

PETE  
**VISCLOSKY**  
U.S. CONGRESS

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July 7, 2009

Thomasenia P. Duncan, Esquire  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

AOR 2009-20

Re: Advisory Opinion Request on behalf of Visclosky for Congress

Dear Ms. Duncan:

I am the treasurer of Visclosky for Congress, Representative Peter J. Visclosky's principal campaign committee (the "Committee"). I respectfully request an advisory opinion from the Federal Election Commission (the "FEC" or "Commission"), pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), regarding whether it is permissible for the Committee to pay legal fees and expenses incurred by Congressman Visclosky's current and/or former staff members in connection with a federal investigation relating to Congressman Visclosky's conduct as a candidate for and a member of the United States House of Representatives and any related proceedings.

On March 21, 2009, the Committee submitted a request for an advisory opinion on whether the Committee could use campaign funds to pay for legal fees and expenses incurred by Congressman Visclosky relating to a federal investigation. *See* Exhibit A. On June 18, 2009, the Commission issued Advisory Opinion 2009-10, granting the Committee's request. *See* Exhibit B. The factual background describing the pending federal investigation is set forth in detail in these documents. Since the time that the original request for an advisory opinion was submitted, one of Congressman Visclosky's former staff members has received a federal grand jury subpoena to produce documents related to this matter. *See* Exhibit C. It is possible that additional subpoenas or requests for information could be forthcoming for additional current and/or former staff members. Accordingly, the Committee submits this request seeking

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confirmation that it can also use campaign funds to pay for legal fees and expenses incurred by current and/or former staff members in connection with this investigation.

### **LEGAL DISCUSSION**

A federal officeholder may use campaign funds to pay any expense that would not constitute a personal use. 2 U.S.C. § 439a. A “personal use” is “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense that would exist irrespective of the candidate’s campaign or duties as Federal officeholder.” 11 C.F.R. § 113.1(g); *see also* Advisory Opinion 2003-17. Under the personal use rules, legal expenses are among the uses that will be examined on a case-by-case basis. 11 C.F.R. § 113.1(g)(l)(ii)(A).

The Commission has long permitted legal expenses incurred in defense of government investigations relating to the activities of a federal officeholder to be paid for with campaign funds, even prior to any regulatory or enforcement action. *See* Advisory Opinions 2006-35; 2005-11; 2003-17; 2000-40; 1998-1; 1997-12; 1996-24; 1995-23. In such cases, the Commission has relied on the description of the investigation supplied by the requesting party and contained in media reports regarding the investigation to determine whether the subject matter of the investigation related to the official conduct of a Member of Congress. *See* Advisory Opinions 2005-11; 1998-1; 1997-12. The Commission has similarly permitted federal officeholders to use campaign funds to respond to media allegations of improper campaign or official activities. *See* Advisory Opinions 2006-35; 2005-11; 1998-1; 1997-12.

As the Commission concluded in Advisory Opinion 2009-10, where it approved the use of campaign funds to pay for legal fees and expenses incurred by Congressman Visclosky in connection with this matter:

As discussed above, the advisory opinion request and accompanying media reports indicate that the Federal government is investigating campaign contributions allegedly made by PMA Group and its clients to Representative Visclosky. Additionally, the reports discuss appropriations earmarks purportedly obtained by Representative Visclosky for various PMA Group clients. The allegations concern Representative Visclosky’s campaign and duties as a Federal officeholder because Representative Visclosky allegedly received the contributions in question as part of his campaign, and his alleged actions regarding the congressional

appropriations process are directly related to his duties as a Federal officeholder. Therefore, based on the representations made in the advisory opinion request and accompanying news articles, the Commission concludes that the legal fees and expenses associated with the Federal investigation would not exist irrespective of Representative Visclosky's campaign or duties as a Federal officeholder. Accordingly, the Committee may use campaign funds to pay legal fees and expenses incurred by Representative Visclosky in connection with the Federal investigation into the alleged provision of illegal campaign contributions by the PMA Group and its clients to the Committee, and Representative Visclosky's allegedly improper earmarking of appropriations for clients of PMA, and any other legal proceedings that involve the same allegations.

