MEMORANDUM

TO: The Commission

FROM: Christopher Hughey
Acting General Counsel

Rosemary C. Smith
Associate General Counsel

Amy L. Rothstein
Assistant General Counsel

Jessica Selinkoff
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
Dear Mr. McNulty:

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

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

**Background**

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

Representative Gabrielle Giffords is a Member of the U.S. House of Representatives from Arizona’s 8th Congressional District. The Committee is her principal campaign committee. Representative Giffords was both a Federal officeholder
and a candidate for re-election to the House of Representatives when the events giving
rise to this request occurred.

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

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

**Question Presented**

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

**Legal Analysis and Conclusions**

Yes, the Committee may use campaign funds to pay the costs of installing the
recommended additional security measures to Representative Giffords’s home because
these costs would not constitute personal use of campaign funds under 2 U.S.C. 439a(b).
The Act identifies six categories of permissible uses of contributions accepted by a Federal candidate. They are: (1) otherwise authorized expenditures in 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 2 U.S.C. 439a(b). 2 U.S.C. 439a(a); see also 11 CFR 113.2(a)-(e).

Under the Act and Commission regulations, contributions accepted by a candidate may not be converted to “personal use” by any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.2(e). Conversion to personal use occurs when a contribution or amount 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.” 2 U.S.C. 439a(b)(2); see also 11 CFR 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of items that would constitute personal use, none of which applies here. See 2 U.S.C. 439a(b)(2)(A)-(I); 11 CFR 113.1(g)(1)(i)(A)-(J). For items not on this list, such as payments for home security systems, the Commission determines on a case-by-case basis whether an expense would fall within the definition of “personal use.” 11 CFR 113.1(g)(1)(ii). The Commission has long recognized 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.” Explanation and Justification for Final Rules on
Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

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

Similarly, here, the Commission concludes that the ongoing security needs of
Representative Giffords identified by the U.S. Capitol Police would not exist were
Representative Giffords not a Federal officeholder or a candidate for re-election.

Representative Giffords was shot and severely wounded while engaged in her duties as a
Federal officeholder, and the expenses for the proposed upgrades to the security system at
Representative Giffords’s family home would not exist irrespective of her duties as a
Federal officeholder or as a candidate for re-election. Therefore, 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. 2 U.S.C. 439a(b).

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. See 2 U.S.C. 437f. 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. See 2 U.S.C. 437f(c)(1)(B). 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. The cited advisory opinions are available on the Commission’s website, www.fec.gov, or directly from the Commission’s Advisory Opinion searchable database at http://saos.nictusa.com/saos/searchao.

On behalf of the Commission,

Cynthia L. Bauerly
Chair