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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 21-06-A**  
**AGENDA ITEM**  
**For meeting of January 28, 2021**

January 19, 2021

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*  
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Subject: Draft AO 2020-06 (Escobar) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. The Commission intends to consider this draft on a tally vote before the next Commission meeting and therefore we are making this draft available for comment until 5:00pm (Eastern Time) on January 20, 2021.

Should this draft not be approved on tally, it will be considered at the Commission meeting of January 28. Members of the public may 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 <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2020-06

2

3 Honorable Veronica Escobar  
4 Member of Congress  
5 Veronica Escobar for Congress  
6 P.O. Box 3961  
7 El Paso, TX 79923  
8

**DRAFT A**

9 Dear Representative Escobar:

10 We are responding to the advisory opinion request you submitted on behalf of  
11 yourself and Veronica Escobar for Congress, your principal campaign committee,  
12 regarding the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45  
13 (the “Act”), and Commission regulations to the proposed use of your committee’s  
14 campaign funds for expenses related to installing a residential security system at your  
15 home. The Commission concludes that the proposed use of campaign funds for wiring  
16 and lighting costs that are necessary for the operation of the residential security system as  
17 recommended by the House Sergeant of Arms is permissible under the Act and  
18 Commission regulations and would not constitute a prohibited conversion of campaign  
19 funds to personal use.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on  
22 December 22, 2020.

23 You are a member of the U.S. House of Representatives from Texas’s 16th  
24 Congressional District. Since taking office, you have received numerous direct threats to  
25 your safety, which the Capitol Police have investigated. Advisory Opinion Request at  
26 AOR001. You have consulted with the Office of the House Sergeant at Arms about these

1 threats, and they have recommended installation of a home security system, including  
2 cameras for a detached garage and surrounding your home. *Id.* The additional wiring  
3 and lighting would provide electricity to the cameras and enough light for them to pick  
4 up images, and therefore would be necessary for these recommended security measures  
5 to function properly. *Id.* You state that the additional wiring and lighting are intended  
6 solely to support the effectiveness of the security system, and are not intended for the  
7 purpose of improving your home. *Id.*

8 ***Question Presented***

9       *May Escobar for Congress use excess campaign funds to pay the costs of lighting*  
10      *and wiring required as part of a residential security system at your home?*<sup>1</sup>

11 ***Legal Analysis and Conclusion***

12       Yes, Escobar for Congress may use campaign funds to pay for costs of wiring and  
13 lighting that are necessary for the operation of a residential security system at your home  
14 as recommended by the House Sergeant at Arms, without such payments constituting  
15 prohibited conversion to personal use of campaign funds.

16       The Act identifies six categories of permissible uses of contributions accepted by  
17 a federal candidate, two of which are “ordinary and necessary expenses incurred in  
18 connection with the duties of the individual as a holder of Federal office,” and “any other

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<sup>1</sup> The advisory opinion request asks whether members of Congress may use campaign funds for the proposed residential security costs. Commission regulations provide that requests regarding the activities of third parties do not qualify as advisory opinion requests. 11 C.F.R. § 112.1(b). As such, the Commission is responding to Representative Escobar’s request only as it applies to her. Other federal officeholders may rely on it to the extent their factual circumstances are materially indistinguishable from those described here. See 11 C.F.R. § 112.5(a)(2).

1 lawful purpose not prohibited by 52 U.S.C. § 30114(b).” 52 U.S.C. § 30114(a); *see also*  
2 11 C.F.R. § 113.2(a)-(e).

3 Under the Act and Commission regulations, contributions accepted by a candidate  
4 may not be converted to “personal use” by any person. 52 U.S.C. § 30114(b)(1); 11 C.F.R.  
5 § 113.2(e). Conversion to personal use occurs when a contribution is used “to fulfill any  
6 commitment, obligation, or expense” of a federal officeholder “that would exist  
7 irrespective” of the officeholder’s duties. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

8 The Act and Commission regulations provide a non-exhaustive list of items that  
9 would constitute conversion to personal use *per se*, none of which applies here. *See* 52  
10 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list,  
11 such as payments for residential security systems, the Commission determines on a case-  
12 by-case basis whether such expenses would fall within the definition of “personal use.”  
13 11 C.F.R. § 113.1(g)(1)(ii). The Commission has long recognized that if a candidate  
14 “can reasonably show that the expenses at issue resulted from campaign or officeholder  
15 activities, the Commission will not consider the use to be personal use.” Personal Use of  
16 Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

17 The Commission has previously concluded that payments for, or improvements  
18 to, a residential security system, under certain circumstances, do not constitute personal  
19 use under the Act and Commission regulations. In Advisory Opinion 2011-17 (Giffords),  
20 Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), members  
21 of Congress faced specific and ongoing threats to the safety of themselves and their  
22 families. The facts presented in those advisory opinions suggested that the threats were  
23 motivated by the requestors’ public roles as federal officeholders, candidates, or both. In

1 all three instances, the Capitol Police recommended specific security upgrades to the  
2 members' homes due to the continuing threats.