Advisory Opinion 2009-10, at 4.

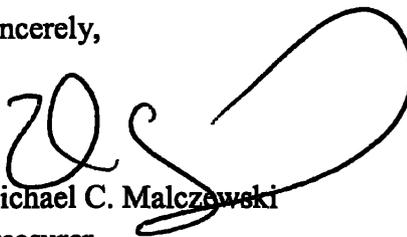
This rationale applies equally to legal expenses incurred by members of Congressman Visclosky's staff in connection with the same federal investigation and any related proceedings. These expenses are ordinary and necessary expenses incurred in connection with the duties of Congressman Visclosky as a holder of federal office. Moreover, Congressman Visclosky's staff would not need to incur these legal expenses "irrespective of" Congressman Visclosky's duties as a federal officeholder. *See* 2 U.S.C. §§ 439a(a)(1) and 439a(b)(1); *see also* 11 C.F.R. § 113.2. Accordingly, payment of these expenses with campaign funds would not constitute a prohibited "personal use." Indeed, the Commission has approved the use of campaign funds to pay legal expenses incurred by an individual other than a federal candidate or federal officeholder in analogous circumstances. *See* Advisory Opinion 1996-24 (authorizing a Congressman to use campaign funds to pay legal expenses incurred by a federal candidate's wife to refute press allegations during a campaign).

Pursuant to federal regulations, the Committee will maintain appropriate documentation of any disbursements made to pay legal fees and expenses in connection with the investigation and other proceedings, if any, that may arise out of the same operative facts. Likewise, the Committee will disclose such expenditures as required under the pertinent regulations.

Based on the foregoing, I ask the Commission to confirm that the Committee may pay legal fees and expenses incurred by Congressman Visclosky's current and/or former staff in connection with a federal investigation relating to his conduct as a candidate for and a member of the United States House of Representative and any related proceedings.

Please contact me if you have any questions about this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael C. Malczewski". The signature is stylized with a large, looping initial "M" and a long, sweeping underline that extends to the right.

Michael C. Malczewski

Treasurer

Visclosky for Congress Committee

MCM/cmw

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February 11, 2009

## Lobbyist Inquiry Appears to Be Widening

By **DAVID D. KIRKPATRICK**

WASHINGTON — Federal prosecutors are looking into the possibility that a prominent lobbyist may have funneled bogus campaign contributions to his mentor, Representative John P. Murtha, as well as other lawmakers, two people familiar with the investigator's questions said Tuesday.

Employees of the PMA Group, the firm founded by the lobbyist, Paul Magliocchetti, have given a total of more than \$1 million to political campaigns over the last three election cycles, according to the nonpartisan Center for Responsive Politics.

In the first half of 2007, the PMA Group and its clients contributed more than \$500,000 to three congressmen, Mr. Murtha, the Pennsylvania Democrat who is chairman of the House defense appropriations subcommittee, and his close allies on the panel, Representative James P. Moran of Virginia and Representative Peter J. Visclosky of Indiana.

The lawmakers, meanwhile, earmarked more than \$100 million in defense spending for PMA clients in the appropriations bills for 2008, according to a study by Taxpayers for Common Sense, which tracks earmarks.

In the last two weeks before the 2008 election, Mr. Murtha went on a last-minute fund-raising blitz, and PMA executives and clients gave him more than \$100,000, according to a tally by the Capitol Hill newspaper Roll Call.

Representatives of the three lawmakers could not be reached for comment.

Mr. Magliocchetti, the firm's founder, was previously a top aide to Mr. Murtha. Former top aides to Mr. Moran and Mr. Visclosky also worked at the company.

Experts in political law said the lawmakers could be required to return the improper contributions or, if they had turned a blind eye to fraud, they could be in legal trouble.

Campaign treasurers have a duty to scrutinize contributions and return any illegal ones, said Robert Walker, a Washington lawyer who previously directed the staff of the Senate Ethics Committee.

The PMA Group had grown into one of the biggest lobbying firms in Washington. But after a disclosure Monday night that federal investigators had raided the firm, it appeared to be on the brink of collapse.

