

AGENDA DOCUMENT NO. 17-32-D

AGENDA ITEM

For meeting of July 13, 2017

SUBMITTED LATE

**DRAFT D**

1 ADVISORY OPINION 2017-07

2

3 Hon. Paul D. Irving

4 Sergeant at Arms

5 U.S. House of Representatives

6 H-124 Capitol

7 Washington, DC 20515-6634

8

9 Dear Mr. Irving:

10 We are responding to your advisory opinion request concerning the application of the  
11 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission  
12 regulations to the proposed use of campaign contributions by Members of the United States  
13 House of Representatives (“Members of Congress” or “Members”) for residential security  
14 systems. The Commission concludes that Members of Congress may use campaign funds to pay  
15 for costs associated with installing (or upgrading) and monitoring a security system at the  
16 Members’ residences without such payments constituting an impermissible conversion of  
17 campaign funds to personal use, under the Act and Commission regulations.

### 18 **Background**

19 The facts presented in this advisory opinion are based on your advisory opinion request  
20 received on June 21, 2017, the supplemental letter received on June 29, 2017, and a comment  
21 from Rep. Gregg Harper received on July 12, 2017.

22 As the Sergeant at Arms, you are the chief law enforcement official for the United States  
23 House of Representatives. Advisory Opinion Request at AOR001. You state that “Members  
24 receive threatening communications on a daily basis” and that the incidence of such threats is  
25 increasing. *Id.* In calendar year 2016, the United States Capitol Police investigated 902  
26 threatening communications received by Members, while in approximately the first six months  
27 of 2017 they have investigated 950 such communications. *Id.* You characterize this as “the new

1 daily threat environment faced by Members of Congress.” *Id.* You indicate that the anonymous  
2 nature of many of the threats makes the Capitol Police’s investigation of those threats  
3 particularly challenging, and you contend that “Members of the U.S. House of Representatives  
4 require a residential security system due to the threat environment.” AOR002.

5 The comment from Rep. Harper further clarifies the nature of the threat he and other  
6 Members of Congress are facing. “These types of threats necessitate a proactive rather than  
7 reactive response. Members are unfortunately no longer able to wait until confirmation of a  
8 threatening communication before taking prudent steps to protect themselves and their family.”<sup>1</sup>

#### 9 **Question Presented**

10 *May Members of Congress use campaign contributions to install or upgrade residential*  
11 *security systems that do not constitute structural improvements to the Members’ homes?*

#### 12 **Legal Analysis and Conclusions**

13 Yes, Members of Congress may use campaign contributions to install or upgrade  
14 residential security systems that do not constitute structural improvements to Members’ homes.  
15 Such systems fall within the uses defined as permissible under the Act: ordinary and necessary  
16 expenses incurred in connection with the duties of the individual as a holder of federal office. 52  
17 U.S.C. 30114 § (a)(2).

18 As a permitted use, the spending on the residential security systems does not fall into the  
19 Act’s prohibition on federal officeholders’ converting contributions they have accepted to their  
20 own “personal use.” 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to personal  
21 use occurs when a contribution or amount is used “to fulfill any commitment, obligation, or

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<sup>1</sup> Comment of Rep. Gregg Harper dated July 12, 2017.

1 expense” of a federal officeholder “that would exist irrespective” of the federal officeholder’s  
2 duties. 52 U.S.C. § 30114(b)(2); see also 11 C.F.R. § 113.1(g).<sup>2</sup>

3 The Act and Commission regulations provide a non-exhaustive list of items that would  
4 constitute a prohibited personal use *per se*, none of which applies here. See 52 U.S.C.  
5 § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list, such as  
6 payments for residential security systems, the Commission determines on a case-by-case basis  
7 whether such expenses would fall within the definition of “personal use.” 11 C.F.R.  
8 § 113.1(g)(1)(ii). The Commission has long recognized that if a candidate “can reasonably  
9 show that the expenses at issue resulted from campaign or officeholder activities, the  
10 Commission will not consider the use to be personal use.” Personal Use of Campaign Funds, 60  
11 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