3       The Commission concluded in each instance that the threats would not have  
4 occurred had the members not been federal officeholders or candidates, and that the  
5 expenses for the proposed security upgrades would not have existed irrespective of their  
6 duties as federal officeholders or candidates. Therefore, the Commission concluded that  
7 the use of campaign funds to pay for the security upgrades recommended by the Capitol  
8 Police would not constitute a prohibited personal use of campaign contributions under the  
9 Act or Commission regulations. *See* Advisory Opinion 2011-17 (Giffords) at 3;  
10 Advisory Opinion 2011-05 (Terry) at 4; Advisory Opinion 2009-08 (Gallegly) at 4.

11       The Commission has also previously considered the implications of the  
12 heightened threat environment faced by members of Congress collectively, necessitating  
13 increased residential security measures even if an individual member has not received  
14 direct threats. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission  
15 considered information from the House Sergeant at Arms about the threats faced by  
16 members of Congress due to their status as federal officeholders, and the  
17 recommendation of the Capitol Police that members of Congress install or upgrade  
18 residential security systems to protect themselves and their families. In light of that  
19 information, the Commission concluded that certain costs of installing or upgrading home  
20 security systems would constitute ordinary and necessary expenses incurred in  
21 connection with members' duties as federal officeholders, and that therefore members of  
22 Congress may use campaign funds to pay for reasonable costs associated with home  
23 security systems. *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 3. The

1 Commission’s conclusion in that advisory opinion was limited to the use of campaign  
2 funds for “non-structural security devices” and the Commission specifically authorized  
3 the use of campaign funds for the installation or upgrade of “cameras, sensors, distress  
4 devices, and similar non-structural security devices, as well as locks, in and around a  
5 Member’s residence.” *Id.*

6 As in the previous advisory opinions concerning federal officeholders who faced  
7 direct threats, you have also received direct threats since taking office as a Member of  
8 Congress, and the House Sergeant at Arms has recommended that you install specific  
9 security measures at your home in response. AOR001. Similar to the circumstances of  
10 the previous advisory opinions, your need for a residential security system arose due to  
11 your role as a federal officeholder, and the proposed wiring and lighting are “meant  
12 solely for supporting the effectiveness of the security system and not as an  
13 ‘improvement’” to your home. *Id.*; see Advisory Opinion 2011-17 (Giffords) at 2;  
14 Advisory Opinion 2011-05 (Terry) at 2; Advisory Opinion 2009-08 (Gallegly) at 2.  
15 Therefore, the costs of installing the recommended security measures will not constitute a  
16 prohibited personal use of campaign funds.

17 Moreover, even in the absence of specific threats directed at you, you are  
18 currently subject to the heightened threat environment faced by members of Congress  
19 that was considered by the Commission in Advisory Opinion 2017-07 (Sergeant at  
20 Arms). As such, the costs of installing a residential security system as recommended by  
21 the House Sergeant at Arms constitute ordinary and necessary expenses incurred in  
22 connection with your duties as a federal officeholder, and are a permissible use of  
23 campaign funds.

1       The specific recommendations of the Sergeant at Arms in your case require  
2 installing additional wiring and lighting around your home and detached garage.  
3 AOR001. While these particular costs may not, on their face, fall within the category of  
4 “non-structural security devices” authorized in Advisory Opinion 2017-07 (Sergeant at  
5 Arms), the recommended security cameras would not function properly without the  
6 additional wiring and lighting. As such, these costs constitute an integral part of an  
7 ordinary and necessary expense that may be paid with campaign funds under the Act. *Id.*  
8 Accordingly, Escobar for Congress may use campaign funds to pay those costs without  
9 such payment resulting in a prohibited conversion of campaign funds to personal use.

10       This response constitutes an advisory opinion concerning the application of the  
11 Act and Commission regulations to the specific transaction or activity set forth in your  
12 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change  
13 in any of the facts or assumptions presented, and such facts or assumptions are material to  
14 a conclusion presented in this advisory opinion, then the requestor may not rely on that  
15 conclusion as support for its proposed activity. Any person involved in any specific  
16 transaction or activity which is indistinguishable in all its material aspects from the  
17 transaction or activity with respect to which this advisory opinion is rendered may rely on  
18 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or  
19 conclusions in this advisory opinion may be affected by subsequent developments in the  
20

1 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

2 Any advisory opinions cited herein are available on the Commission's website.

3

4 On behalf of the Commission,

5

6 Shana M. Broussard

7 Chair