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October 22, 2015

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**BY HAND DELIVERY**

*Office of General Counsel*  
Attn: Adav Noti, Esq., Acting Associate General Counsel for Policy  
Federal Election Commission  
999 E. Street N.W.  
Washington, D.C. 20463

**Re: Advisory Opinion Request**

Dear Mr. Noti:

Pursuant to 52 U.S.C. § 30108, we seek an advisory opinion on behalf of Senate Democratic Leader Harry Reid. Leader Reid anticipates having substantial post-retirement obligations arising from his 34-year tenure as a federal officeholder and, in particular his twelve years as Democratic Leader – including eight years as Senate Majority Leader. Federal law currently does not provide any government funds to assist former Senate Majority Leaders to fulfill these obligations. *First, Leader Reid seeks confirmation that the Federal Election Campaign Act (the “Act”) and Commission regulations permit campaign funds to be used to employ a full-time assistant after Leader Reid’s retirement to help fulfill these obligations. Second, Leader Reid seeks confirmation that Searchlight Leadership Fund, his leadership PAC, may pay some or all of the costs of winding down his Senate office.*<sup>1</sup>

Leader Reid has led a long and distinguished career in Congress. He was first elected to the U.S. House of Representatives in 1982 and served two terms prior to being elected to the U.S. Senate in 1986. After winning his third Senate election in 1998, Leader Reid was chosen to serve as Assistant Senate Democratic Leader. Six years later, his colleagues chose him to serve as Senate Democratic Leader, a position he currently holds. During Leader Reid’s twelve-year run as Democratic leader, he served as Senate Majority Leader for eight of those years. On March 27, 2015, Leader Reid announced that he would not seek re-election in 2016 and would retire from the U.S. Senate.

Leader Reid’s legislative and campaign-related activities have been substantial, and as a result, the broad sweep of responsibilities related to those activities will not cease upon the expiration of his term. Leader Reid intends to hire a full-time assistant to help him fulfill these responsibilities. For instance, the assistant will review, organize, and arrange for transportation

<sup>1</sup> To ensure compliance with Senate Rules, the leadership PAC funds would not be used prior to the expiration of Leader Reid’s term in office.

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and storage of archival and office materials; manage officially-related correspondence; fact-check and draft materials relating to Leader Reid's tenure in office; schedule and organize

appearances in which Leader Reid will discuss his tenure in office; and perform related clerical duties. Leader Reid stipulates that the employee will not assist him with any activity described in 11 C.F.R. § 113.1(g)(1)(i). Moreover, the employee will not be a family member of Leader Reid's. Unlike former Speakers of the House, who receive government funds to assist with post-retirement duties, there is no appropriation for former Majority Leaders to maintain an office related to their prior duties. That is why Leader Reid seeks confirmation that he may use campaign funds to do so.

***Question 1: May Leader Reid use campaign funds to pay the salary and related costs of an assistant who will exclusively engage in tasks arising from the officeholder's tenure in office?***

The Act identifies six permissible uses of contributions accepted by an authorized committee of a federal candidate.<sup>2</sup> Included in this list are paying "ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office," as well as "any other lawful purpose," but not conversion to "personal use."<sup>3</sup> A contribution is converted to personal use if it "is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office."<sup>4</sup>

When evaluating whether a disbursement is a prohibited personal use of campaign funds, the Commission first determines whether the disbursement is among the expenses deemed *per se* personal use by Commission regulations.<sup>5</sup> The proposed payment for a staff person would not be *per se* personal use, as Leader Reid has stipulated that the staffer would not assist him with any activity described in 11 C.F.R. § 113.1(g)(1)(i) and would not be a family member. Because the proposed disbursement is not *per se* personal use, the Commission must assess whether the obligation "would exist irrespective of the candidate's campaign or responsibilities as a Federal officeholder."<sup>6</sup> "When the Commission engages in a case-by-case determination, it does so in light of its 'long-standing opinion that candidates have wide discretion over the use of campaign funds.'"<sup>7</sup> "If the candidate can reasonably show that the expenses at issue resulted from

<sup>2</sup> 52 U.S.C. § 30114(a).