12 The Commission has previously concluded that payments for, or improvements to, a  
13 residential security system, under certain circumstances, do not constitute personal use under  
14 the Act and Commission regulations. In Advisory Opinion 2011-17 (Giffords), Advisory  
15 Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), Members of Congress  
16 faced specific and ongoing threats to the safety of themselves and their families. The facts  
17 presented in those advisory opinions suggested that the threats were motivated by the Members’  
18 public roles as federal officeholders and/or candidates. In all three instances, the Capitol Police  
19 recommended specific security upgrades to the Members’ residences due to the continuing  
20 threats. The Commission concluded that the threats would not have occurred had the Members

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<sup>2</sup> While these provisions also proscribe personal use of campaign funds by federal candidates who are not current federal officeholders, the advisory opinion request was, and this advisory opinion is, limited to payments by current federal officeholders. You have not asked about, and this opinion does not address, the use of campaign funds for residential security by candidates for federal office, or for former federal officeholders.

1 not been federal officeholders and/or candidates, and that the expenses for the proposed  
2 residential security upgrades would not exist irrespective of their duties as federal officeholders  
3 and/or candidates. Therefore, the Commission concluded that the use of campaign funds to pay  
4 for the non-structural security upgrades recommended by the Capitol Police would not  
5 constitute a prohibited personal use of campaign contributions under the Act or Commission  
6 regulations.

7 The Commission has carefully considered the information provided by your office and  
8 Representative Harper regarding both (1) the current threat environment facing Members of  
9 Congress due to their status as federal officeholders; and (2) the Capitol Police's threat  
10 assessment, resulting in its recommendation that Members upgrade their residential security.<sup>3</sup>  
11 In light of this information, the Commission concludes that Members of Congress may, while in  
12 office, use campaign funds to pay for the reasonable costs associated with installing (or  
13 upgrading) and monitoring a security system at Members' residences, as described in this  
14 opinion, regardless of whether those Members have received specific or ongoing threats,  
15 without such payments constituting a prohibited personal use of campaign contributions under  
16 the Act and Commission regulations.<sup>4</sup> Specifically, the Commission authorizes the use of  
17 campaign funds to pay for the installation (or upgrade) and monitoring costs of cameras,  
18 sensors, distress devices, and similar non-structural security devices, as well as locks, in and

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<sup>3</sup> The advisory opinion request in this instance asks only about use of campaign funds by federal officeholders. Candidates who are not federal officeholders may rely on Advisory Opinion 2011-17 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly) if the relevant facts are materially indistinguishable from the facts of those advisory opinions, or they may submit an advisory opinion request.

<sup>4</sup> The Commission assumes that officeholders' campaign committees will pay the fair market value of any such residential security installation or upgrades to prevent the acceptance of potentially impermissible in-kind contributions from vendors.

1 around a Member’s residence.<sup>5</sup> These expenses must be reported as “residential security  
2 expenses” on campaign-finance reports; simultaneously with the approval of this Advisory  
3 Opinion, the Commission will add “residential security expenses” to its list of purposes deemed  
4 “adequate” for campaign disbursements.

5 The Commission emphasizes that this conclusion is based on the information you  
6 provided about the current heightened threat environment experienced by Members of  
7 Congress, as assessed by the Capitol Police, and that if the threat environment should diminish  
8 significantly at some point in the future, this conclusion may no longer apply.

9 This response constitutes an advisory opinion concerning the application of the Act and  
10 Commission regulations to the specific transaction or activity set forth in your request. *See*  
11 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or  
12 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
13 this advisory opinion, then the requestors may not rely on that conclusion as support for their  
14 proposed activity. Any person involved in any specific transaction or activity which is  
15 indistinguishable in all its material aspects from the transaction or activity with respect to which  
16 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
17 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
18 affected by subsequent developments in the law including, but not limited to, statutes,  
19 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
20 on the Commission’s website.

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<sup>5</sup> Such residential security expenses are not considered to be “utility payments” under 11 C.F.R. § 113.1 (g)(1)(i)(E).

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On behalf of the Commission,

Steven T. Walther,  
Chairman