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April 13, 2023

MEMORANDUM

TO: The Commission

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Subject: AO 2023-01 (U.S. Rep. Nanette Diaz Barragán) - Draft A

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 5:30pm (Eastern Time) on April 18, 2023.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2023-01

2

3 Brian G. Svoboda

4 Antoinette M. Fuoto

5 Perkins Coie LLP

6 700 13th Street, NW

7 Suite 800

8 Washington, DC 20005-3960

9

10 Dear Mr. Svoboda and Ms. Fuoto:

DRAFT A

11 We are responding to your advisory opinion request on behalf of U.S.
12 Representative Nanette Diaz Barragán regarding the application of the Federal Election
13 Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the
14 proposed use of campaign funds to pay certain travel expenses incurred in connection
15 with events held by the Congressional Hispanic Caucus (“CHC”) — specifically, the
16 travel expenses for CHC members, staff, and other invited event participants. The
17 Commission concludes that the proposed use of campaign funds for these travel expenses
18 is permissible under the Act and Commission regulations because the expenses are
19 ordinary and necessary expenses incurred in connection with Representative Barragán’s
20 duties as a federal officeholder.¹

¹ While this advisory opinion was pending, the Commission received a letter from Representative Bryan Steil, Chairman of the Committee on House Administration of the U.S. House of Representatives, regarding that Committee’s regulations and Representative Barragán’s advisory opinion request. In responding to the advisory opinion request, the Commission limits its analysis to the Act and regulations issued thereunder, and expresses no opinion concerning the application of the Rules of the U.S. House of Representatives or the rules or regulations of any Committee of the House of Representatives, including the Committee on House Administration and the House Committee on Ethics, nor does the Commission express any opinion concerning the application of any other federal, state, or local laws, rules, or regulations that may be implicated by the proposed activities, because those questions are not within the Commission’s jurisdiction.

1 **Background**

2 The facts presented in this advisory opinion are based on your letter received on
3 February 2, 2023, emails dated February 16 and February 21, 2023, and publicly
4 available information.

5 Representative Barragán serves California’s 44th Congressional District in the
6 U.S. House of Representatives.² Her principal campaign committee is Barragán for
7 Congress.³

8 Representative Barragán is the Chair of the CHC, which is an official
9 Congressional Membership Organization.⁴ These organizations are subject to the
10 regulations promulgated by the U.S. House of Representatives Committee on House
11 Administration and the U.S. House of Representatives Committee on Ethics.⁵ The
12 Committee on House Administration considers Congressional Membership
13 Organizations, like the CHC, to be “extensions of the individual offices of participating
14 Members, who assist the [Congressional Membership Organization] in carrying out its
15 legislative objectives.”⁶

² Advisory Opinion Request (“AOR”) at AOR001; *see also* Nanette Diaz Barragán, About Nanette, <https://barragan.house.gov/about> (last visited Mar. 2, 2023).

³ AOR001; *see also* Barragán for Congress, Statement of Organization, FEC Form 1 (May 4, 2015), <https://docquery.fec.gov/pdf/674/15031422674/15031422674.pdf>.

⁴ AOR001; *see also* Congressional Hispanic Caucus, Congressional Hispanic Caucus Announces Leadership for 118th Congress, <https://chc.house.gov/media-center/press-releases/congressional-hispanic-caucus-announces-leadership-for-118th-congress> (last visited Mar. 2, 2023).

⁵ AOR001-2; *see also* Committee on Ethics, Official Support Organizations, https://ethics.house.gov/official-outside-organizations/official-support-organizations#org_fnote4 (“Official Support Organizations”) (last visited Mar. 2, 2023).

⁶ AOR002; *see also* Official Support Organizations, *supra* note 5.

1 As CHC Chair, Representative Barragán is “driv[ing] the planning” of a series of
2 policy events that will take place throughout the country.⁷ The purpose of these events is
3 to “allow CHC Members to hear directly from constituents and stakeholders on issues of
4 importance to Latino communities and to discuss the legislative and policy work of the
5 CHC and its Members.”⁸ Representative Barragán states that these “will be official
6 events, helping the CHC and its Members to develop their legislative agenda and
7 implement their official objectives.”⁹

8 The CHC events will be formatted as townhalls, listening sessions, or roundtables,
9 where some CHC members will serve as speakers or headliners and answer questions
10 from the audience.¹⁰ CHC also plans to invite individuals who are not CHC members
11 (such as non-CHC Members of Congress, members of the current administration, and
12 public policy experts) to serve as speakers and headliners at these events.¹¹ Like the
13 CHC participants, these non-CHC participants would serve as a “draw” to raise public
14 interest in the events and encourage attendance.¹²

15 As CHC Chair and the primary planner of these events, Representative Barragán
16 says she is “deeply invested in [the events’] success, which depends in no small part on

⁷ AOR002.

