



FEDERAL ELECTION COMMISSION

Washington, DC 20463

July 13, 2023

ADVISORY OPINION 2023-04

Shohin Vance
Kleinbard LLC
1717 Arch Street, Fifth Floor
Philadelphia, PA 19103

Dear Mr. Vance:

We are responding to your advisory opinion request on behalf of Guy for Congress (the “Committee”) regarding the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the proposed use of campaign funds to pay for the purchase and installation of a special security film on the windows of Congressman Guy Reschenthaler’s home. The Commission concludes that the proposed use of campaign funds to protect the Congressman’s home and occupants against threats arising from the Congressman’s duties as a federal officeholder is a permissible use of campaign funds under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your advisory opinion request (the “request” or “AOR”) received on June 8, 2023. The Committee is the principal campaign committee of Congressman Guy Reschenthaler.¹ The request lists several incidents of Members of Congress facing protests or threats of violent attack at their private residences,² stating these occurrences have become “more commonplace” and “more acute” over the last several years.³

¹ See AOR001. See also Guy for Congress, FEC Form 1 (Statement of Organization) (filed Dec. 6, 2021), <https://docquery.fec.gov/pdf/903/202112069469800903/202112069469800903.pdf>.

² AOR002 (citing Eliza Tebo, *Demonstrators Gather At Sen. Lindsey Graham’s D.C. Home Urging ‘No Confirmation Before Inauguration’*, DCist (Sept. 21, 2020), <https://dcist.com/story/20/09/21/noconfirmation-before-inauguration/>; Zach Schonfeld, *Collins says she ‘wouldn’t be surprised’ if a lawmaker is killed amid rise in threats*, The Hill (Oct. 2, 2022), <https://thehill.com/homenews/senate/3671136-collins-says-she-wouldntbe-surprised-if-a-lawmaker-is-killed-amid-rise-in-threats/>; Amanda Holpuch, *Pelosi’s Husband is Gravely Injured in Hammer Attack by Intruder*, The New York Times (Oct. 28, 2022) <https://www.nytimes.com/2022/10/28/us/politics/nancy-paul-pelosi-attack.html>).

³ AOR001-2.

The request further describes several recent incidents in which Congressman Reschenthaler's district office and private residence have been threatened with or the targets of violence. On April 19, 2022, an individual verbally harassed and threatened staff at Congressman Reschenthaler's district office before later returning to throw a brick through one of the office's windows.⁴ In 2021, Congressman Reschenthaler "was confronted and harassed [at his private residence] by two individuals that disagreed with official acts taken by the Congressman in connection with the certification of the 2020 presidential election results."⁵ In 2020, an intruder trespassed in the backyard of Congressman Reschenthaler's neighbor, who reported to law enforcement that he suspected the intruder "believed that residence belonged to Congressman Reschenthaler."⁶ The request also notes that Congressman Reschenthaler has received numerous concrete threats of violence, which have been reported to Capitol Police.⁷ Additionally, in January 2023, Congressman Reschenthaler was named Chief Deputy Whip of the House Republican Caucus. The request states that this appointment makes Congressman Reschenthaler an integral part of the House majority's leadership team and "the subject of increased public attention, which, in turn, is reasonably likely to make him even more of a target than he was before."⁸

In response to these prior incidents and its growing concerns for future threats, the Committee seeks to purchase and install a special security film to the windows of the Congressman's home.⁹ The request describes the security film as a "clear" and "durable polyester film" that will not change the appearance of the home but, when "applied to the interior of glass windows [will] form a shatter-resistant barrier, protecting those inside the structure from incoming projectiles" and preventing "any broken glass shards from flying through the air."¹⁰ According to the request, the security film is not a permanent fixture and can generally be removed when applied correctly. Further, the film is "well recognized for its effectiveness" and "has already been installed in numerous federal office buildings."¹¹ The Committee has stated it would pay the fair market value for the security film and installation.¹²

⁴ AOR002 (citing Paul Peirce, *Hempfield man jailed after police say he disrupted a funeral, broke a window at congressman's office*, TribLive (Apr. 22, 2022), <https://triblive.com/local/westmoreland/hempfield-man-jailed-after-police-say-he-disrupted-a-funeral-broke-window-at-congressmans-office/>).

⁵ AOR002.

⁶ *Id.*

⁷ AOR003.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² AOR003 n.7.

Question Presented

May the Committee pay for the cost and installation of a security window film to protect Congressman Reschenthaler's home?

Legal Analysis

Yes, the Committee may pay for the cost and installation of a security window film to protect Congressman Reschenthaler's home.