Former PMA lobbyists were scurrying to try to move with their clients to new firms and several announced the opening of a new shop, Flagship Government Relations.

Some symbols of Mr. Magliocchetti's former influence remain, however. On Tuesday night at the Capitol Grille, a clubby Pennsylvania Avenue steakhouse where lobbyists sometimes entertain lawmakers or clients, there were still about eight bottles in a private wine locker labeled with his nickname, Mags.

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FEBRUARY 11, 2009, 6:22 A.M. ET

## FBI Raids Defense-Related Lobbying Firm Linked to Murtha

By SUSAN SCHMIDT

The Federal Bureau of Investigation has raided a prominent defense-related lobbying firm with ties to Rep. John P. Murtha, one of three firms linked to the powerful Pennsylvania Democrat raided in the past three months.

PMA Group of Arlington, Va. turned over materials to agents who showed up at its offices in November, company spokesman Patrick Dorton said Tuesday. Mr. Dorton declined to comment about whether the firm is a target of the investigation. He said PMA is cooperating with the FBI's request for information.

PMA was founded by Paul Magliocchetti, formerly the top aide on a defense appropriations subcommittee chaired by Mr. Murtha.

Asked whether the congressman is under investigation, Murtha spokesman Matthew Mazonkey said: "No he is not. We have not been contacted by any federal agency, and no one is suggesting that Jack Murtha has anything to do with this, period."

The Justice Department had no comment on the PMA raid, which was first reported by ABC News.

FBI agents sought information about campaign contributions generated by those at the firm to members of Congress, according to a person with knowledge of the investigation. Agents were looking into whether lobbyists or clients listed as donors to congressional campaigns may have improperly been reimbursed, this person said.

Over the past two years, Mr. Murtha directed earmarks worth \$93 million to PMA clients, according to the National Journal's Hotline publication. In the last two election cycles, he took in \$1.3 million in contributions from the firm and its clients, which include big defense contractors as well as small firms located in his district.

News of the PMA investigation comes after Jan. 22 raids on two small defense contractors in Murtha's district. Kuchera Industries and Kuchera Defense Systems have gotten millions of dollars in federal earmarks that went through Mr. Murtha's subcommittee, according to Wall Street Journal research. The FBI, Defense Criminal Investigative Service and the Internal Revenue Service participated in the Kuchera raids, which included gathering material from the homes of its founders and a private hunting reserve that local press reports said was the venue for a Murtha campaign fundraiser.

The U.S. attorney's office in Pittsburg has said only that the Kuchera raids are part of an ongoing investigation.

**FBI Raids Defense-Related Lobbying Firm Linked to Murtha - WSJ.com**

News of the FMA raids came as the firm has been hit with a series of defections. Several FMA senior lobbyists left the firm in recent days and created their own business.

Their new firm, Flagship Government Relations, issued a statement Tuesday saying: "Paul Magliocchetti recently indicated that he would be retiring from FMA and invited members of senior management to negotiate an agreement to take over much of the client work. We were unable to reach agreement and resigned from FMA last Friday."

Write to Susan Schmidt at [susan.schmidt@wsj.com](mailto:susan.schmidt@wsj.com)

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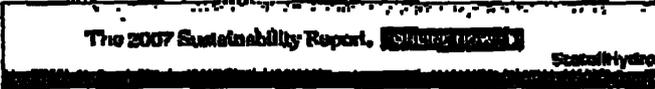
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## Lobbying firm facing FBI probe has history of donations to Visclosky

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By KEVIN NEVERS

A Washington, D.C., lobbying firm with close connections to U.S. Rep. Pete Visclosky, D-Ist, is apparently under federal investigation.

Earlier this week ABC News reported that in November 2008 the FBI raided the Arlington, Va., offices of The PMA Group.

PMA specializes in representing tech-oriented businesses—including those in the fields of defense, domestic security, information technology, and energy; environment, and natural resources—and on its website calls itself “a respected leader in non-partisan government relations, legislative counsel, and federal sector business development.” Since 1989, the website states, PMA “has given clients an inside track to business opportunities with the federal government.”