<sup>3</sup> *Id.* §§ (a)(2), (a)(6); (b).

<sup>4</sup> *Id.* § (b)(2).

<sup>5</sup> 11 C.F.R. § 113.1(g)(1)(i).

<sup>6</sup> See 11 C.F.R. § 113.1(g); FEC Adv. Op. 2014-06 (Ryan et al.); 2011-17 (Giffords); 2009-20 (Visclosky); 1996-14 (de la Garza); *Explanation and Justification, Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862 (Feb. 9, 1995).

<sup>7</sup> FEC Adv. Op. 2015-06 (Waters) (quoting *Explanation and Justification, Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862 (Feb. 9, 1995)).

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campaign or officeholder activities, the Commission will not consider the use to be personal use.”<sup>8</sup>

Notably, *former* officeholders enjoy the same right to use campaign funds to pay for expenses arising from their tenure in federal office. In 2001, the Commission approved a request by *former* Senator Kerrey to use campaign funds to help him respond to press stories about his service record during the Vietnam War.<sup>9</sup> The Commission concluded that the expenses at issue “would not have occurred if Mr. Kerrey had not been a prominent Senator and prominent Federal candidate” and thus it was permissible to use campaign funds to pay for them.<sup>10</sup> The Kerrey advisory opinion is particularly noteworthy in demonstrating the breadth of the allowance for former officeholders, given that the press stories primarily addressed conduct that occurred *before* former Senator Kerrey became a federal officeholder.

The same analysis applies here but with more force. The obligation at issue in this request – salary and benefits for a staffer to help Leader Reid perform tasks arising from his tenure in federal office – would not exist irrespective of Leader Reid’s tenure as a former Senate Leader. If Mr. Reid had not served as a federal officeholder for 34 years, he would bear no responsibility to maintain archival and office materials, to correspond with others regarding his tenure in office, to draft materials regarding his tenure in office, or to appear before audiences to discuss his tenure in office. Like former Senator Kerrey in 2001, Leader Reid “can reasonably show that the expense at issue resulted from campaign [and] officeholder activities.”<sup>11</sup> Leader Reid’s request is even stronger, in fact, because all of the conduct that gives rise to the post-retirement expenses occurred during his tenure in office. This is particularly true since Leader Reid was Senate Majority Leader for 8 years and the federal government does not provide any funds to assist former Senate Majority Leaders in fulfilling their post-retirement obligations.

The Commission’s regulations, which explicitly allow a former officeholder to use campaign funds to pay for “winding-down” expenses of the Senate office, also support the use of campaign funds to pay for the staffer.<sup>12</sup> The Commission recently stated that “winding-down costs include the ‘necessary administrative costs’ of terminating a campaign or congressional office, such as office space rental, staff salaries and office supplies.”<sup>13</sup> Leader Reid’s proposed expenditure is consistent with this instruction, as he seeks to pay a staff salary. Although wind-down costs

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<sup>8</sup> *Explanation and Justification, Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862 (Feb. 9, 1995); see also FEC Adv. Op. 2001-09 (Kerrey) (citing standard).

<sup>9</sup> FEC Adv. Op. 2001-09 (Kerrey).

<sup>10</sup> *Id.*

<sup>11</sup> *Explanation and Justification, Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862 (Feb. 9, 1995).

<sup>12</sup> 11 C.F.R. § 113.2(a)(2).

<sup>13</sup> FEC Adv. Op. 2013-05 (Gallegly) (citing 11 C.F.R. §§ 110.1(b)(3)(ii), 116.1(a)).

