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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 15-47-B**  
**AGENDA ITEM**  
**For meeting of September 17, 2015**

September 10, 2015

**MEMORANDUM**

TO: The Commission

FROM: Daniel A. Petalas *DAP*  
Acting General Counsel

Adav Noti *AN*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Sean Wright *SW*  
Attorney

Subject: AO 2015-06 (Waters) Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on September 16, 2015.

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 <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2015-06  
2  
3 Hon. Maxine Waters  
4 Member of Congress  
5 2221 Rayburn House Office Building  
6 Washington, D.C. 20515  
7

8 Dear Representative Waters,  
9

10 We are responding to your advisory opinion request concerning whether the Federal  
11 Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations permit  
12 your authorized committee, your leadership PAC, or yourself personally to make donations to  
13 candidates for elected office in a foreign country. The Commission concludes that such  
14 donations are permissible under the Act and Commission regulations.

15 ***Background***

16 The facts presented in this advisory opinion are based on your letter received on July 14,  
17 2015, and a subsequent email received on July 28, 2015.

18 You are a member of the U.S. House of Representatives representing the 43rd  
19 Congressional District of California, and you are a candidate for re-election to that office.<sup>1</sup> You  
20 intend to donate to campaigns of candidates for office in Haiti. Advisory Opinion Request  
21 (“AOR”) at AOR002. You intend to make these donations using your authorized committee’s  
22 funds, your leadership PAC’s funds, or your own individual funds. AOR002.

23 ***Questions Presented***

24 (1) *May your authorized committee use committee funds to make a donation to a candidate*  
25 *for office in a foreign country?*

26 (2) *May your leadership PAC use PAC funds to make a donation to a candidate for office in*  
27 *a foreign country?*

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<sup>1</sup> Maxine Waters, FEC Form 2 at 1 (Mar. 19, 2015),  
<http://docquery.fec.gov/pdf/080/15950885080/15950885080.pdf>.

1 (3) *May you use your personal funds to make an individual donation to a candidate for office*  
2 *in a foreign country?*

3 ***Legal Analysis and Conclusions***

4 (1) *May your authorized committee use committee funds to make a donation to a candidate*  
5 *for office in a foreign country?*

6 Yes, your authorized committee may use committee funds to donate to a candidate for  
7 office in a foreign country because the donations would constitute a “lawful purpose” within the  
8 meaning of the Act.<sup>2</sup>

9 Under the Act and Commission regulations, an authorized committee may use its funds  
10 for several specific purposes — including “donations to state and local candidates” — and for  
11 “any other lawful purpose” that does not constitute conversion of campaign funds to “personal  
12 use.” 52 U.S.C. § 30114(b); 11 C.F.R. §§ 113.1(g), 113.2(e). The Act provides that campaign  
13 funds “shall be considered to be converted to personal use if [the funds are] used to fulfill any  
14 commitment, obligation or expense of a person that would exist irrespective of the candidate’s  
15 election campaign or individual’s duties as a holder of Federal office.” 52 U.S.C. § 30114(b)(2);  
16 *see also* 11 C.F.R. § 113.1(g). The Act and Commission regulations provide a non-exhaustive  
17 list of uses of campaign funds that are *per se* personal use. 52 U.S.C. § 30114(b)(2); 11 C.F.R.  
18 § 113.1(g)(1)(i). For uses of campaign funds not on this list, the Commission determines, on a  
19 case-by-case basis, whether they constitute personal use. 11 C.F.R. § 113.1(g)(1)(ii). *See*  
20 Advisory Opinion 2014-06 (Ryan *et al.*) at 4 (purchase of candidate’s book); *see also* Advisory  
21 Opinion 2011-17 (Giffords) (use of campaign funds for home security system). When the

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<sup>2</sup> Regarding other provisions of law that might bear on the permissibility of the proposed activity, *see infra* pp. 5-6 & n.4.

1 Commission engages in a case-by-case determination, it does so in light of its “long-standing  
2 opinion that candidates have wide discretion over the use of campaign funds.” Expenditures;  
3 Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7867 (Feb. 9,  
4 1995).

5 Donating to candidates for office in a foreign country is not one of the *per se* personal  
6 uses listed in the Act and Commission regulations. *See* 52 U.S.C. § 30114(b)(2); 11 C.F.R.  
7 § 113.1(g)(1)(i). Accordingly, the Commission determines on a case-by-case basis whether such  
8 a donation by an authorized committee is permissible.

9 As noted above, the Act and Commission regulations explicitly permit authorized  
10 committees to donate funds to state and local candidates. *See* 52 U.S.C. § 30114(a)(5); 11  
11 C.F.R. § 113.2(d). But even before Congress amended the Act to include donations to state and  
12 local candidates in the enumerated list of permissible uses of campaign funds, the Commission  
13 consistently relied on the “any other lawful purpose” provision to determine that such donations  
14 were permissible. *See, e.g.*, Advisory Opinion 2000-32 (Martinez) (donation of funds to a state  
15 candidate); Advisory Opinion 1996-52 (Andrews) (excess campaign funds refunded and  
16 transferred to future campaign); *see also* Factual and Legal Analysis at 9-10, MUR 6263  
17 (Committee to Re-elect Artur Davis to Congress) (Sept. 27, 2010) (concluding that committee’s  
18 spending on U.S. Representative’s “exploratory efforts before becoming a [state] candidate” was  
19 akin to permissible donation to state and local candidates).

