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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 21-19-C**  
**AGENDA ITEM**  
**For meeting of March 25, 2021**  
**SUBMITTED LATE**

March 25, 2021

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by NFS*  
Acting General Counsel

Neven F. Stipanovic *NFS*  
Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

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Attorney

Subject: Draft AO 2021-03 (NRSC and NRCC) – Second Revised Draft A

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Attachment

1 ADVISORY OPINION 2021-03

2

3 Jessica Furst Johnson, Esq.  
4 Chris Winkelman, Esq.  
5 Holtzman Vogel Josefiak Torchinsky PLLC  
6 15405 John Marshall Highway  
7 Haymarket, VA 20169

**SECOND REVISED DRAFT A**

8

9 Dear Ms. Johnson and Mr. Winkelman:

10 We are responding to your advisory opinion request on behalf of the National  
11 Republican Senatorial Committee (the “NRSC”) and the National Republican  
12 Congressional Committee (the “NRCC”) regarding the application of the Federal  
13 Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations  
14 to the proposed use of the campaign funds of the members of Congress who comprise the  
15 NRSC and NRCC to pay for personal security to protect themselves and their families.  
16 The Commission concludes that the proposed use of campaign funds for bona fide,  
17 legitimate, professional personal security personnel against threats arising from the  
18 members’ status as officeholders is a permissible use of campaign funds under the Act  
19 and Commission regulations.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on  
22 January 27, 2021, on public disclosure reports filed with the Commission, and on  
23 statements made by your counsel at the Commission’s March 25, 2021 public meeting.

1           The NRSC and NRCC are national party committees. Advisory Opinion  
2 Request at AOR002.<sup>1</sup> The NRSC is comprised of all sitting Republican members of the  
3 United States Senate, and the NRCC is comprised of all sitting Republican members of  
4 the United States House of Representatives. *Id.* The NRSC’s and NRCC’s primary  
5 functions are to aid in the election of Republican candidates for office, and in that role the  
6 NRSC and NRCC provide guidance to Republican candidates for federal office and  
7 officeholders. *Id.* The NRSC and NRCC seek this advisory opinion “on behalf of their  
8 Members currently serving in federal office.”

9           The request lists numerous instances of “concrete threats of physical violence  
10 against Members and their families” and responses by law enforcement agencies, going  
11 back several years and continuing to the present, and the “worsened” threat environment  
12 as assessed by the Capitol Police. *Id.* AOR003-007. In response to the recent and  
13 ongoing threats of physical violence against senators and representatives and their  
14 families due to their status as officeholders, some officeholders have considered  
15 increasing security measures, including hiring personal security personnel. AOR002.  
16 Senators’ and Representatives’ “vulnerability to potential threats is significantly  
17 heightened when they are away from home,” while the responsibilities of their offices  
18 require them and their families to appear frequently in public settings. AOR005. Thus  
19 “the most practical and effective solution for protecting the safety of Members and their  
20 families is the employment of personal security personnel.” *Id.* “The request would only

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<sup>1</sup> See also NRSC, FEC Form 1 (Statement of Organization) (filed Oct. 3, 2020), <https://docquery.fec.gov/pdf/753/202010039285004753/202010039285004753.pdf>; NRCC, FEC Form 1 (Statement of Organization) (filed Feb. 5, 2021), <https://docquery.fec.gov/pdf/441/202102059427031441/202102059427031441.pdf>.

1 apply in those instances where federal agents are not protecting the Member or Member's  
2 family, and in no way would any private personnel retained pursuant to this request  
3 interfere with the operations of federal law enforcement agencies." AOR002.

4

5 ***Question Presented***

6 *May the Members of the United States Senate and United States House of*  
7 *Representatives that comprise the NRSC and NRCC permissibly use campaign funds to*  
8 *pay for bona fide, legitimate, professional personal security personnel to protect both the*  
9 *Member and the Member's immediate family due to threats arising from his or her*  
10 *officeholder status ?*

11 ***Legal Analysis and Conclusion***

12 Yes, Members of the United State Senate and United States House of  
13 Representatives that comprise the NRSC and the NRCC may use campaign funds to pay  
14 for bona fide, legitimate, professional personal security personnel to protect themselves  
15 and their immediate families due to threats arising from their status as officeholders when  
16 they are not otherwise being protected by federal law enforcement agents or the United  
17 States Capitol Police.<sup>2</sup>

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

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<sup>2</sup> As indicated in the request, "immediate family" means members of the officeholder's household, including a spouse, minor children, or other relatives who normally reside with the officeholder. AOR001 n.3

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         The Commission has issued a number of advisory opinions authorizing the use of  
4 campaign funds to protect against threats to officeholders’ physical safety, on the grounds  
5 that the need for such security expenses would not exist if not for the officeholders’  
6 activities or duties. In Advisory Opinion 2020-06 (Escobar), Advisory Opinion 2011-17  
7 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08  
8 (Gallegly), members of Congress faced specific and ongoing threats to the safety of  
9 themselves and their families. The facts presented in those advisory opinions suggested  
10 that the threats were motivated by the requestors’ public roles as federal officeholders,  
11 candidates, or both.

12         The Commission concluded in each instance that the expenses for the proposed  
13 security upgrades would not have existed irrespective of the requestors’ duties as federal  
14 officeholders or candidates. Therefore, the Commission concluded that the use of  
15 campaign funds to pay for the security upgrades was permissible under the Act or  
16 Commission regulations. *See* Advisory Opinion 2020-06 (Escobar) at 3; Advisory  
17 Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory  
18 Opinion 2009-08 (Gallegly) at 4.

19         The Commission has also previously considered the implications of the  
20 heightened threat environment faced by Members of Congress collectively, necessitating  
21 increased residential security measures even if an individual Member has not received  
22 direct threats. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission  
23 considered information from the House Sergeant at Arms about the threats faced by

1 Members of Congress due to their status as federal officeholders, and the  
2 recommendation of the Capitol Police that Members of Congress install or upgrade  
3 residential security systems to protect themselves and their families. In light of that  
4 information, the Commission concluded that certain costs of installing or upgrading home  
5 security systems would constitute ordinary and necessary expenses incurred in  
6 connection with Members' duties as federal officeholders, and that therefore Members of  
7 Congress may use campaign funds to pay for reasonable costs associated with home  
8 security systems. *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

9         Here, the Commission considers the need for officeholders to take proactive  
10 measures to protect themselves and their immediate families due to threats arising from  
11 their status as officeholders. Similar to the need for increased residential security, the  
12 need for personal security for officeholders and their immediate family members in the  
13 context requested arises due to officeholders' roles as elected officials. Under these  
14 circumstances, the reasonable costs of bona fide, legitimate, professional personal  
15 security personnel for officeholders and their immediate family members constitute  
16 ordinary and necessary expenses incurred in connection with officeholders' duties and  
17 are a permissible use of campaign funds under the Act and Commission regulations.

18         Accordingly, the Members that comprise the NRSC and NRCC may use  
19 campaign funds to pay for bona fide, legitimate, professional personal security personnel  
20 to protect themselves and their immediate families due to threats arising from their status  
21 as officeholders, when federal agents are not protecting the Members or the Members'  
22 families. The Commission emphasizes this conclusion is based on the information  
23 provided about security threats that exist due to the Members' duties as federal

1 officeholders. *See* Advisory Opinion 2017-07 (Sergeant at Arms); Advisory Opinion  
2 2011-17 (Giffords) at 3.

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

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On behalf of the Commission,

Shana M. Broussard  
Chair