

AGENDA DOCUMENT NO. 11-50



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SECRETARIAT

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AGENDA ITEM

August 30, 2011 For Meeting of 9-1-11

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Christopher Hughey *CH*
Acting General Counsel *(by PK)*

Rosemary C. Smith *PCS*
Associate General Counsel

Amy L. Rothstein *AR*
Assistant General Counsel

Jessica Selinkoff *JS*
Attorney

Subject: Draft AO 2011-17 (Giffords)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the Open Session agenda for September 1, 2011.

Attachment

1 ADVISORY OPINION 2011-17

2

3 Michael McNulty

4 Chairman

5 Giffords for Congress

6 P.O. Box 12886

7 Tucson, AZ 85732-2886

8

9 Dear Mr. McNulty:

DRAFT

10 We are responding to your advisory opinion request on behalf of Giffords for
11 Congress (the “Committee”) concerning the application of the Federal Election
12 Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the use
13 of campaign funds to pay for enhanced security at Representative Gabrielle Giffords’s
14 home.

15 The Commission concludes that because the need for enhanced security at
16 Representative Giffords’s home is due to violence and security threats stemming from her
17 activities as a Member of Congress, the use of campaign funds to pay for such security
18 measures does not constitute personal use of campaign funds, and is permissible under
19 the Act and Commission regulations.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on
22 August 17, 2011, and public disclosure reports filed by the Committee with the
23 Commission.

24 Representative Gabrielle Giffords is a Member of the U.S. House of
25 Representatives from Arizona’s 8th Congressional District. The Committee is her
26 principal campaign committee. Representative Giffords was both a Federal officeholder

1 and a candidate for re-election to the House of Representatives when the events giving
2 rise to this request occurred.

3 On January 8, 2011, Representative Giffords was shot and severely wounded at an
4 event sponsored by her congressional office. Since that time, Representative Giffords has
5 been undergoing treatment at TIRR Memorial Hermann Hospital in Houston, Texas. She
6 was recently transferred to outpatient rehabilitation, allowing her to reside in the family
7 home in the Houston area when she is not receiving treatment.

8 After Representative Giffords was shot, at the request of the U.S. House of
9 Representatives Sergeant at Arms, the U.S. Capitol Police conducted a security
10 assessment of the Houston area family home and the general threat to Representative
11 Giffords. The U.S. Capitol Police, following its standards and best industry practices,
12 made several recommendations to increase the home's security that are specific to the
13 identified security needs of Representative Giffords. The recommendations include
14 installing improved exterior lighting, improved locks, and a duress alarm button. The
15 estimated cost of the improvements is \$2,200. The Committee states that these security
16 improvements are not intended to increase the value of the property.

17 ***Question Presented***

18 *May the Committee use campaign funds to pay the costs of installing the*
19 *recommended additional security measures to Representative Giffords's home?*

20 ***Legal Analysis and Conclusions***

21 Yes, the Committee may use campaign funds to pay the costs of installing the
22 recommended additional security measures to Representative Giffords's home because
23 these costs would not constitute personal use of campaign funds under 2 U.S.C. 439a(b).

1 The Act identifies six categories of permissible uses of contributions accepted by
2 a Federal candidate. They are: (1) otherwise authorized expenditures in connection with
3 the candidate’s campaign for Federal office; (2) ordinary and necessary expenses
4 incurred in connection with the duties of the individual as a holder of Federal office;
5 (3) contributions to organizations described in 26 U.S.C. 170(c); (4) transfers, without
6 limitation, to national, State, or local political party committees; (5) donations to State
7 and local candidates subject to the provisions of State law; and (6) any other lawful
8 purpose not prohibited by 2 U.S.C. 439a(b). 2 U.S.C. 439a(a); *see also* 11 CFR
9 113.2(a)-(e).

10 Under the Act and Commission regulations, contributions accepted by a candidate
11 may not be converted to “personal use” by any person. 2 U.S.C. 439a(b)(1); 11 CFR
12 113.2(e). Conversion to personal use occurs when a contribution or amount is used “to
13 fulfill any commitment, obligation, or expense of a person that would exist irrespective of
14 the candidate’s election campaign or individual’s duties as a holder of Federal office.”
15 2 U.S.C. 439a(b)(2); *see also* 11 CFR 113.1(g).

16 The Act and Commission regulations provide a non-exhaustive list of items that
17 would constitute personal use, none of which applies here. *See* 2 U.S.C. 439a(b)(2)(A)-
18 (I); 11 CFR 113.1(g)(1)(i)(A)-(J). For items not on this list, such as payments for home
19 security systems, the Commission determines on a case-by-case basis whether an expense
20 would fall within the definition of “personal use.” 11 CFR 113.1(g)(1)(ii). The
21 Commission has long recognized that if a candidate “can reasonably show that the
22 expenses at issue resulted from campaign or officeholder activities, the Commission will

1 not consider the use to be personal use.” Explanation and Justification for Final Rules on
2 Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

3 The Commission has previously concluded that payments for, or improvements
4 to, a home security system, under circumstances very similar to those presented here, do
5 not constitute personal use under the Act and Commission regulations. In Advisory
6 Opinions 2011-05 (Terry) and 2009-08 (Gallegly), Members of Congress who were also
7 candidates for re-election faced specific ongoing threats to the safety of themselves and
8 members of their families. The facts suggested that the individuals threatening both
9 Representatives Gallegly and Terry were motivated by the Representatives’ public roles
10 as candidates and activities as Members of Congress. In both of those advisory opinions,
11 the proposed security upgrades to the Representatives’ homes were recommended by the
12 U.S. Capitol Police specifically because of the continuing threats. The Commission
13 concluded in both advisory opinions that the threats would not have occurred had the
14 Representatives not been Members of Congress or candidates for re-election, and that the
15 expenses for the proposed upgrades to the Representatives’ security systems would not
16 exist irrespective of the Representatives’ campaigns or duties as Federal officeholders.

17 Similarly, here, the Commission concludes that the ongoing security needs of
18 Representative Giffords identified by the U.S. Capitol Police would not exist were
19 Representative Giffords not a Federal officeholder or a candidate for re-election.
20 Representative Giffords was shot and severely wounded while engaged in her duties as a
21 Federal officeholder, and the expenses for the proposed upgrades to the security system at
22 Representative Giffords’s family home would not exist irrespective of her duties as a
23 Federal officeholder or as a candidate for re-election. Therefore, the use of campaign

1 funds to pay for these security system upgrades would not constitute personal use of
2 campaign contributions, and would not be prohibited by the Act or Commission
3 regulations. 2 U.S.C. 439a(b).

4 This response constitutes an advisory opinion concerning the application of the
5 Act and Commission regulations to the specific transaction or activity set forth in your
6 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
7 of the facts or assumptions presented, and such facts or assumptions are material to a
8 conclusion presented in this advisory opinion, then the requestor may not rely on that
9 conclusion as support for its proposed activity. Any person involved in any specific
10 transaction or activity which is indistinguishable in all its material aspects from the
11 transaction or activity with respect to which this advisory opinion is rendered may rely on
12 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
13 conclusions in this advisory opinion may be affected by subsequent developments in the
14 law, including, but not limited to, statutes, regulations, advisory opinions, and case law.
15 The cited advisory opinions are available on the Commission's website, www.fec.gov, or
16 directly from the Commission's Advisory Opinion searchable database at
17 <http://saos.nictusa.com/saos/searchao>.

18 On behalf of the Commission,

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Cynthia L. Bauerly
Chair