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March 16, 2012

MEMORANDUM

AGENDA ITEM

TO: The Commission

FROM: Anthony Herman *AK*
General Counsel

Kevin Deeley *KD*
Acting Associate General Counsel

Amy Rothstein *AR*
Assistant General Counsel

Joanna S. Waldstreicher *AK for JSW*
Attorney

Subject: Draft AO 2012-05 (Lantos Foundation)

For Meeting of 3-22-12

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. We have been asked to have this draft placed on the Open Session agenda for March 22, 2012.

Attachment

1 ADVISORY OPINION 2012-05

2

3 Mr. Eric Schnapper
4 Lantos Foundation for Human Rights & Justice
5 19 Pleasant Street, 2nd Floor
6 Concord, New Hampshire 03301

DRAFT

7

8 Ms. Janet Szelenyi
9 Tom Lantos for Congress Committee
10 P.O. Box 777
11 San Carlos, CA 94070-0777

12

13 Dear Mr. Schnapper and Ms. Szelenyi:

14 We are responding to your advisory opinion request concerning the application of
15 the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission
16 regulations to your proposed plan for the Tom Lantos for Congress Committee (the
17 “Committee”) to donate the balance of its funds to the Lantos Foundation for Human
18 Rights and Justice (the “Foundation”). The Commission concludes that the Committee
19 may donate the balance of its funds to the Foundation.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letters received on
22 January 18 and 25, 2012, and on reports filed with the Commission.

23 Tom Lantos was a member of Congress for 27 years and passed away in 2008.
24 The Committee is the authorized campaign committee of the late Congressman Tom
25 Lantos. The Committee’s assets totaled \$843,766.76 as of its January 31, 2012 year-end
26 report, and it has no outstanding debts.

27 The Foundation was established in 2008 by members of Congressman Lantos’s
28 family, in concert with his friends and supporters, including individuals who had worked
29 for the Committee and Congressman Lantos’s congressional office. The Foundation’s

1 purpose is to continue the late Congressman's work in advancing human rights. The
2 Foundation is a public charity under 26 U.S.C. 170(b)(1)(A)(vi) and is exempt from
3 Federal taxes under 26 U.S.C. 501(c)(3). The Foundation represents that its most recent
4 Form 990 filed with the Internal Revenue Service, for fiscal year 2010, shows net assets
5 of \$7,738,678.

6 The Committee has donated \$45,000 to establish an archive of materials related to
7 Congressman Lantos's human rights activities while serving in Congress. The grant is
8 maintained in a separate restricted account and has a remaining balance of \$28,270.

9 Several individuals receive compensation for their work for the Foundation,
10 including Congressman Lantos's family members and people who worked for the
11 Committee or his congressional office. The Foundation's current President is the late
12 Congressman's daughter; its Executive Director worked as a part-time consultant on
13 behalf of the Committee; and a part-time consultant and a part-time employee for the
14 Foundation both worked for Congressman Lantos. The Foundation represents that the
15 funds now used to compensate these and other individuals do not derive from Committee
16 funds, and that its current endowment and income are and will remain sufficient to
17 provide such compensation.

18 The Committee proposes to donate its remaining funds to the Foundation subject
19 to several conditions:

20 (1) The donated funds and any income generated from those funds will be placed
21 in a separate account and will not be commingled with any other assets of the
22 Foundation.

1 (2) Neither the donated funds nor any income generated from those funds will be
2 used to provide compensation, gifts or grants, or any materials or reimbursement
3 for any expense within the scope of 2 U.S.C. 439a(b)(2)(A)-(I) or 11 CFR
4 113.1(g)(1)(i)(A)-(J) (identifying certain prohibited uses of campaign funds), to
5 any member of Congressman Lantos's family, any person who was employed by
6 the Committee, or any person who was employed in Congressman Lantos's
7 congressional office.

8 (3) Neither the donated funds nor any income generated from those funds will be
9 used to influence any election.

10 Congressman Lantos anticipated that the Foundation would be created and
11 expressed the hope that the funds held by the Committee would be donated to the
12 Foundation after his death. The Committee and the Foundation anticipate that the funds
13 to be donated will constitute approximately 11 percent of the Foundation's resulting total
14 assets.

15 ***Question Presented***

16 *May the Committee donate the balance of its funds to the Foundation?*

17 ***Legal Analysis and Conclusions***

18 Yes, the Committee may donate the balance of its funds to the Foundation.

19 The Act identifies six categories of permissible uses of contributions accepted by a
20 Federal candidate. They include use "for contributions to an organization described in
21 section 170(c) of the Internal Revenue Code" and "for any other lawful purpose."

22 2 U.S.C. 439a(a)(3), (6); *see also* 11 CFR 113.2(b), (e).

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

6 The Foundation is a tax-exempt organization described in section 170(c) of the
7 Internal Revenue Code. Therefore, the Committee may donate funds to the Foundation,
8 so long as the donation will not result in the conversion of any of the funds to personal
9 use.

10 Commission regulations provide that “[d]onations of campaign funds or assets to
11 an organization described in section 170(c) of Title 26 of the United States Code [the
12 Internal Revenue Code] are not personal use, unless the candidate receives compensation
13 from the organization before the organization has expended the entire amount donated for
14 purposes unrelated to his or her personal benefit.” 11 CFR 113.1(g)(2). The
15 Commission has previously interpreted this provision to allow a campaign committee to
16 donate funds to a charitable organization even when the candidate was a member of the
17 organization’s board of directors, so long as none of the donated funds accrued to the
18 candidate’s benefit. Advisory Opinion 1983-27 (McDaniel).

19 Based on the facts presented by the request, no benefit will accrue to
20 Congressman Lantos as a result of the Committee’s proposed donation to the Foundation.
21 Accordingly, the Commission concludes that the Committee may donate the balance of
22 its funds to the Foundation.

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

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On behalf of the Commission,

Caroline C. Hunter
Chair