⁸ *Id.*

⁹ AOR004.

¹⁰ AOR002, 6-7.

¹¹ AOR006-7.

¹² *Id.*

1 CHC Member participation.”¹³ But, she adds, CHC has no travel budget.¹⁴ To enable
2 CHC Members, other speakers or headliners, and necessary administrative staff to attend
3 the events “regardless of the limited resources available,” Representative Barragán
4 proposes to offer to use funds from her principal campaign committee to pay their
5 ordinary and necessary travel expenses.¹⁵ Representative Barragán asserts that her
6 committee would pay the travel expenses only of CHC Members and other speakers or
7 headliners participating in a CHC event and administrative staff facilitating the CHC
8 event;¹⁶ only if the primary purpose of their travel is to participate in the event;¹⁷ and
9 only if they have agreed not to engage in any campaign activity during their trip other
10 than through incidental contacts.¹⁸ The House Ethics Committee has informally advised
11 Representative Barragán that her proposed use of campaign funds is permissible under
12 House Rules.¹⁹

¹³ AOR002.

¹⁴ *Id.*

¹⁵ *Id.* Such travel expenses could include airfare, lodging, and taxi or car service. *Id.*

¹⁶ AOR005-7; The requestor does not seek to pay travel expenses of any other potential attendees, such as spouses or children of event participants. AOR006-7.

¹⁷ AOR006-7.

¹⁸ AOR002.

¹⁹ AOR001.

1 ***Question Presented***

2 *May Barragán for Congress pay for CHC Members and other individuals who*
3 *will serve as speakers or headliners at official CHC events and staff facilitating the*
4 *events to travel to attend official CHC events?*

5 ***Legal Analysis***

6 The Act and Commission regulations would not prohibit Barragán for Congress
7 from using campaign funds to pay for CHC Members and other individuals who will
8 serve as speakers or headliners at official CHC events and staff facilitating the events to
9 travel to attend official CHC events. Under the Act, such travel expenses would be
10 ordinary and necessary expenses incurred in connection with Representative Barragán’s
11 duties as a holder of federal office.

12 The Act permits a federal officeholder to use campaign funds for a variety of
13 enumerated purposes, including for “ordinary and necessary expenses incurred in
14 connection with the duties of the individual as a holder of Federal office,”²⁰ and for “any
15 other lawful purpose” that does not constitute conversion of campaign funds to “personal
16 use.”²¹ The Act defines “personal use” as the use of campaign funds “to fulfill any
17 commitment, obligation, or expense of a person that would exist irrespective of the
18 candidate’s election campaign or individual’s duties as a holder of Federal office.”²²

19 The Act and Commission regulations provide a non-exhaustive list of expenses

²⁰ 52 U.S.C. § 30114(a)(2); *see also* 11 C.F.R. § 113.2(a).

²¹ 52 U.S.C. § 30114(a)(6), (b)(1); *see also* 11 C.F.R. § 113.2(e).

²² 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

1 that would constitute prohibited personal use *per se* if paid with campaign funds, none of
2 which applies here.²³ The Commission determines on a case-by-case basis whether the
3 use of campaign funds to pay other expenses, such as the travel expenses at issue here,
4 would be “personal use” under the Act.²⁴ The Commission has long recognized that if a
5 candidate or federal officeholder “can reasonably show that the expenses at issue resulted
6 from campaign or officeholder activities, the Commission will not consider the use [of
7 campaign funds to pay those expenses] to be personal use.”²⁵

8 The Commission has previously approved proposals by federal officeholders to
9 utilize their campaign funds to pay for others to travel to official events when the events
10 were directly related to the officeholder’s duties and the attendance of those individuals
11 was necessary for the execution of the event. For example, in Advisory Opinion 1996-45
12 (Roybal-Allard), the Commission concluded that a Member of Congress could use her
13 campaign funds to pay the travel and hotel expenses of speakers and consultants who
14 would lead a seminar that she was hosting in her “official capacity as a Member of
15 Congress.”²⁶ The seminar would focus on racial sensitivity, and the requestor planned to
16 invite representatives of nonprofit, community-based organizations and city agencies

²³ See 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i).