In Fiscal Year 2008, according to data compiled by Taxpayers for Common Sense, PMA clients obtained a total of 154 earmarks—or federal contracts—totaling \$299,498,000. Of those 154 earmarks, Visclosky requested 16 of them—one of them in conjunction with U.S. Sens. Evan Bayh, D-Ind., and Richard Lugar, R-Ind., among others—totaling \$23,800,000 or nearly 8 percent of the total. Only U.S. Rep. John Murtha, D-Pa., secured more federal funding for PMA clients: 16 earmarks totaling \$38,105,000.

PMA has also been a major contributor to Visclosky’s re-election campaigns, donating \$59,200 in the 2007-08 cycle and \$55,000 in the 2005-06 cycle, according to data compiled by the Center for Responsive Politics. In the 2003-04 cycle Visclosky’s re-election campaign received \$49,000 from Paul Magliocchetti Associates. Magliocchetti is the founder of PMA.

In addition to PMA’s contributions, Visclosky’s re-election campaigns have received donations from several PMA clients, including at least two in the 2007-08 cycle—21st Century Systems and ProLogic Inc.—for which he secured earmarks in Fiscal Year 2008.

Visclosky told the *Chesterton Tribune* on Thursday that he had been unaware of any investigation of PMA. “I did not know about the FBI raid in November until I read about it in the national periodicals this week,” he said. Whatever the nature of the investigation might be, Visclosky added, no one connected to it has sought to speak with him about PMA. “In no way, shape, or form has any federal, state, or local agency

contacted me or any of my staffers in any office," he said.

"We have no sense that there is" a problem with any of the campaign contributions made by PMA or its clients, Vislosky said. But if there is a problem which "we have no knowledge of, we would return the moneys."

There is this link as well between Vislosky and PMA: several PMA clients are or have been tenants at the Purdue Technology Center of Northwest Indiana in Merrillville, a business incubation facility developed partially with \$6.4 million in federal funding secured by Vislosky. On Thursday the Purdue Technology Center's website listed three current PMA clients as tenants: ProLogic Inc., an information technology firm, for which Vislosky secured two earmarks in Fiscal Year 2008 and from which his re-election campaign in the 2007-08 cycle received a contribution; Nesch, a life sciences firm; and NuVant Systems Inc., an industrial technology firm.

#### Details

According to Taxpayers for Common Sense, in Fiscal Year 2008 Vislosky in his own right secured earmarks totaling \$69,946,200 (he also secured earmarks in conjunction with other members). Of that amount, 34 percent or \$23,800,000 consisted of earmarks for PMA clients. Of the 16 earmarks secured for PMA clients, at least three were for firms which have made contributions to his re-election campaigns: an earmark of \$2 million to 21st Century Systems for "Intelligent Distributed Command and Control"; and two earmarks to ProLogic Inc., one for \$1.2 million for "Medical Resources Conservation Technology Pilot Energy Cost Control Evaluation," the other for \$200,000 for "Optimal Placement of Unattended Sensors."

According to the Center for Responsive Politics, 21st Century Systems donated \$31,650 to his re-election campaign in the 2007-08 cycle and \$22,000 in the 2005-06 cycle. ProLogic Inc. donated \$20,500 in the 2007-08 cycle and \$37,500 in the 2005-06 cycle. At least one other PMA client has contributed money to Vislosky's re-election campaigns: Parametric Technology Corporation, which donated \$26,500 in the 2005-06 cycle.

Vislosky told the *Tribune* that he trusts his constituents to trust him. "There is a whole level of activity of mine in Northwest Indiana, whether as a practicing attorney or a member of Congress," he said. "People are going to reference that long-term relationship that I and my constituency have had."

"As far as the contributions that have been received," Vislosky said, "they are in the public domain because of disclosure. I have continued to support disclosure so that the media can know who is supporting campaigns and who has received contributions."

Vislosky also noted that lobbyists provide an important service to government. "We are looking in my office for programs and firms that can add value to the country," he said. "You have large institutions, like the Pentagon and the Department of Energy. I'm not suggesting that people aren't doing their jobs there. But they tend to have inertia. They have

ways of doing things. Sometimes there are good ideas out there, new ways of approaching a problem, but it's difficult to get those voices heard. PMA is a group that can help. When we do find a firm that can add value to the taxpayers, we are happy to be of assistance to them, so they can share their value and their worth."

