

ADR 2012-05



Lantos
FOUNDATION

for **Human Rights**
& Justice

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OFFICE OF GENERAL
COUNSEL

January 12, 2012

Anthony Herman
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request

Dear Mr. Herman:

Pursuant to 2 U.S.C. § 437f(a)(1) and 11 C.F.R. § 112.1, the Lantos Foundation for Human Rights and Justice ("the Lantos Foundation") seeks an advisory opinion. The Lantos Foundation seeks confirmation that under the Federal Election Campaign Act of 1971, as amended, and its implementing regulations, the Lantos for Congress Committee ("the Committee") may, subject to the limitations set out below, donate the balance of its funds to the Lantos Foundation.

Background

Origins of the Lantos Foundation

Prior to his death in early 2008, Congressman Tom Lantos was the Chair of the House Foreign Affairs Committee. Congressman Lantos was a co-founder of the Congressional Human Rights Caucus, which in 2008 was renamed the Tom Lantos Human Rights Commission. During the twenty-seven years when he served in the House of Representatives, Congressman Lantos was the leading congressional proponent of international human rights.

In the spring of 2008, the Lantos Foundation was established by members of Congressman Lantos' family, in concert with his friends and supporters, including individuals who had earlier worked for either the campaign Committee or Congressman Lantos' congressional office. The purpose of the Lantos Foundation is to continue the human rights activities that were the Congressman's life work, "to strengthen the role of human rights and justice in U.S. foreign policy and to encourage a stronger

role for human rights and justice in all aspects of international relations." Articles of Agreement, Tom Lantos Foundation for Human Rights and Justice, Article 2: Purposes, p.1. (N.H. Id #591426).

Since its founding, the Lantos Foundation has advanced the cause of human rights in a number of important ways. Programming in support of human rights and democracy globally includes the following:

The Lantos Human Rights Prize, which is awarded annually to an individual or organization that best exemplifies the Foundation's mission, namely to be a vital voice standing up for the values of decency, dignity, freedom, and justice in every corner of the world. Recipients of the Lantos Prize include His Holiness the Dalai Lama, Nobel Laureate Elie Wiesel, and Paul Rusesabagina.

The Front Line Fund, which provides direct assistance to those in the trenches fighting important human rights battles. Activities supported include: anti-trafficking efforts, freedom for prisoners of conscience, and opposition to forced evictions in China.

The Lantos/HIA Congressional Fellows Program, which gives young professionals and future leaders the opportunity to work in the U.S. Congress and gain a greater understanding of the American legislative process and how human rights ideals translate into real policy solutions.

The Roosevelt International Disability Rights Award (in partnership with the Roosevelt Institute), which is awarded annually at the United Nations to a country that has made significant progress in furthering human rights for disabled persons by implementing the principles of the United Nations Convention on the Rights of Persons with Disabilities and the Universal Declaration of Human Rights.

The Lantos Foundation is engaged in many other human rights initiatives that support its mission, which include educating and advocating against anti-Semitism and Holocaust denial in the Middle East, fighting human rights abuses in China and Russia, and advancing the cause of internet freedom globally.

In addition, an archive has been established of materials related to Congressman Lantos' human rights activities during his service in Congress. The archive was funded with a restricted fund of \$45,000 from the Lantos Committee to cover the costs of cataloging and housing the archive materials. This grant is maintained in a separate restricted account and has a remaining balance of \$28,270.

Further information about the Foundation's activities is available at the Foundation's website: www.lantosfoundation.org

Current Assets of the Lantos Foundation

From the outset, members of Congressman Lantos' family and former congressional and campaign staffers have played a central role in establishing the Foundation and advancing its work. They bring indispensable skills to this mission because of their institutional memory of Congressman Lantos' work, their ability to reach out to the late Congressman's friends and supporters, and their passionate commitment to the human rights causes for which Congressman Lantos fought.

The Lantos Foundation's fundraising efforts, which remain ongoing, have met with significant success. The Foundation's most recent IRS Form 990, filed for FY 2010 shows net assets of \$7,738,678 on line 22 of Part I Summary.

When the Lantos Foundation was initially organized and began work, everyone involved served without compensation. As the scope of the Foundation's activities increased, and the growing income and endowment permitted, several of those individuals began to receive compensation. At this point in time the President of the Foundation, Dr. Katrina Swett, Congressman Lantos' daughter, is receiving compensation from the Foundation. The Foundation is also compensating its Executive Director, Denise Perron, who worked as a part-time consultant on behalf of the Committee. In addition the Foundation is compensating Janet Szelenyi as a part-time consultant and Candace Bryan Abbey as a part-time employee; both of these individuals worked for Congressman Lantos.