²⁴ 11 C.F.R. § 113.1(g)(1)(ii)(C).

²⁵ Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995). Indeed, the Commission has approved the use of campaign funds for a range of expenses resulting from officeholder activities. See, e.g., Advisory Opinion 2022-25 (Crapo) (approving use of campaign funds for residential security installations because officeholder was subject to security threats arising from status as federal officeholder); Advisory Opinion 1997-11 (Roybal-Allard) (approving use of campaign funds for officeholder to complete language immersion course to improve communication with constituents).

²⁶ Advisory Opinion 1996-45 (Roybal-Allard) at 1. For this event, the speakers and consultants offered their services for free on the condition that their transportation and lodging expenses were covered. *Id.*

1 from her district to attend because of the demographic diversity of their clientele.²⁷ The
2 Commission determined that the use of funds to pay the speakers' travel and hotel
3 expenses was an "ordinary and necessary expense related to the conduct of the seminar,"
4 and the seminar was "connected to [the requestor's] duties as a Federal officeholder"
5 because of "the community service nature of the seminar . . . and its direct relationship
6 to public policy matters that are of concern to Members of Congress."²⁸ The
7 Commission thus concluded that the requestor's use of campaign funds to pay the
8 speakers' travel expenses would be permissible under the Act and Commission
9 regulations.²⁹

10 Similarly, in Advisory Opinion 1997-02 (Skaggs/LaHood), the Commission
11 concluded that Members of Congress could use campaign funds to pay for their children
12 to travel to and attend an official congressional retreat that sought "to improve the
13 effectiveness and quality of the legislative environment in the House of
14 Representatives."³⁰ The retreat included programming specifically designed for the
15 children, and the retreat sponsors stressed the importance of full family participation in
16 the event.³¹ The Commission found that the retreat was directly related to the Members'
17 official responsibilities because "[l]egislation is the principal *bona fide* official

²⁷ *Id.*

²⁸ *Id.* at 2.

²⁹ *Id.* The Commission assumed that the requestor would expend campaign funds "only for the consultants' travel expenses directly connected with the seminar and not for expenses incurred by them that are unrelated to seminar travel or to their subsistence during the seminar." *Id.*

³⁰ Advisory Opinion 1997-02 (Skaggs/LaHood) at 4.

³¹ *Id.* at 2, 4.

1 responsibility of each Member of Congress.”³² Accordingly, the “costs of traveling to
2 (and from) and attending the retreat would not exist absent each Member’s duties as a
3 Federal officeholder.”³³ Further, because full family participation was “necessary for the
4 successful execution” of the event, the Commission concluded that the use of campaign
5 funds to pay the travel expenses and attendance fees of Members’ children was
6 permissible under the Act and Commission regulations.³⁴

7 Representative Barragán’s proposal to use campaign funds to enable speakers,
8 headliners, and necessary administrative staff to travel to and participate in CHC events is
9 consistent with these prior advisory opinions. As in Advisory Opinion 1996-45 (Roybal-
10 Allard) and Advisory Opinion 1997-02 (Skaggs/LaHood), the events in question will be
11 directly connected to the requestor’s duties as a federal officeholder. The CHC is an
12 official Congressional Membership Organization subject to the regulations promulgated
13 by the U.S. House of Representatives Committee on House Administration and the U.S.
14 House of Representatives Committee on Ethics.³⁵ The proposed events will be official
15 CHC events, formatted as townhalls, listening sessions, or roundtables, designed to
16 “allow CHC Members to hear directly from constituents and stakeholders on issues of
17 importance to Latino communities and to discuss the legislative and policy work of the

³² *Id.* at 4.

³³ *Id.*

³⁴ *Id.*; see also Advisory Opinion 2005-09 (Dodd) (approving use of campaign funds for travel expenses of U.S. Senator’s minor children to accompany Senator and spouse travelling to functions directly connected to Senator’s *bona fide* official responsibilities); Advisory Opinion 1996-20 (Lucas) (approving use of campaign funds for chief of staff to travel to national party convention to attend policy briefings and function as liaison with congressional office).