Data compiled by the Center for Responsive Politics reveal this trend in contributions to Vislosky's re-election campaigns over the years. The top five contributors in the 1997-98 cycle were all unions: the International Brotherhood of Electrical Workers, the Ironworkers Union, the Sheet Metal Workers Union, the Teamsters Union, and the United Auto Workers, each of which made a donation of \$10,000.

In the 1999-2000 cycle, four of the top contributors were unions, each making a donation of \$10,000, but the biggest contributor was Condor Systems Inc., a maker of electronic intelligence equipment, which made a donation of \$12,500.

In the 2001-02 cycle, only one of the top five contributors was a union, with Condor Systems Inc. making the largest donation of \$16,500 and Paul Magliochetti Associates making one of \$16,500.

The 2001-02 cycle was the last one in which a union was listed among the top five contributors. Since then the top five contributors have all been businesses.

Vislosky attributed that shift in the kind of top-five contributor to his emerging prominence as a ranking member—now the chair—of the Energy and Water Appropriations Subcommittee of the House Appropriations Committee. That subcommittee has an annualized budget larger than the entire State of Indiana's and funds "energy programs, weapons, nuclear programs," he said. "When I became a ranking member, a broad swath of national responsibilities kicked in."

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## Visclosky's ties to troubled PMA Group run deep

By Henry C. Jackson  
March 02, 2009

WASHINGTON - He represents an area known for its rampant corruption, but Rep. Pete Visclosky has always had a reputation for staying above the fray.

That consensus is being challenged by revelations about the northwest Indiana Democrat's ties to a troubled defunct lobbying firm.

PMA Group was once one of the biggest lobbying firms in Washington, specializing in securing defense earmarks for its clients. Now, the firm is disintegrating amid a federal investigation into allegations that its founder, Paul Magliocchetti, a former top aide to Rep. John Murtha, D-Pa., steered donations to lawmakers through sham donors.

PMA Group's top beneficiaries include Murtha, chairman of the House Appropriations subcommittee that funds defense programs, and Rep. Jim Moran, D-Va., who also sits on the defense appropriations subcommittee.

But few lawmakers have stronger ties to the firm than Visclosky. His former congressional chief of staff worked as a lobbyist for the firm, and he received at least \$100,000 in contributions from donors tied to PMA Group between 2006 and 2008, according to Federal Election Commission reports. PMA Group was the top donor to Visclosky's 2008 re-election campaign.

From his seat on the House Appropriations Committee and its defense funding subcommittee, Visclosky has also reciprocated -- helping to secure more than \$23 million in earmarks in 2008 for clients of PMA Group.

"It's pretty clear that Visclosky has deep ties to PMA Group," said Sheila Krumholz, executive president of the Center for Responsive Politics.

"It's also clear that (campaign funds) are being delivered to him on a targeted basis, based on his committee assignments. He's been in a position to help them from his perch," she said.

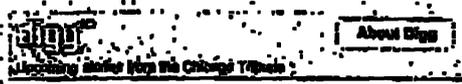
PMA Group spokesman Patrick Dorton declined to comment on Visclosky's ties to the firm.

The congressman said in mid-February he would return at least \$16,000 from donors who were listed as having ties to PMA Group, including \$16,000 in donations from men who live in the Florida community of Amelia Island and are listed in FEC filings as members of PMA's board of directors, and \$2,000 from Marvin Hoffman, of Marina del Rey, Calif., who is listed as a PMA Group lobbyist but has said he has no ties to PMA Group.

Campaign spokesman David St. John said that if more allegations of straw donors were unearched, Visclosky would look at giving those back, too. He declined further.

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Until now, Viclosky has largely managed to avoid such concerns, even while representing a district that includes Indiana's Lake County — which former Attorney General Robert Kennedy once called one of the nation's most corrupt.

Since unseating an incumbent Democrat in 1984, Viclosky has quietly carved out a 25-year career in the House. He has rarely faced significant opposition in one of the country's most Democratic congressional districts.