None of the Foundation funds now used to provide compensation to these or any other individuals derive from campaign Committee funds. The current endowment and income of the Foundation are and will remain sufficient to provide that compensation, and indeed will constitute a large majority of all the assets of the Foundation.

Tax Status of the Foundation

On May 30, 2008 the Lantos Foundation received its Determination Letter confirming exemption from federal taxes under Section 501(c)(3) of the Internal Revenue code and its public charity status under section 170(b)(1) (A) (vi).

Assets of the Lantos Committee

As of the October 15, 2011 Quarterly FEC Report, the assets of the Committee totaled \$861,613.86. The Committee proposes to donate all of its remaining funds to the Foundation. Given the far larger size of the Foundation's current assets, the Committee contribution would total only about 11% of the Foundation's resulting total assets.

Congressman Lantos, prior to his death, expressed the hope that the funds held by his campaign Committee would be given to the Foundation that he anticipated would be created.

Proposed Restrictions Regarding Use of the Donation

Under the terms of the proposed contribution to the Lantos Foundation, the funds donated by the Committee will be subject to the following limitations.

- (1) The donated funds and any income generated by those funds shall be placed in a separate account and shall not be co-mingled with other assets of the Foundation.
- (2) Neither the donated funds nor any income generated from those funds shall be used to provide to any member of Congressman Lantos' family (as that term is defined in 2 U.S.C. § 439a(c)(3)(B) or 11 C.F.R. § 113.1(g)(7)), to any person who was employed by the Committee, or to any person who was employed in Congressman Lantos' congressional office,
 - (a) compensation,
 - (b) gifts or grants, or
 - (c) any materials or reimbursement for any expense within the scope of 2 U.S.C. § 439a(b)(2)(A) through (I) or 11 C.F.R. § 113.1(g)(1)(A) through (J).
- (3) Neither the donated funds nor any income generated by those funds shall be used to influence any election.

Legal Analysis

Section 439a(a)(3) of 2 U.S.C. provides that contributions to a candidate or campaign committee may be used "for contributions to an organization described in section 170(c) of Title 26." The Lantos Foundation is a charitable organization within the scope of section 170. Section 439a(b)(1) provides that any covered contribution or donation to or for a candidate "shall not be converted by any person to personal use."

11 C.F.R. § 113.1(g)(2) provides:

Charitable donations. Donations of campaign funds or assets to an organization described in section 170(c) of Title 26 of the United States Code are not personal use, unless the candidate receives compensation from the organization before the organization has expended the entire amount donated for purposes unrelated to his or her personal benefit.

The prohibition spelled out in section 113.1(g)(2) against payment of compensation to the candidate is obviously not applicable to the proposed donation to the Lantos Foundation.

In several Advisory Opinions the Commission has indicated that the prohibition against compensation would apply to any use of donated fund that would "benefit [the candidate] in any . . . financial respect." Advisory Opinion 1986-39; see Advisory Opinion 1983-27 (use of donated funds that would "accrue to [the candidate's] benefit" would constitute a prohibited "personal use"). In at least some circumstances compensation of or other payments to a family member of a candidate could accrue to the benefit of the candidate himself or herself. Apparently for that reason, in a number of instances campaign committees seeking approval of charitable donations have provided that the donated funds would not be used to compensate either the candidate or a member of the candidate's family. In the instant case, however, compensation paid to a member of former Congressman Lantos' family obviously could not be said to accrue to the candidate's benefit.

In many past instances in which a campaign committee proposed to make a donation to a charitable organization, the donation was being used to establish the charitable organization itself, and most if not all of the expenditures of the charitable organization were thus to come from funds donated by the campaign committee. In that situation the funds donated by the campaign committee would have been the primary, perhaps the sole source of funds used to pay any compensation. That will not be the case with regard to the Lantos Foundation. The Lantos Foundation has raised from other sources funds easily sufficient to cover all current and foreseeable compensation expenditures. Furthermore, the terms of the proposed donation to the Lantos Foundation will, in any event, preclude use of the donated funds to make payments to any members of Congressman Lantos' family, or to former employees of his campaign or congressional office.

Conclusion

For the above reasons, we respectfully request that the FEC advise the Foundation that the proposed donation to the Lantos Foundation, subject to the specific restrictions described above, would be permissible under the Federal Election Campaign Act and its implementing regulations.

If you have any questions or need additional information, please do not hesitate to contact us. Thank you for your consideration.

Yours sincerely,



Eric Schnapper
Board Member
Lantos Foundation for Human Rights and Justice

Attachments:
IRS section 501(c)(3) letter
Certificate of Registration
Certificate of Nonprofit Corporation

STATE OF NEW HAMPSHIRE



DEPARTMENT OF JUSTICE CHARITABLE TRUSTS DIVISION

CERTIFICATE OF REGISTRATION

TOM LANTOS FOUNDATION FOR HUMAN RIGHTS & JUSTICE

CONCORD, NH

is registered as a charitable trust with the Department of the Attorney General, Division of Charitable Trusts pursuant to Chapter 7 Section 19 of the Revised Statutes Annotated of the State of New Hampshire.

Date of Issuance: ***December 2, 2008***

KELLY A. AYOTTE
ATTORNEY GENERAL

Registration number: ***17516***

A handwritten signature in cursive script, appearing to read "Terry M. Knowles", written over a horizontal line.

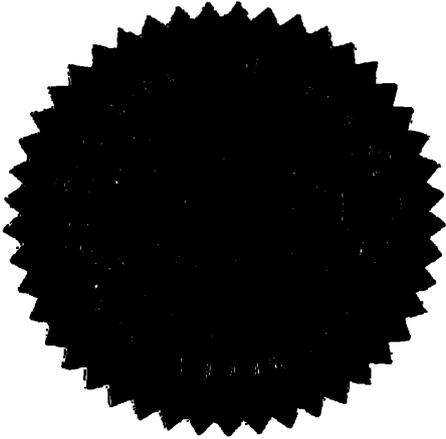
Terry M. Knowles
Assistant Director of Charitable Trusts

NOTE: THIS CERTIFICATE OF REGISTRATION IS ISSUED TO CHARITABLE TRUSTS IN COMPLIANCE WITH RSA 7:19 RELATIVE TO REGISTRATION REQUIREMENTS. CHARITABLE TRUSTS MUST ALSO COMPLY WITH PERIODIC REPORTING REQUIREMENTS AND OTHER LAWS. CURRENT INFORMATION MAY BE OBTAINED FROM THE REGISTER.

State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that TOM LANTOS FOUNDATION FOR HUMAN RIGHTS AND JUSTICE is a New Hampshire nonprofit corporation formed February 12, 2008. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 12th day of February, A.D. 2008

Handwritten signature of William M. Gardner in black ink.

William M. Gardner
Secretary of State

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date **MAY 30 2008**

TOM LANTOS FOUNDATION FOR HUMAN
RIGHTS AND JUSTICE
19 PLEASANT ST
CONCORD, NH 03301

Employer Identification Number:
35-2325429
DLN:
17053084348018
Contact Person:
PETER A ORLETT ID# 31436
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
170(b)(1)(A)(vi)
Form 990 Required:
Yes
Effective Date of Exemption:
February 12, 2008
Contribution Deductibility:
Yes
Advance Ruling Ending Date:
December 31, 2012
Addendum Applies:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

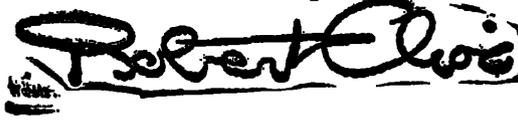
Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

Letter 1045 (DO/CG)

TOM LANTOS FOUNDATION FOR HUMAN

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

A handwritten signature in black ink that reads "Robert Choi". The signature is written in a cursive style with a horizontal line underneath the name.

Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosures: Publication 4221-PC
Statute Extension

Letter 1045 (DO/CG)

TOM LANTOS

P.O. Box 777
San Carlos, CA 94070-0777

January 25, 2012

Joanna Waldstreicher
Office of General Counsel, Policy Division
Federal Election Commission
999 E Street NW
Washington, DC 20463

RECEIVED
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2012 JAN 25 PM 3:25
OFFICE OF GENERAL
COUNSEL

Dear Ms. Waldstreicher,

The Tom Lantos for Congress Committee joins in the request for an advisory opinion by the Lantos Foundation for Human Rights and Justice made in their letter of January 12, 2012.

Thank you.

Sincerely,



Janet Szelenyi
Treasurer
Tom Lantos for Congress Committee
C00112250

Authorized and paid for by the Tom Lantos for Congress Committee

