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House of Representatives

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July 12, 2017

Lisa Stevenson, Esq.
Acting General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Comments on Advisory Opinion Request 2017-07

Dear Ms. Stevenson:

I write in support of the House Sergeant-at-Arms request for an advisory opinion concerning whether a Member of Congress, consistent with the Federal Election Campaign Act, may use campaign funds to purchase a home security system which does not constitute a structural improvement to the Member's home and to pay for the monitoring thereof. Based on the statute, the Commission's regulations, and enforcement proceedings, the request by the House Sergeant-at-Arms is permissible under the Federal Elections Campaign Act.

52 U.S.C. § 30114(b)(1)&(2) set forth the prohibitions on personal use, stating:

(b) Prohibited use

(1) In general

A contribution or donation described in subsection (a) shall not be converted by any person to personal use.

(2) Conversion

For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the 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, including-

- (A) a home mortgage, rent, or utility payment;
- (B) a clothing purchase;
- (C) a noncampaign-related automobile expense;
- (D) a country club membership;
- (E) a vacation or other noncampaign-related trip;
- (F) a household food item;
- (G) a tuition payment;

(H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and

(I) dues, fees, and other payments to a health club or recreational facility.

See also 52 U.S.C. § 30114(a)(setting forth six categories of explicitly permissible use of contributions accepted by a federal candidate); 11 C.F.R. § 113.2(e).

Accordingly, impermissible personal use occurs when a contribution is used “to fulfill any commitment, obligation or expense that would exist *irrespective* of . . . the individual’s duties as a holder of Federal office.” 52 U.S.C. 2 § 30114(b)(2) (emphasis added); see also 11 C.F.R. § 113.1(g)

In the present instance, the House Sergeant-at-Arms request represents an expense that would *not* exist irrespective of the Member’s duties as a holder of a Federal office. Because of the nature of the Federal office, Members have become increasing subjects of threats and scrutiny. Accordingly, the Member needs appropriate protection based on threats that exist because of their federal office.

The only potential textual claim in the statute is that home security system monitoring would constitute a utility payment under 52 U.S.C. § 30114(b)(2)(A). Notwithstanding that the expenses would not exist irrespective of a Member’s duties as a Federal officeholder, such a claim is unsupported. Black’s Law Dictionary defined a “utility” as a “firm owning and operating facilities for production and distribution of *water, electricity, gas, and telecommunications* to the public.” (emphasis added). Black’s Law Dictionary (10th ed. 2014), available at Westlaw BLACKS. Security monitoring does not fit within these categories. Merriam-Webster defines a “utility” as a “service (such as light, power, or water) provided by a public utility.” Merriam-Webster, “Utility,” (July 10, 2017). Again, security monitoring does not fit within these categories. Security monitoring is typically provided by private firms.¹

Under 11 C.F.R. § 113.1(g)(1)(ii), the Commission is empowered to determine on a case-by-case basis whether a specific expense would fall under the definition of personal use. Although the current fact pattern does not fit within an example listed under 11 C.F.R. § 113.1(g)(1)(ii)(A-D), the regulations describe those categories to be only “examples” of the type of uses that the Commission may determine is permissible. The Commission has in the past issued advisory opinions on similar matters. Advisory Opinion 2011-17 (Giffords); Advisory Opinion 2011-05 (Terry); Advisory Opinion 2009-08 (Gallegly) (holding that the use of campaign funds did not constitute personal use when used for a home security system for Members who had received specific and ongoing threats to themselves and their families and having undergone a U.S. Capitol Police threat assessment).

The Committee has oversight jurisdiction over the House Sergeant-at-Arms. House Rule X, clause 4(d)(1)(A).² As Chairman of the Committee on House Administration, I have learned of the threat environment facing Members because of their duties as federal officeholders. Members face threats because of their votes and positions on legislation. Members face threats because of their party affiliations and positions within party conferences or caucuses. These threats occur precisely because an individual has assumed the office of a Member of Congress and has discharged these duties by voting or otherwise engaging in their official and representational duties.

The threat environment facing Members has changed. Whereas before, the United States Capitol Police may have more forewarning of threats against Members, threats against Members occur at both

¹ The General Services Administration, for example, has contract with a private security monitoring firm that other government agencies may use. General Services Administration, GS-07F-8854D, Federal Supply Service Contract, Authorized Federal Supply Service Customer Information, Tyco Integrated Security (2015).

² Through its oversight jurisdiction over the House Sergeant-at-Arms, the Committee also has jurisdiction over the Capitol Police. *See, e.g.*, H.R.320 115th Cong.; H.R. 4733 (114th Cong.); H.R. 454 (112th Cong.).

a greater frequency and with less forewarning than in the past.³ The House Sergeant-at-Arms, in their request for an advisory opinion, characterized approximately 950 communications as threatening.⁴ These types of threats necessitate a proactive rather than reactive response. Members are unfortunately no longer able to wait until confirmation of a threatening communication before taking prudent steps to protect themselves and their family.⁵

United States Capitol Police threat assessments are by their nature reactive. The threat environment that Members face is rapidly changing. Members are suddenly followed from town hall meetings and accosted on the road.⁶ In many instances, a proper threat assessment requires a threat to be issued before action is taken, and appropriate investigation. Threat assessments are resource and time intensive. Requiring an ex ante threat assessment can create unacceptable levels of risk for a Member and their family. Unfortunately, violence or harassment of Members and their families does not always wait for a thorough threat assessment.

In this new threat environment, Members must, as a results of their positions, take steps to protect themselves and their families to prevent tragedies like those in Arizona and Virginia.

Accordingly, the threats that Members of Congress face because of their Federal office cause them to incur an expense that would not occur but for their Federal office under the statute.

Sincerely,

A handwritten signature in black ink that reads "Gregg Harper". The signature is written in a cursive, flowing style.

Gregg Harper
Chairman
Committee on House Administration

GH/ras

³ Kevin Freking, *House Official: Threats To Lawmakers Spike In 2017*, THE WASHINGTON POST, July 10, 2017, https://www.washingtonpost.com/national/house-official-threats-to-lawmakers-increase-in-2017/2017/07/10/ba1d0c16-6594-11e7-94ab-5b1f0ff459df_story.html?utm_term=.fa663b5c00e0.

⁴ Paul D. Irving, Sergeant at Arms of the United States House of Representatives, Official Request For An Advisory Opinion, June 21, 2017, available at <https://cg-519a459a-0ea3-42c2-b7bc-fa1143481f74.s3-us-gov-west-1.amazonaws.com/legal/aos/83328.pdf>.

⁵ Advisory Opinions 2011-17 (Giffords) and 2011-05 (Terry) both concern situations wherein a Member had a particularized threat and had undergone a United States Capitol Police threat assessment.

⁶ Olivia Beavers, *Woman Accused Of Chasing GOP Rep In Car After Town Hall*, THE HILL, May 11, 2017, <http://thehill.com/homenews/house/333027-woman-chases-down-gop-rep-car-after-town-hall-charged-with-felony>.