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generally cover a period of six months after leaving office, the Commission has made clear that the six-month period “acts as a safe harbor” rather than an absolute limit.<sup>14</sup> The measure, according to the Commission, is intended “to ensure that former officeholders have ample time to close down their offices” and “does not preclude a former officeholder who can demonstrate that he or she has incurred ordinary and necessary winding down expenses more than six months after leaving office from using campaign funds to pay those expenses.”<sup>15</sup> Leader Reid’s historic tenure in office – he is the second longest-serving Democratic leader of all time – requires well more than six months to wind-down.

For the reasons set forth above, the Commission should find that the use of campaign funds to pay for the salary and benefits of the staffer described above is permissible.

**Question 2: May a former officeholder use leadership PAC funds to pay wind-down costs?**

A leadership PAC is a “political committee that is directly or indirectly established . . . by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual.”<sup>16</sup> The Commission has defined the term “leadership PAC” in terms of its functions:

[S]uch PACs are formed by individuals who are Federal officeholders and/or Federal candidates. The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder’s travel when campaigning for other Federal candidates. The monies may also be used to make contributions to party committees, including State party committees in key states, or donated to candidates for State and local office.<sup>17</sup>

Neither the statute nor the regulations limit a PAC’s ability to pay wind-down costs of a former federal officeholder. The only potentially relevant limitation is the law limiting “contributions” from a leadership PAC (which qualifies as a multi-candidate committee) to an authorized campaign committee to \$5,000 per election.<sup>18</sup> But the payment of wind-down costs for a former officeholder who is *not* currently a federal candidate is *not* a “contribution” to that former

<sup>14</sup> FEC Adv. Op. 2013-05 (Gallegly) (quoting *Explanation and Justification, Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7873 (Feb. 9, 1995)).

<sup>15</sup> *Id.* (quoting *Explanation and Justification, Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7873 (Feb. 9, 1995)).

<sup>16</sup> 11 C.F.R. § 100.5(e)(6); see also 52 U.S.C. § 30104(i)(8)(B).

<sup>17</sup> *Explanations and Justifications, Leadership PACs*, 68 Fed. Reg. 67013, 67014 (Dec. 1, 2003) (quoting *Notice of Proposed Rulemaking on Leadership PACs*, 67 Fed. Reg. 78753, 78754 (Dec. 26, 2002)).

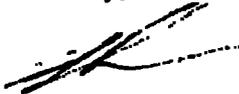
<sup>18</sup> See 11 C.F.R. §§ 110.2(d), 100.5(e)(6).

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officeholder's authorized committee. A "contribution" is defined to include any gift of money or "anything of value [] for the purpose of influencing any election for Federal office."<sup>19</sup> The PAC's payment of winding-down expenses has no plausible election-influencing purpose and, hence, is not a "contribution." The fact that an authorized committee has the legal right to make a particular payment does not *preclude* a leadership PAC from making the same payment nor does it require that the leadership PAC treat the payment as an in-kind contribution to the authorized committee. In Advisory Opinion 2007-08, for example, a Member of Congress sought to use leadership PAC funds to commission a self-portrait that would be donated to the U.S. House of Representatives.<sup>20</sup> The Commission approved of the expenditure "because such a payment would be exclusively to create a portrait to be donated to a section 170(c) organization and thus would not be for the purpose of influencing an election for Federal office."<sup>21</sup> The same analysis would permit Leader Reid's leadership PAC to pay the wind-down expenses of his Senate office.

We appreciate your consideration of these requests.

Sincerely,



Marc E. Elias  
Jonathan S. Berkon  
David J. Lazarus

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<sup>19</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>20</sup> FEC Adv. Op. 2007-08 (Rangel).

<sup>21</sup> *Id.*

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Ms. Selinkoff –

Leader Reid proposes to use campaign funds to pay for a staffer to assist with tasks arising from his tenure in office. If those tasks cease to exist, Leader Reid would no longer use campaign funds to pay this staffer. At this time, Leader Reid cannot predict with any degree of certainty when he would expect those tasks to end. Please let us know if you have any additional questions.

Many thanks,

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