



January 26, 2021

Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

Re: Request for Advisory Opinion

Dear Commissioners:

The National Republican Senatorial Committee (“NRSC”) and the National Republican Congressional Committee (“NRCC”) (collectively, the “Party Committees”), through the undersigned counsel, submit this request for an advisory opinion pursuant to 52 U.S.C. § 30108 of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Party Committees request the Commission’s confirmation that a Member of the U.S. Senate or U.S. House of Representatives may use campaign funds to pay for personal security personnel to protect the Member and the Member’s immediate family from threatened harm.<sup>1</sup>

While the Act generally provides the Commission up to 60 days to respond to a written advisory request,<sup>2</sup> the Party Committees respectfully request expedited consideration of this opinion in light of recent developments that have elevated the threat environment facing Members. To assist in expediting this request, we are available to answer any questions the Commission or staff may have by electronic mail at any time and would be able to appear before the Commission at its earliest opportunity if the Commission believes a public hearing is necessary to resolve the question presented.

### **Question Presented**

May a Member of the U.S. Senate or U.S. House of Representatives permissibly use campaign funds to pay for personal security personnel to protect both the Member and the Member’s immediate family?<sup>3</sup> We seek the Commission’s confirmation that, consistent with Commission

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<sup>1</sup> The Commission has previously issued advisory opinions to requestors submitting on behalf of Members of Congress and/or federal candidates. See, e.g., Advisory Opinion 2017-17 (Sergeant at Arms Irving) (issuing advisory opinion applicable to Members’ use of campaign funds to pay for residential security systems); Advisory Opinion 2006-24 (NRSC, DSCC, Republican State Committee of Pennsylvania) (issuing advisory opinion applicable to federal candidate recount funds).

<sup>2</sup> 52 U.S.C. § 30108(a)(1). *But see id.* § 30108(a)(2) (requiring the Commission to issue an advisory opinion within 20 days if requested by a candidate in the 60-day window before a federal election).

<sup>3</sup> The term “immediate family” is intended to include members of the officeholder’s household, including a spouse, minor children, or other relatives who reside with the Member.

precedent, such a use of campaign funds would not constitute an impermissible personal use of campaign funds.

## **Factual Background**

The NRSC and NRCC are classified as national committees under the Act. The NRSC is comprised of sitting Republican Members of the U.S. Senate and includes all incumbent Republican Senators. The NRCC is comprised of sitting Republican Members of the U.S. House of Representatives and includes all incumbent Republican House Members. As part of their primary function to aid the election of candidates affiliated with the Republican Party, the Party Committees provide guidance to incumbent federal candidates, as well as to challengers and to candidates for open seats. The Party Committees submit this request on behalf of their Members currently serving in federal office who look to the Party Committees for support and guidance.

In light of current events involving concrete threats of physical violence against Members and their families, Members have been compelled to consider further security measures for themselves and their families. As has been well-documented in the media,<sup>4</sup> Members and their families continue to endure threats and security breaches, which are being timely reported to appropriate law enforcement officials.<sup>5</sup>

Over the previous decade, the Commission has provided essential and timely guidance to Senators and House Members in response to heightened security concerns, including in the aftermath of the shootings of Representatives Giffords and Scalise in 2011 and 2017, respectively. The current threat environment that Members and their families face must again be met with increased security measures. The Party Committees believe it is important that Members of Congress have additional options to protect themselves and their families, if they wish, and thus seek the Commission's guidance on the permissibility of using their campaign funds to supplement the home security systems the Commission has previously authorized with personal security personnel.

## **Legal Background**

### *The Act and Commission Regulations*

The use of campaign funds is governed by the Act's permitted use provision and personal use prohibition. See 52 U.S.C. § 30114(a), (b); 11 C.F.R. §§ 113.1, 113.2. The Act identifies six broad categories of permitted uses of campaign funds, including: (1) authorized expenditures in

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<sup>4</sup> See, e.g., Press Release, U.S. Attorney's Office, E. Dist. N.Y., Queens Man Arrested for Threatening to Murder Members of Congress (Jan. 19, 2021), <https://www.justice.gov/usao-edny/pr/queens-man-arrested-threatening-murder-members-congress>; John Bowden, *FBI Arrests Man Who Allegedly Threatened to Kill Pelosi*, The Hill (Jan. 12, 2012), <https://thehill.com/policy/national-security/533843-fbi-arrests-man-who-allegedly-threatened-to-kill-pelosi>.

