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April 6, 2009

Federal Election Commission  
Office of the General Counsel  
999 E Street, NW  
Washington, DC 20463

Kathryn Biber Chen  
303-894-6310  
KBiberChen@pattonboggs.com

AOR 2009-07

Re: Request for Advisory Opinion

Dear Commissioners:

On behalf of Congressman Randy Neugebauer and his principal campaign committee, Neugebauer Congressional Committee ("Committee"), we respectfully request an advisory opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971 ("FECA" or "Act"), as amended.

#### EXPLANATION

In 2008, Congressman Neugebauer, together with certain members of his family, formed a Texas-based Limited Liability Company (LLC)<sup>1</sup> to purchase a recreational boat that will be harbored in the Washington D.C. area. The LLC purchased the boat and is its current owner.

The Committee seeks to confirm:

(1) That the Committee may utilize the boat for Committee events, assuming such uncompensated use stays within the percentage partnership rights held by Congressman Neugebauer himself;

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<sup>1</sup> This entity, which is organized under the laws of the State of Texas, has elected treatment as a partnership for purposes of 11 CFR § 110.1(g). Congressman Neugebauer and his wife together own a sixty percent share of the LLC, and the remaining forty percent is owned by a Texas limited partnership owned by Congressman Neugebauer and his wife, Congressman Neugebauer's son, Congressman Neugebauer's daughter-in-law, and two trusts benefiting Congressman Neugebauer's grandchildren (the two children of his son and daughter-in-law).

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(2) That to the extent the Committee's use exceeds Congressman Neugebauer's own percentage rights to the boat, such use would be paid for at a fair market rate by the Committee; and

(3) That, as an alternative to using the boat within the partnership rights of Congressman Neugebauer, the Committee may pay the LLC a fair market rate for any and all use of the boat.

Congressman Neugebauer seeks to confirm:

(1) That the boat may be made available to other committees, including other principal campaign committees, leadership PACs, and party committees, for rental at a fair market rate; and

(2) That Congressman Neugebauer may pay the LLC a fair market rental value for the Committee's use of the boat for campaign activities, using only Congressman Neugebauer's personal funds, and then record such amount as an expenditure of personal funds pursuant to the Act and Commission regulations.

## LEGAL ANALYSIS

### *Fair Market Value*

Congressman Neugebauer and his co-owners have, after consulting area rental companies regarding the cost of comparably-sized boats, determined the fair market per-hour rental value of the boat. This rate will be monitored to ensure seasonal accuracy and to account for any changes in rates charged by area rental companies for comparably-sized boats.

In addition to basic rental costs, entities paying to use the boat would also pay fair market value to hire a captain for the boat, pay for boat staff, and pay for any and all event costs including food, beverages, catering staff, and supplies attributable to that committee's event. Such charges will, in all respects, conform with the rules set forth in 11 CFR §§ 100.52(d)(1)-(2) and elsewhere in the Act and Commission regulations.

As you know, the Commission has permitted similar arrangements in the past, holding that a campaign committee may lease campaign office space and equipment from a corporation owned by the candidate, rent a storage shed on the candidate's property for campaign use, or rent a mobile home from the candidate's auto dealership. *See, e.g.*, Advisory Opinions 2000-02, 1995-8, 1994-22, 1994-8, 1993-1, 1988-13, 1985-42, and 1983-1.

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### ***Use by the Committee***

With respect to the Committee's use of the boat, and the possibility of payments from the Committee to the LLC, the Committee and Congressman Neugebauer seek to avoid any appearance of improper "personal use."

Commission regulations specifically address payments by a committee for rental of the candidate's property, providing that such payments constitute impermissible "personal use" only where they "exceed the fair market value of the property usage." 11 CFR § 113.1(g)(1)(i)(E)(2). Of course, any events held on the boat by the Committee will be for the specific purpose of benefiting the Committee exclusively, and under no circumstances will expenditures for such events be "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).

Obviously, Congressman Neugebauer is permitted to make unlimited expenditures to benefit his own campaign, *see* 11 CFR §§ 110.10 & 100.33. Furthermore, we are mindful of 11 CFR § 100.33(c)(2), which would mandate that he "owns," for purposes of federal election law, only one-half of the sixty percent ownership shared with his wife, or thirty percent of the LLC.

Under these rules, it would appear that Congressman Neugebauer may permit the Committee to utilize the boat, free of charge, within his partnership rights. Should use ever exceed Congressman Neugebauer's own rights, the Committee would pay fair market value for the use. It would also appear that as an alternative to using the boat within the partnership rights of Congressman Neugebauer, the Committee may pay the LLC a fair market rate for any and all use of the boat. Finally, it would appear that Congressman Neugebauer may pay the LLC a fair market rental value for the Committee's use of the boat for campaign activities, using only Congressman Neugebauer's personal funds, and then record such amount as an expenditure of personal funds pursuant to the Act and Commission regulations.

### ***Use by Other Committees***

It would also appear that other committees, such as principal campaign committees, leadership PACs, and party committees, may pay fair market rental value to the LLC for use of the boat.

Should the LLC permit Congressman Neugebauer's leadership PAC, TEXASPAC, to use the boat, we also seek confirmation that such an arrangement would be permissible as long as the PAC paid the LLC the fair market rental value of the boat. Any payment would benefit TEXASPAC exclusively, such that any payment would be made "irrespective" of Congressman

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Neugebauer's own candidacy. *See* 11 CFR § 113.1(g)(6). Congressman Neugebauer is, of course, limited to a \$5,000 annual contribution to TEXASPAC within his aggregate biennial limits.

Under these rules, it would appear that the boat may be made available to other committees, including other principal campaign committees, leadership PACs, and party committees, for rental at a fair market rate.

### CONCLUSION

Given precedent set forth in previous Advisory Opinions, we seek confirmation from the Commission that the proposed use of the LLC's boat is permissible. Please do not hesitate to contact us with any questions.

Sincerely,



Benjamin L. Ginsberg  
Kathryn Biber Chen