The Act identifies six categories of permissible uses of contributions accepted by a federal candidate, two of which are "ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office," and "any other lawful purpose" not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a); *see also* 11 C.F.R. § 113.2(a)-(e). The Commission has issued several advisory opinions authorizing the use of campaign funds to protect against threats to federal officeholders' physical safety, on the grounds that the need for such security expenses would not exist irrespective of the officeholders' activities or duties. For example, in Advisory Opinions 2022-02 (Steube), 2011-17 (Giffords), 2011-05 (Terry), and 2009-08 (Gallegly), Members of Congress faced specific and ongoing threats to the safety of themselves and their families and sought to use campaign funds for certain home security upgrades to protect against those threats. The facts presented in those advisory opinions suggested that the threats were motivated by the requestors' public roles as federal officeholders, candidates, or both. The Commission determined in each instance that the expenses for the proposed security upgrades would not have existed irrespective of the requestors' duties as federal officeholders or candidates. Therefore, the Commission concluded that the use of campaign funds to pay for the security upgrades was permissible under the Act and Commission regulations.¹³

The Commission has also previously considered the implications of the heightened threat environment faced by Members of Congress collectively, necessitating increased residential security measures even if an individual Member has not received direct threats. For example, in Advisory Opinion 2017-07 (Sergeant at Arms), the Commission considered information from the House Sergeant at Arms about the threats faced by Members of Congress due to their status as federal officeholders, and the recommendations of the Capitol Police that Members of Congress install or upgrade residential security systems to protect themselves and their families. In light of that information, the Commission concluded that certain costs of installing or upgrading home security systems in and around a Member's residence would constitute ordinary and necessary expenses incurred in connection with Members' duties as federal officeholders and that, therefore, Members of Congress may use campaign funds to pay reasonable costs associated with such home security systems.¹⁴

¹³ See Advisory Opinion 2022-02 (Steube) at 5; Advisory Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; and Advisory Opinion 2009-08 (Gallegly) at 4.

¹⁴ Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

The Commission has also considered the permissibility of using campaign funds to pay for window security film as an authorized security enhancement in response to a heightened threat environment. In Advisory Opinion 2022-05 (Crapo), the Commission considered whether campaign funds could be used to pay for a series of residential security enhancements recommended by the U.S. Capitol Police, including the installation of security film “on all accessible windows to prevent surreptitious observation into the residence.”¹⁵ The Commission determined that window security film, as a removeable security measure designed to mitigate potential threats stemming from the Member’s duties as a federal officeholder, falls within the category of “non-structural security devices” for which campaign funds could be used, citing Advisory Opinion 2017-07 (Sergeant at Arms).¹⁶

Here, the Commission again considers whether a federal officeholder may use campaign funds to pay for a residential security measure to protect himself and his immediate family from threats arising from his duties as a federal officeholder. As in Advisory Opinion 2022-05 (Crapo), the Committee seeks to purchase and install a protective security film to the windows of the Congressman’s private residence to protect the Congressman and his family from such threats.

Although the window security film in Advisory Opinion 2022-05 (Crapo) was intended to prevent surreptitious observation into Senator Crapo’s residence, and here Congressman Reschenthaler intends the window film “to form a shatter-resistant barrier, protecting those inside the structure from incoming projectiles,”¹⁷ in both situations the window film “is a removeable security measure designed to mitigate potential threats stemming from the [Member]’s duties as a federal officeholder, and therefore falls within the category of ‘non-structural security devices’ for which the use of campaign funds was authorized in Advisory Opinion 2017-07 (Sergeant at Arms).”¹⁸

Based on the facts presented in the request and consistent with prior advisory opinions, the Commission concludes that the cost to purchase and install special security film on the windows of Congressman Reschenthaler’s home would be an ordinary and necessary expense incurred in connection with the Congressman’s duties as a federal officeholder. Accordingly, the Committee may use campaign funds to pay that expense. The Commission emphasizes that this conclusion is based, in part, on information provided about the current heightened threat environment experienced by Members of Congress, as assessed by the Capitol Police, and may no longer apply if the threat environment should diminish significantly at some point in the future.¹⁹

¹⁵ Advisory Opinion 2022-05 (Crapo) at 3.

¹⁶ *Id.* at 5.

¹⁷ AOR003.

¹⁸ Advisory Opinion 2022-25 (Crapo) at 4-5.

¹⁹ *See, e.g.*, Advisory Opinion 2017-07 (Sergeant at Arms) at 4; Advisory Opinion 2022-25 (Crapo) at 5.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request.²⁰ The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion.²¹ Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,



Dara Lindenbaum,
Chair

²⁰ See 52 U.S.C. § 30108.

²¹ See *id.* § 30108(c)(1)(B).