<sup>5</sup> In certain instances, one or more federal law enforcement agencies may offer to provide security to a Member or Member's family. The request would only apply in those instances where federal agents are not protecting the Member or Member's family, and in no way would any private personnel retained pursuant to this request interfere with the operations of federal law enforcement agencies.

connection with the candidate’s campaign for federal office; (2) ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of federal office; (3) contributions to organizations described in 26 U.S.C. § 170(c); (4) transfers, without limitation, to national, state, or local political party committees; (5) donations to state and local candidates subject to the provisions of state law; and (6) any other lawful purpose not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a)(1) – (6); *see also* 11 C.F.R. § 113.2(a) – (e). With respect to prohibited uses of campaign funds, the Act contains a list of commitments, obligations, or expenses of a person that would exist irrespective of a candidate’s election campaign or individual’s duties as an officeholder, including a home mortgage, rent, utility payments, clothing, vacations, household items, tuition, and country club or health club memberships. Spending campaign funds on these categories of expenses constitutes an impermissible conversion of contributions to personal use. 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g). Commission regulations provide that other uses of funds are considered on a case-by-case basis to determine whether a particular use of funds would fulfill a commitment, obligation, or expense that would exist irrespective of the candidate’s campaign or duties as a federal officeholder, and thereby constitute an impermissible personal use of campaign funds.

### *Commission Precedent*

In numerous advisory opinions regarding use of campaign funds for security-related expenses, the Commission has concluded “that if a 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.’” Advisory Opinion 2018-15 (Wyden) at 3 (*quoting* Explanation and Justification for Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995)). From 2009-2011, the Commission issued a series of advisory opinions that approved the use of campaign funds for upgraded home security systems for individual Members of Congress. *See* Advisory Opinions 2009-08 (Gallegly), 2011-05 (Terry), and 2011-17 (Giffords). In each of these opinions, the Commission applied its case-by-case “irrespective” test to conclude that using campaign funds to pay for home security systems, with certain restrictions, would not constitute a personal use of funds.

In Advisory Opinion 2009-08 (Gallegly), the requestor detailed specific threats that had been made against the requesting Member and his spouse at their home, and demonstrated that the threats were made as a result of “the Congressman’s public role as a candidate ... and/or his activities as a Member of Congress.” Advisory Opinion 2009-08 at 3. For instance, the request noted that the threatening individual entered the Gallegly’s property three times before the Galleglys obtained a restraining order, and that after the individual entered their property a fourth time, thus violating the restraining order, the individual was arrested and sentenced. As explained in the request for that advisory opinion, “Representative Gallegly consulted the U.S. Capitol Police” which “recommended various upgrades to Representative Gallegly’s home security system for the Congressman’s and Mrs. Gallegly’s safety.” *Id.* at 2. “Representative Gallegly confirmed that the security upgrades would not involve any structural improvements to, and are not intended to increase the value of, the Galleglys’ property.” *Id.* On the basis of this information, the Commission determined that “the on-going harassment” of the Galleglys was “a result of Representative Gallegly’s re-election campaign and public position as a Member of

Congress” and “conclude[d] that the need for the proposed upgrades to the Congressman’s security system would not exist irrespective of the Congressman’s campaign or duties as a Federal officeholder.” *Id.* at 4. Accordingly, “the use of campaign funds to pay for these security system upgrades would not constitute personal use of campaign contributions, and would not be prohibited by the Act or Commission regulations.” *Id.*

Advisory Opinion 2011-05 (Terry) involved similar facts, and U.S. Capitol Police again “recommended the installation of various components of a security system, including CCTV video surveillance, at Representative Terry’s home.” Advisory Opinion 2011-05 at 2. The Commission applied the same analysis as in Advisory Opinion 2009-08 and again concluded that “the expenses for the proposed upgrades to the Congressman’s security system would not exist irrespective of the Congressman’s campaign or duties as a Federal officeholder.” *Id.* at 4. Thus, according to the Commission, “the use of campaign funds to pay for these security system upgrades would not constitute personal use of campaign contributions.” *Id.*

Likewise, in Advisory Opinion 2011-17 (Giffords), the Commission approved a request to use campaign funds to pay for “upgrades to the security system at Representative Giffords’ family home” following the tragic event in 2011 at which Representative Giffords was shot and severely wounded. Advisory Opinion 2011-17 at 2. U.S. Capitol Police “made several recommendations to increase the home’s security that are specific to the identified security needs of Representative Giffords.” *Id.* The Commission, therefore, concluded that “the use of campaign funds to pay for these security system upgrades would not constitute personal use of campaign contributions.” *Id.* at 3.

