



FEDERAL ELECTION COMMISSION

Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Office of the Commission Secretary <sup>VFV</sup>

**DATE:** April 12, 2023

**SUBJECT:** Comment Regarding AOR 2023-01 (U.S. Rep. Nanette Diaz Barragán)

Attached is a comment received from Perkins Coie on behalf of the requestor. This matter is on the April 19, 2023 Open Meeting Agenda.

**Attachment**

**RECEIVED**

By Office of the Commission Secretary at 4:45 pm, Apr 12, 2023

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**RECEIVED**

By Office of General Counsel at 4:21 pm, Apr 12, 2023

**Via E-Mail**

April 12, 2023

Lisa J. Stevenson, Esq.  
Acting General Counsel  
Office of General Counsel  
Federal Election Commission  
1050 First Street, N.E.  
Washington, D.C. 20463  
[ao@fec.gov](mailto:ao@fec.gov)

**Re: Comment on Advisory Opinion Request 2023-01**

Dear Ms. Stevenson:

We submit this comment on behalf of Representative Nanette Diaz Barragán and ask the Commission to consider it pursuant to 11 C.F.R. § 112.3.

Representative Barragán understands that she has an independent obligation to comply with House rules. Accordingly, before submitting the request, she consulted with the responsible offices of the House. She obtained guidance from nonpartisan professional staff at the Committee on Ethics that there is no express prohibition in House rules concerning her use of principal campaign funds to pay for other Members' travel for official purposes, and that, so long as she also follows FEC guidance on the use of principal campaign funds to pay for other Members' travel to official Congressional Hispanic Caucus events, there would be no risk of violating House rules. When advised that the question also implicates the Commission's jurisdiction, Representative Barragán made the instant request.<sup>1</sup>

Consistent with the law governing the advisory opinion process, Representative Barragán asks the Commission only whether her proposed use of funds would comply with the Federal Election Campaign Act of 1971 ("the Act") and Commission regulations.<sup>2</sup> She recognizes—as the

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<sup>1</sup> See Advisory Opinion Request 2023-01 ("Request") at 1 n.1. See also U.S. House of Representatives Comm. on Ethics, House Ethics Manual 176 (2022), <https://ethics.house.gov/sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf> ("When a Member wishes to use campaign funds for a purpose on which the Standards Committee has taken a position but the FEC has not, the Member should consult with the FEC before proceeding.")

<sup>2</sup> See 52 U.S.C. § 30108(b); 11 C.F.R. § 112.4(d) (barring the Commission from issuing any opinion of an advisory nature except concerning the application of the Act, of chapter 95 or chapter 96 of title 26, or of Commission regulations).

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Commission has consistently and repeatedly affirmed—that the Commission may only speak to the actual or potential application of the statutes and regulations within its jurisdiction.<sup>3</sup> Having been presented with a complete, written request regarding the application of the Act and Commission regulations, the Commission must respond as to those matters.<sup>4</sup> In light of Chairman Steil’s views, which Representative Barragán had no reason to be aware of before he submitted his April 4, 2023 letter to the Commission, she will consult again with CHA before her campaign makes any specific payment.<sup>5</sup>

Representative Barragán made her request only after her inquiries and a review of House rules and regulations led her reasonably to believe that her proposed activity would comply with House rules. The April 4 letter cites page 2 of the *Eligible Congressional Member Organizations Handbook* as relevant authority:

9. Except where authorized by the Committee on Ethics, campaign funds may not pay for an ECMO’s official and representational activities.<sup>6</sup>

This passage is virtually identical to one contained in the *Member’s Congressional Handbook*:

12. Except where authorized by the Committee on Ethics, campaign funds may not pay for a Member’s official and representational activities.<sup>7</sup>

However, Members commonly use principal campaign committee funds to defray official travel expenses. The Ethics Committee advises: “A Member may use campaign funds to pay official or

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<sup>3</sup> See *id.* See also, e.g., Advisory Opinion 2007-18 (Rangel) (expressing “no opinion regarding application of the rules of the House of Representatives to the proposed activity because those questions are not within the Commission’s jurisdiction”). Accord Advisory Opinion 2007-05 (Iverson); Advisory Opinion 2006-35 (Kolbe); Advisory Opinion 2005-11 (Cunningham); Advisory Opinion 1997-02 (Skaggs/LaHood).

<sup>4</sup> See 52 U.S.C. 30108(a)(1).

<sup>5</sup> As noted in the request, the events in question will be policy events, in which Members will hear directly from constituents and stakeholders on issues of importance to Latino communities, and discuss legislative and policy work. