation to violate business relations with another. The elements of the tort include: 1) a valid business relationship; 2) the third party has knowledge of the relationship; 3) the third party intentionally coerces one of the parties to terminate the business relationship; 4) the third party is not authorized to interfere with the two parties' relationship; and 5) the third party's interference results in damages to one of the parties.

Here, Ms. Avelenda held a position as senior vice president and assistant general counsel at Lakeland Bank; Rep. Frelinghuysen was aware of her position; the congressman wrote a note on the bottom of a letter to one of Lakeland Bank's board members, warning him that Ms. Avelenda was a non-desirous employee; Rep. Frelinghuysen was not authorized to interfere in Ms. Avelenda's relationship with her employer; and, as a direct result of Rep. Frelinghuysen's actions, Ms. Avelenda was called into her boss's office, forced to explain her conduct, and ultimately resigned. Therefore, it appears Rep. Frelinghuysen may have committed tortious interference with Ms. Avelenda's business relations.

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from "taking any official actions for the prospect of personal gain for themselves or anyone else."⁹ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

While Rep. Frelinghuysen used his campaign committee, rather than official stationary for his poison pen note, his position as a sitting member of Congress was still clear. Therefore, if, as it appears, Rep. Frelinghuysen used his position as a member of Congress to coerce Lakeland Bank to fire Ms. Avelenda, or even merely sought to make her employment more tenuous for his personal, political benefit, he may have violated 5 C.F.R. § 2635.702(a).

⁹ House Comm. on Standards of Official Conduct, "Memorandum For All Members, Officers and Employees," Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”¹⁰ This ethics standard is considered to be “the most comprehensive provision” of the code.¹¹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.¹² This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,¹³ making false statements to the Committee,¹⁴ criminal convictions for bribery,¹⁵ or accepting illegal gratuities,¹⁶ and accepting gifts from persons with interest in legislation in violation of the gift rule.¹⁷

Further, the ethics committee has warned members of Congress that “intervening in private matters requires exercise of particular caution.” “[C]ommunicating with private businesses may be viewed as “pressure to take action in order to please the Member.”¹⁸ While this warning in the committee’s handbook specifically refers to communications sent from a member’s office, the ethics rules apply whether a member of Congress acts as an office holder or a candidate.

¹⁰ Rule 23, clause 1.

¹¹ House Comm. on Standards of Official Conduct, *House Ethics Manual*, p. 12.

¹² House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

¹³ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

¹⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

¹⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

¹⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

¹⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

¹⁸ House Comm. On Standards of Official Conduct, *House Ethics Manual*, p. 313 (2008 ed).

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Therefore, if, as it appears, Rep. Frelinghuysen used his position as one of the most powerful members of the House of Representatives to coerce a New Jersey bank into constructively terminating an employee because she exercised her First Amendment rights to oppose him politically, his conduct does not reflect creditably on the House in violation of Rule XXIII, clause 1.

Conclusion

Since the 2016 election, Ms. Avelenda, like many Americans has been exercising her First Amendment rights to engage in political activity. Opposing the agenda of President Trump, Ms. Avelenda and others have been urging their members of Congress to speak out and vote against legislation promoted by the president. It is shocking that a member of Congress – who swears an oath to uphold the Constitution of the United States – would retaliate against someone who exercises her constitutional rights by attempting to interfere in her employment. The Office of Congressional Ethics should investigate and make clear that, if nothing else, such conduct discredits the House of Representatives.

Sincerely,



Daniel E. Stevens
Executive Director
Campaign for Accountability