Less than one month after the shooting of Representative Scalise, the Commission issued Advisory Opinion 2017-07, which broadly concluded that “Members of Congress may use campaign funds to pay for costs associated with installing (or upgrading) and monitoring a security system at the Members’ residences without such payments constituting an impermissible conversion of campaign funds to personal use, under the Act and Commission regulations.” Advisory Opinion 2017-07 (Irving) at 1. This advisory opinion request was submitted by the Sergeant at Arms of the U.S. House of Representatives, who informed the Commission that “Members receive threatening communications on a daily basis,” “the incidence of such threats is increasing,” and that Members face a “new daily threat environment.” *Id.* According to the request, “[i]n calendar year 2016, the United States Capitol Police investigated 902 threatening communications received by Members, while in approximately the first six months of 2017 they have investigated 950 such communications.” *Id.*<sup>6</sup>

As noted above, in Advisory Opinions 2009-08 (Gallegly), 2011-05 (Terry), and 2011-17 (Giffords), the Commission reached its conclusion using the case-by-case “irrespective” standard set forth at 11 C.F.R. § 113.1(g)(1)(ii) (“The Commission will determine, on a case-by-case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or

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<sup>6</sup> Advisory Opinion 2020-06 (Escobar), issued on January 22, 2021, reiterated the conclusions reached in previous advisory opinions, and extended the Commission’s approval to the installation of “additional wiring and lighting” around Representative Escobar’s home, even though neither qualified as the “non-structural security devices” previously approved.

expense that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder, and therefore are personal use.”). In Advisory Opinion 2017-07 (Irving), however, the Commission concluded that residential security systems that do not constitute structural improvements to Members’ houses “fall within the uses defined as permissible under the Act: ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of federal office.” Advisory Opinion 2017-07 (Irving) at 2. The Commission made clear that this conclusion applies “regardless of whether those Members have received specific or ongoing threats.” *Id.* at 3. This shift in approach rendered the installation, upgrading, and maintenance of Members’ residential security systems *per se* permitted uses of campaign funds. In light of the current environment, this advisory opinion request asks the Commission to reach the same conclusion with respect to personal security personnel.

Finally, we note that the Commission recently approved a request by a Member of Congress to use campaign funds to pay “reasonable expenses incurred in protecting your personal electronic devices and accounts from, and responding to, cybersecurity threats.” *See* Advisory Opinion 2018-15 (Wyden). The Commission found that these were “ordinary and necessary expenses incurred in connection with your duties as a holder of federal office.” *Id.* at 4. Taken together, these advisory opinions demonstrate the Commission’s recognition that the current environment has made security precautions an “ordinary and necessary” officeholder expense.

### Analysis

The security needs of Members and their families do not lessen when they are away from their residences. To the contrary, their vulnerability to potential threats is significantly heightened when they are away from home. Yet the responsibilities associated with being elected representatives constantly require Members (and their families) to appear in public settings, and in such settings, the most practical and effective solution for protecting the safety of Members and their families is the employment of personal security personnel. Therefore, just as it has concluded that the use of campaign funds for upgraded home security systems does not run afoul of the Act’s personal use prohibitions, we ask the Commission to similarly conclude that campaign funds may permissibly be used to pay for personal security personnel since such expenses would *not* exist irrespective of a Member’s campaign activities or officeholder duties.

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The Commission concluded in Advisory Opinion 2017-07 (Irving) that residential security system upgrades and/or installations are ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal officer, meaning campaign funds may be spent on such systems consistent with 52 U.S.C. § 30114. In that opinion, the Commission “[s]pecifically ... authorize[d] the use of campaign funds to pay for the installation (or upgrade) and monitoring costs of cameras, sensors, distress devices, and similar non-structural security devices, as well as locks, in and around a Member’s residence.” Advisory Opinion 2017-07 (Irving) at 3.

The Commission cautioned that its conclusion in Advisory Opinion 2017-07 (Irving) was “based on information ... provided about the current heightened threat environment experienced by Members of Congress, as assessed by the Capitol Police, and that if the threat environment should diminish significantly at some point in the future, this conclusion may no longer apply.” Advisory Opinion 2017-07 (Irving) at 3-4. In light of well-publicized events that have transpired since July 2017, the “threat environment” faced by federal officeholders clearly has not “diminish[ed] significantly,” and has actually worsened. Within the U.S. Capitol complex, the Capitol Police are tasked with providing security for Members. Outside the Capitol, however, most Members are not provided with government-funded personal security.