That's resulted in a comfort level for many constituents, said Maurice Eisenstein, an associate professor of political science at Purdue University Calumet who has written about Viclosky and his ties to PMA Group.

"He's comfortable, he's like somebody you are used to, but nobody really speaks well of his accomplishments," he said. "Nobody can really say he's developed something here. On the other hand, he's like an old granddad who's been around a long time. It's what people are used to."

Eisenstein said Viclosky operates in something of a media vacuum, with the district he covers swallowed by Chicago news to the north and west, and news from Indianapolis to the south.

"There's a real disconnect between his reputation and whatever he does because there's just not that much coverage," he said.

Dan Dumezich, a former GOP state lawmaker from Schererville, said Viclosky doesn't get caught in the problems of local politics but isn't a particularly good advocate for northwest Indiana, either.

"I've noticed over the years he was getting contributions from people in Washington, California, Oregon," Dumezich said. "I think that's kind of the life story of Pete Viclosky. He's done what he needs to do to help himself politically, but he's never had a major impact on our area."

"What can I say? The appropriations haven't come our way."

It is unclear what, if any, penalties Viclosky will pay politically for his ties to PMA Group. Krumholz said Viclosky would need to be vigilant in dealing with his ties to PMA Group or his safe seat could be at risk.

"I think it depends on what more comes out and also on his response," Krumholz said. "It depends on whether it is viewed as authentic or whether it's kind of 'Who me?' type of thing. He clearly had a close relationship."

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June 18, 2009

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ADVISORY OPINION 2009-10

Dr. Michael C. Malczewski  
Visclosky for Congress  
P.O. Box 10003  
Merrillville, IN 46411-0003

Dear Dr. Malczewski:

We are responding to your advisory opinion request on behalf of Visclosky 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 legal fees and expenses incurred by Representative Visclosky in connection with a Federal investigation.

The Commission concludes that the Committee may use campaign funds to pay legal fees and expenses incurred by Representative Visclosky in connection with the Federal investigation and other legal proceedings as described below, because the allegations relate to Representative Visclosky's campaign and duties as a Federal officeholder, and the legal fees and expenses would not exist irrespective of Representative Visclosky's campaign or duties as a Federal officeholder. The use of campaign funds to pay for Representative Visclosky's representation in legal proceedings regarding allegations that are not related to his campaign activity or duties as a Federal officeholder, however, would constitute an impermissible personal use.

### ***Background***

The facts presented in this advisory opinion are based on your letter received on March 31, 2009, and telephone conversations with Commission attorneys.

Representative Visclosky is the U.S. Representative from the First District of Indiana. He is a member of the House Committee on Appropriations and the Appropriations Subcommittee on Defense, and is Chairman of the Appropriations Subcommittee on Energy and Water Development. Visclosky for Congress is Representative Visclosky's principal campaign committee.

According to media reports contained in the advisory opinion request, the FBI and Federal prosecutors are investigating whether a lobbying firm, PMA Group, made improper political contributions to Representative Visclosky and other members of the U.S. House of Representatives. Media reports state that the FBI executed a search warrant at PMA headquarters in November 2008, and that Federal prosecutors "are looking into the possibility that a prominent lobbyist may have funneled bogus campaign contributions to...lawmakers." David D. Kirkpatrick, *Lobbyist Inquiry Appears to Be Widening*, N.Y. TIMES, Feb. 11, 2009, <http://www.nytimes.com/2009/02/11/us/politics/11inquire.html?ref=politics>. Although many of the details of the Federal investigation are not public at this time, media reports indicate that the investigation centers on more than \$500,000 dollars in alleged campaign contributions from PMA Group and its clients to three congressmen, including Representative Visclosky. Kevin Nevers, *Lobbying Firm Facing FBI Probe Has History of Donations to Visclosky*, CHESTERTON TRIBUNE (Ind.), Feb. 13, 2009, [http://chestertontribune.com/Northwest%20Indiana/21397%20lobbying\\_firm\\_facing\\_fbi\\_probe\\_h.htm](http://chestertontribune.com/Northwest%20Indiana/21397%20lobbying_firm_facing_fbi_probe_h.htm). The media reports also discuss appropriations earmarks purportedly obtained by Representative Visclosky for PMA Group clients, several of whom also allegedly made contributions to Representative Visclosky's re-election campaign. *Id.*; see also Henry C. Jackson, *Visclosky's Ties to Troubled PMA Group Run Deep*, CHICAGO TRIBUNE, March 2, 2009, <http://archives.chicagotribune.com/2009/mar/02/news/chi-ap-in-viscloskydonation>.

