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December 16, 2015

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The Honorable Ann M. Ravel, Chair
Federal Election Commission
999 E. Street N.W.
Washington, D.C. 20463

Re: Advisory Opinion 2015-13 (Reid)

Dear Chair Ravel:

We write to comment on the two draft advisory opinions submitted in response to Advisory Opinion 2015-13. Draft A adheres to the Commission's regulations and precedents. Draft B departs from them. Accordingly, the Commission should adopt Draft A.

Drafts A and B agree that Leader Reid may use campaign funds to pay an assistant to review, organize, and arrange for transportation and storage of archival and office materials. Furthermore, Drafts A and B agree that Leader Reid's use of campaign funds for this purpose is *not* limited to the six months following his retirement from office. However, whereas Draft A correctly concludes that Leader Reid may also use campaign funds to pay an assistant to manage officially-related correspondence, fact-check and draft materials relating to his tenure in office, and schedule and organize appearances in which Leader Reid would discuss his tenure in office, Draft B incorrectly concludes that he may not.

The Commission's regulations on this point are straightforward. Campaign funds may *not* be used to pay any expense that "that would exist irrespective of the candidate's [or former candidate's] campaign or duties as a Federal officeholder."[1] Conversely, in light of the "wide discretion over the use of campaign funds" afforded to candidates and former candidates, if it can be "reasonably show[n] that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use."[2] Applying this test, Draft A correctly concludes that the proposed expenses are permissible, because "the assistant will engage exclusively in 'tasks arising from [Senator Reid's] tenure in federal office.'"[3]

Notably, Draft B does *not* contend that the expenses for the activities at issue would exist irrespective of Leader Reid's duties as a federal officeholder. Instead, Draft B eschews the Commission's longstanding test in favor of an entirely new standard: that campaign funds may

[1] 11 C.F.R. § 113.1(g).
[2] *Explanation and Justification, Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862 (Feb. 9, 1995).
[3] Draft A at 4-5 (citing 11 C.F.R. § 113.2(a); AOR at 3).

not be used by former officeholders except to pay for (a) wind-down activities or (b) activities that the former officeholder is *obligated* by law or his status as a former officeholder to undertake.

Draft B's proposed standard finds no support in the Commission's regulations, which provide that campaign funds "[m]ay be used for any other lawful purpose, unless such use is personal use under 11 CFR 113.1(g)."[4] Draft B suggests that the allowance for wind-down expenses in section 113.2 should be read to presumptively forbid payment for an activity that is not a wind-down expense. But that misreads the rule. Payments for a former officeholder's wind-down activities are but one *example* of a lawful expense under section 113.2. Likewise, Draft B's implication that the discretionary nature of the proposed activities renders them ineligible for payment with campaign funds is without basis in the regulation. The regulation asks whether the expense results from officeholder activities; it does not demand a showing that the former officeholder is obliged to undertake the activity.

When addressing the use of funds by former officeholders, the Commission has repeatedly applied a case-by-case analysis and considered whether the expenses were incurred in connection with the duties of federal office.[5] For example, in Advisory Opinion 2001-9, the Commission concluded that Senator Kerrey could use campaign funds to pay for expenses that "would not have occurred if Mr. Kerrey had not been a prominent Senator and prominent Federal candidate." Likewise, the expenses at issue here also would not have occurred if Leader Reid had not been a prominent Senator or candidate. It is Leader Reid's long tenure as Senate Democratic Leader that will result in him receiving officially-related correspondence, drafting materials relating to his tenure in office, and accepting invitations to appear to discuss his tenure in office. None of these advisory opinions laid down a bright-line rule, as Draft B does, limiting former officeholders' use of campaign funds to wind-down expenses or activities *required* to be undertaken by law or their officeholder status.[6] The Commission should reject Draft B's entreaty to do so here.

We appreciate your consideration and request that the Commission approve Draft A.

Sincerely,

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[4] 11 C.F.R. § 113.2(e).
[5] *See* FEC Adv. Op. 2013-05 (Gallegly); FEC Adv. Op. 2001-09 (Kerrey for U.S. Senate); FEC Adv. Op. 1996-14 (de la Garza); FEC Adv. Op. 1993-06 (Panetta).
[6] *See* FEC Adv. Op. 2013-05 (Gallegly); FEC Adv. Op. 1996-14 (de la Garza); FEC Adv. Op. 1993-06 (Panetta).