Members are confronted in public on a routine basis, and it has become increasingly common for protesters to gather outside Members’ homes. In August 2019, it was reported that “a group of protesters supporting gun control gathered outside the home of Sen. Majority Leader Mitch McConnell ... where one expressed that someone should ‘stab [him] in the heart.’”<sup>7</sup> The homes of Senator McConnell and Speaker Pelosi were vandalized earlier this month, and a severed pig’s head left in Speaker Pelosi’s driveway, apparently in response to coronavirus relief legislation.<sup>8</sup> According to a CNN report, “[s]ome members of Congress have told their party leadership that they are in fear for their lives and the lives of their families.”<sup>9</sup> This month, after at least three Members of Congress were confronted and harassed at airports in the Washington, DC region, the Washington Metropolitan Airports Authority and U.S Air Marshals increased security surrounding Members’ air travel.<sup>10</sup> Finally, AP reported that “[f]ederal law enforcement officials are examining a number of threats aimed at members of Congress as the second [impeachment] trial of President Donald Trump nears,” including “plots to attack members of Congress during travel to and from the Capitol complex during the trial.”<sup>11</sup>

Personal security personnel (*i.e.*, bodyguards) serve the same purpose as an electronic home security system – to provide a “proactive rather than reactive response” that does not require a Member “to wait until confirmation of a threatening communication before taking prudent steps to protect themselves and their family.” Advisory Opinion 2017-07 (Irving) at 2 (quoting comments of Representative Harper). In repeatedly approving the use of campaign funds to pay

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<sup>7</sup> Joseph Wulfsohn, *Protesters gather outside McConnell’s Kentucky home, one calls for his stabbing ‘in the heart’*, Fox News, Aug. 6, 2019, <https://www.foxnews.com/media/protestors-gather-outside-mcconnells-ky-home-one-calls-for-his-stabbing-in-the-heart>.

<sup>8</sup> See Allyson Waller, *Homes of Mitch McConnell and Nancy Pelosi Are Reported Vandalized*, New York Times, Jan. 2, 2021, <https://www.nytimes.com/2021/01/02/us/mcconnell-pelosi-house-vandalized.html>; Editorial, *Protesters targeting the homes of politicians are crossing the line – and possibly the law*, Washington Post, Jan. 5, 2021, [https://www.washingtonpost.com/opinions/pelosi-mcconnell-houses-vandalized-break-law/2021/01/05/1fccb94c-4f8b-11eb-b96e-0e54447b23a1\\_story.html](https://www.washingtonpost.com/opinions/pelosi-mcconnell-houses-vandalized-break-law/2021/01/05/1fccb94c-4f8b-11eb-b96e-0e54447b23a1_story.html).

<sup>9</sup> Jamie Gangel, Marshall Cohen, and Annie Grayer, *Members of Congress fear for their lives and security after deadly riot, sources say*, CNN, Jan. 15, 2021, <https://www.cnn.com/2021/01/14/politics/capitol-hill-lawmakers-security-concerns/index.html>.

<sup>10</sup> Alex Moe and Alicia Victoria Lozano, *Travel security tightened for members of Congress after harassment*, NBC News, Jan. 9, 2021, <https://www.nbcnews.com/politics/congress/travel-security-tightened-members-congress-after-harassment-n1253647>.

<sup>11</sup> *AP source: Lawmakers threatened ahead of impeachment trial*, Associated Press, Jan. 25, 2021, <https://apnews.com/article/lawmakers-trump-impeachment-trial-c6456b8c7a1d48e8b011fa82f8526f9d>.

for residential security systems, the Commission has correctly recognized that when a Member is the subject of security threats, that Member's family faces the same risks. When a Member is in Washington, DC, the home security systems the Commission previously approved remain in place and provide protection for the Member's family. Personal security personnel would serve the same function.

The Commission was advised in 2017 that "Members face threats because of their votes and positions on legislation. Members face threats because of their party affiliations and positions within party conferences or caucuses." Advisory Opinion 2017-07, Comment of Representative Gregg Harper. Representative Harper concluded that "Members have become increasing subjects of threats and scrutiny," and they "need[] appropriate protection based on threats that exist because of their federal office." Advisory Opinion 2017-07, Comment of Representative Gregg Harper. The same is true today, and this assessment remains widely shared.

### Conclusion

It is essential that Members be able to adequately protect themselves and their families, whether in their homes or in public settings, from credible threats directed at them because of their status as officeholders. Accordingly, for the reasons set forth above, the Commission should confirm that Members of Congress may permissibly use campaign funds to pay for personal security personnel to protect both the Member and the Member's immediate family, and that such use of campaign funds is not an impermissible personal use.

Please feel free to contact us if you have any questions about this request.

Sincerely,



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