### ***Question Presented***

*May the Committee use campaign funds to pay legal expenses incurred by Representative Visclosky in connection with a Federal investigation of the PMA Group and Representative Visclosky's conduct as a candidate for and a member of the House of Representatives, and any other legal proceedings that involve the same allegations?*

### ***Legal Analysis and Conclusions***

Yes, the Committee may use campaign funds to pay legal fees and expenses incurred by Representative Visclosky in connection with a Federal investigation into the alleged provision of illegal campaign contributions by the PMA Group and its clients to the Committee, and Representative Visclosky's allegedly improper earmarking of

appropriations for clients of PMA, and any other legal proceedings that involve the same allegations, because the allegations relate to Representative Visclosky's campaign or duties as a Federal officeholder, or both, and the legal fees and expenses would not exist irrespective of Representative Visclosky's campaign or duties as a Federal officeholder. The Committee may not, however, use campaign funds to pay legal fees or expenses regarding allegations unrelated to Representative Visclosky's campaign or duties as a Federal officeholder.

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); 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). The Act specifies that 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); 11 CFR 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of items that would constitute personal use *per se*, none of which applies here. For items not on this list, the Commission makes a determination on a case-by-case basis whether an expense would fall within the definition of "personal use." 11 CFR 113.1(g)(1)(ii). Further, Commission regulations specifically provide a non-exhaustive list of uses, including "legal expenses," that are subject to a case-by-case determination. *Id.* Accordingly, the Commission analyzes the payment of legal fees and expenses with campaign funds on a case-by-case basis under 11 CFR 113.1(g)(1)(ii)(A).

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, 67 (Feb. 9, 1995). Legal fees and expenses, however, "will not be treated as though they are campaign or officeholder related merely because the underlying proceedings have some impact on the campaign or the officeholder's status." *Id.* at 7868. The Commission has concluded that the use of campaign funds for legal fees and expenses does not constitute personal use when the legal proceedings involve allegations directly relating to the candidate's campaign or duties as a Federal officeholder. See, e.g., Advisory Opinions 2008-07 (Vitter), 2006-35 (Kolbe for Congress), 2005-11 (Cunningham), and 2003-17 (Treffinger).

As discussed above, the advisory opinion request and accompanying media reports indicate that the Federal government is investigating campaign contributions allegedly made by PMA Group and its clients to Representative Visclosky. Additionally, the reports discuss appropriations earmarks purportedly obtained by Representative Visclosky for various PMA Group clients. The allegations concern Representative Visclosky's campaign and duties as a Federal officeholder because Representative Visclosky allegedly received the contributions in question as part of his campaign, and his alleged actions regarding the congressional appropriations process are directly related to his duties as a Federal officeholder. Therefore, based on the representations made in the advisory opinion request and accompanying news articles, the Commission concludes that the legal fees and expenses associated with the Federal investigation would not exist irrespective of Representative Visclosky's campaign or duties as a Federal officeholder. Accordingly, the Committee may use campaign funds to pay legal fees and expenses incurred by Representative Visclosky in connection with the Federal investigation into the alleged provision of illegal campaign contributions by the PMA Group and its clients to the Committee, and Representative Visclosky's allegedly improper earmarking of appropriations for clients of PMA, and any other legal proceedings that involve the same allegations.

The Commission notes, however, that because many of the details of the Federal investigation are not public at this time, it is possible that portions of the investigation could involve allegations not related to Representative Visclosky's campaign or his duties as a Federal officeholder. "The use of campaign funds to pay for Representative [Visclosky's] representation in legal proceedings regarding any allegations that are not related to his campaign activity or duties as a Federal officeholder would constitute an impermissible personal use." Advisory Opinion 2005-11 (Cunningham).