³⁵ AOR001-2; see also Official Support Organizations, *supra* note 5.

1 CHC and its Members.”³⁶ As Chair of the CHC, Representative Barragán’s official
2 duties include assisting the CHC in carrying out its legislative objectives.³⁷ The CHC
3 events will be designed to facilitate these objectives by promoting engagement and
4 communication with constituents and stakeholders on the legislative and policy matters
5 of the CHC and its members.³⁸ The Commission has previously recognized that
6 legislation and public policy are *bona fide* official responsibilities of Members of
7 Congress.³⁹ Accordingly, the events in question will be directly connected to
8 Representative Barragán’s duties as a federal officeholder.

9 Further, the proposed travel expenses are for individuals whose attendance is
10 necessary for the successful execution of the CHC events. In Advisory Opinion 1997-02
11 (Skaggs/LaHood), the Commission concluded that Members of Congress could use
12 campaign funds to pay the travel expenses for persons whose attendance was “necessary
13 for the successful execution” of the event.⁴⁰ And in Advisory Opinion 1996-45 (Roybal-
14 Allard), the Commission concluded that travel expenses for speakers and consultants to
15 participate in a seminar hosted by a Member of Congress in her official capacity were
16 “ordinary and necessary expense[s] related to the conduct of the seminar.”⁴¹ Likewise,

³⁶ AOR002.

³⁷ AOR001-2; *see also* Official Support Organizations, *supra* note 5.

³⁸ AOR002.

³⁹ Advisory Opinion 1997-02 (Skaggs/LaHood) at 4 (“Legislation is the principal *bona fide* official responsibility of each Member of Congress.”); Advisory Opinion 1996-45 (Roybal-Allard) at 2 (concluding that community service event was connected to the requestor’s duties as federal officeholder given its “direct relationship to public policy matters that are of concern to Members of Congress”).

⁴⁰ Advisory Opinion 1997-02 (Skaggs/LaHood) at 4.

⁴¹ Advisory Opinion 1996-45 (Roybal-Allard) at 2.

1 here, Representative Barragán’s request to use campaign funds extends only to travel
2 expenses for individuals serving in speaker or headliner roles and CHC staff
3 administering the event. Representative Barragán further asserts that her committee
4 would pay travel expenses only if the primary purpose of the travel is to participate in the
5 CHC event and the expenses are directly connected to the event.⁴² The campaign will not
6 pay for any personal or collateral expenses.⁴³ Further, travelers must agree that they will
7 not engage in any campaign-related activity during their trip.⁴⁴ Under these
8 circumstances, the Commission concludes that the proposed travel expenses will be
9 ordinary and necessary expenses related to the successful execution of the CHC events.

10 Accordingly, the Commission concludes that the Act and Commission
11 regulations would not prohibit Barragán for Congress from using campaign funds to pay
12 the travel expenses of CHC members and other individuals who will serve as speakers or
13 headliners at these official CHC events and staff facilitating the events.

14 This response constitutes an advisory opinion concerning the application of the
15 Act and Commission regulations to the specific transaction or activity set forth in your
16 request.⁴⁵ The Commission emphasizes that, if there is a change in any of the facts or
17 assumptions presented, and such facts or assumptions are material to a conclusion
18 presented in this advisory opinion, then the requestor may not rely on that conclusion as
19 support for its proposed activity. Any person involved in any specific transaction or

⁴² *Id.*; AOR006-7.

⁴³ AOR006-7.

⁴⁴ AOR002.

⁴⁵ *See* 52 U.S.C. § 30108.

1 activity which is indistinguishable in all its material aspects from the transaction or
2 activity with respect to which this advisory opinion is rendered may rely on this advisory
3 opinion.⁴⁶ Please note that the analysis or conclusions in this advisory opinion may be
4 affected by subsequent developments in the law including, but not limited to, statutes,
5 regulations, advisory opinions, and case law. Any advisory opinions cited herein are
6 available on the Commission’s website.

7 On behalf of the Commission,

8
9 Dara Lindenbaum,

10 Chair
11

⁴⁶ See *id.* § 30108(c)(1)(B).