20 Most notably, in Advisory Opinion 1993-10 (Colorado), the Commission permitted a  
21 former federal candidate to transfer his excess federal campaign funds to two separate election  
22 efforts: his campaign for President of the Popular Democratic Party, and his campaign for  
23 Governor of Puerto Rico. In permitting the transfer of funds to the campaign for office in Puerto

1 Rico, the Commission relied on the “any other lawful purpose” provision in what is now 52  
2 U.S.C. § 30114(a), stating that permissibility of this transfer “follow[ed]” from the  
3 Commission’s precedents allowing transfers to state and local campaigns. *See id.* at 2.

4 Like non-federal candidates within the United States, candidates in other countries are  
5 categorically excluded from the Act’s definition of “candidate.” *See* 52 U.S.C. § 30101(2)-(3).

6 Thus, for purposes of the “lawful purpose” analysis under section 30114(a)(6), foreign  
7 candidates and nonfederal domestic candidates are similarly situated with regard to receiving  
8 donations of federal campaign funds. *Cf.* Advisory Opinion 1993-10 (Colorado) at 2.

9 Accordingly, consistent with the Commission’s longstanding reasoning that campaign funds may  
10 lawfully be donated to non-federal candidates, the proposed contribution to a candidate for office  
11 in a foreign country is permissible pursuant to 52 U.S.C. § 30114(a)(6) and 11 CFR § 113.2(e).<sup>3</sup>

12 (2) *May your leadership PAC use PAC funds to make a donation to a candidate for office in*  
13 *a foreign country?*

14 Yes, your leadership PAC may use PAC funds to make a contribution to a candidate for  
15 office in a foreign country because the personal use restrictions do not apply to leadership PACs.

16 A leadership PAC is “a political committee that is directly or indirectly established,  
17 financed, maintained or controlled by [a federal candidate or officeholder] but which is not an  
18 authorized committee of the candidate or individual and which is not affiliated with an  
19 authorized committee of the candidate or individual.” 52 U.S.C. § 30104(i)(8)(B); *see also* 11  
20 C.F.R. § 100.5(e)(6). The Act’s personal use prohibition, as implemented in Commission  
21 regulations, applies only to “use of funds in a campaign account,” *i.e.*, to authorized committees.

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<sup>3</sup> The Commission notes that spending pursuant to section 30114(a)(6) must comply with the proscriptions of section 30114(b). Your proposed donations therefore must not be used by the recipient to relieve you of “any commitment, obligation, or expense . . . that would exist irrespective of [your] election campaign or . . . duties as a holder of federal office.” 52 U.S.C. § 30114(b)(2).

1 See 11 C.F.R. § 113.1(g). A leadership PAC is not an authorized committee and therefore is not  
2 subject to the personal use prohibition. Accordingly, the Commission concludes that your  
3 leadership PAC may use PAC funds to make a contribution to a candidate for office in a foreign  
4 country.

5 (3) *May you use your personal funds to make an individual contribution to a candidate for*  
6 *office in a foreign country?*

7 Yes, you may use your personal funds to make an individual contribution to a candidate  
8 for office in a foreign country. As discussed above, the Act’s personal use prohibition, as  
9 implemented in Commission regulations, applies only to “use of funds in a campaign account,”  
10 *i.e.*, to authorized committees. An individual is not an authorized committee and therefore is not  
11 subject to the personal use prohibition.

12 Moreover, the proposed contribution would not implicate the Act’s prohibition on  
13 contributions *from* foreign nationals. Commission regulations provide that foreign nationals  
14 shall not, directly or indirectly, make “a contribution or donation of money or other thing of  
15 value, or to make an express or implied promise to make a contribution or donation, in  
16 connection with a Federal, State, or local election,” 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R.  
17 § 110.20(b), but the request presents no facts that suggest such contribution or donation will be  
18 made. See Advisory Opinion 2015-02 (Grand Trunk Western Railroad – Illinois Central  
19 Railroad PAC) at 3 n.2 (noting that foreign entity’s “*receiving* of donations does not implicate  
20 the Act’s prohibition on foreign nationals *making* any contribution or donation in connection  
21 with an election” (emphasis in original)).

22 The Commission expresses no opinion as to any other relevant federal or foreign laws or  
23 regulations — including the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*, or the

1 laws of the Republic of Haiti<sup>4</sup> — or as to any potential tax ramifications of the described activity  
2 because such matters are not within the Commission’s jurisdiction. For the same reason, the  
3 Commission expresses no opinion regarding any aspects of your proposal that are within the  
4 jurisdiction of the House Ethics Committee, the General Counsel of the House of  
5 Representatives, or the Department of State. *See* AOR001.

6 This response constitutes an advisory opinion concerning the application of the Act and  
7 Commission regulations to the specific transaction or activity set forth in your request. *See*  
8 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or  
9 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
10 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
11 proposed activity. Any person involved in any specific transaction or activity which is  
12 indistinguishable in all its material aspects from the transaction or activity with respect to which  
13 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
14 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
15 affected by subsequent developments in the law including, but not limited to, statutes,  
16 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
17 on the Commission’s website.

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<sup>4</sup> Because 52 U.S.C. § 30114(a)(6) permits only “lawful” uses of campaign funds, the Commission’s conclusion in this advisory opinion assumes that the proposed donations would be permissible under Haitian law. If the proposed donation is not lawful under Haitian law – or under any law of the United States outside the Commission’s jurisdiction – then it would not be permissible under section 30114(a)(6) of the Act. *See, e.g.*, Advisory Opinion 2007-29 (Jackson Jr.) at 2, n.3; Advisory Opinion 1993-10 (Colorado) at 2-3; Advisory Opinion 1986-05 (Barnes) at 1; Advisory Opinion 1980-113 (Miller) at 2.

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On behalf of the Commission,

Ann M. Ravel  
Chair