In accordance with 2 U.S.C. 432(c), the Committee must maintain appropriate documentation of any disbursements made to pay legal expenses incurred in connection with the Federal investigation and other legal proceedings. *See also* 11 CFR 102.9(b) and 104.11. In addition, the Committee must report all funds disbursed for such legal expenses as operating expenditures, noting the payee's full name, address, and a detailed description of the purpose of the payment. 11 CFR 104.3(b)(2) and (4).

This advisory opinion does not address whether the Committee may use campaign funds to pay legal expenses incurred in responding to the press in connection with the Federal investigation, as that question was not presented in the advisory opinion request.

The Commission expresses no opinion regarding the application of Federal tax law, other law, or the rules of the U.S. House of Representatives to the proposed activities, because those questions are not within the Commission's jurisdiction.

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. All cited advisory opinions are available on the Commission's website at <http://saos.nicusa.com/saos/searchao>.

On behalf of the Commission,

(signed)  
Steven T. Walther  
Chairman



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 111<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 155

WASHINGTON, TUESDAY, JUNE 2, 2009

No. 81

## House of Representatives

The House met at 2 p.m. and was called to order by the Speaker pro tempore (Mr. LARSEN of Washington).

### DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,  
June 2, 2009.

I hereby appoint the Honorable RICK LARSEN to act as Speaker pro tempore on this day.

NANCY PELOSI,  
Speaker of the House of Representatives.

### PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer: God eternal, Creator of unfailing light, give that same kind of light to all who call upon Your Holy Name.

May our minds and hearts be purified of all self-centered wishes and judgments.

So, freed enough to be attentive to Your Word and Holy Inspirations, enable this Congress to accomplish Your purpose for this country and do what is best, not only for ourselves but for those most in need. This will give You lasting glory, both now and forever. Amen.

### THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

### PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentlewoman from Arizona (Mrs. KIRKPATRICK) come forward and lead the House in the Pledge of Allegiance.

Mrs. KIRKPATRICK of Arizona led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK  
Washington, DC, May 22, 2009.

Hon. NANCY PELOSI,  
The Speaker, House of Representatives,  
Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 3(b) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on May 22, 2009, at 9:35 a.m.:

That the Senate passed without amendment H.R. 663.

That the Senate passed without amendment H.R. 918.

That the Senate passed without amendment H.R. 1284.

That the Senate passed without amendment H.R. 1656.

That the Senate agreed to without amendment H. Con. Res. 153.

That the Senate passed S. Con. Res. 19.

With best wishes, I am

Sincerely,

LORRAINÉ C. MILLER,  
Clerk of the House.

### COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK  
Washington, DC, May 26, 2009.

Hon. NANCY PELOSI,  
The Speaker, House of Representatives,  
Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(b) of Rule II

of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on May 26, 2009, at 10:03 a.m.:

That the Senate passed with an amendment H.R. 2346.

With best wishes, I am

Sincerely,

LORRAINÉ C. MILLER,  
Clerk of the House.

### COMMUNICATION FROM CHIEF OF STAFF, THE HONORABLE PETER VISCLOSKY, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Charles B. Brimmer, Chief of Staff, the Honorable PETER VISCLOSKY, Member of Congress:

HOUSE OF REPRESENTATIVES,  
Washington, DC, June 1, 2009.

Hon. NANCY PELOSI,  
Speaker, House of Representatives,  
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a grand jury subpoena for documents issued by the U.S. District Court for the District of Columbia.

After consultation with counsel, I will make the determinations required by Rule VIII.

Sincerely,

CHARLES B. BRIMMER,  
Chief of Staff.

### COMMUNICATION FROM THE HONORABLE PETER VISCLOSKY, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable PETER VISCLOSKY, Member of Congress:

HOUSE OF REPRESENTATIVES,  
Washington, DC, June 1, 2009.

Hon. NANCY PELOSI,  
Speaker, House of Representatives,  
Washington, DC.

DEAR MADAM SPEAKER: This is to notify you formally, pursuant to Rule VIII of the

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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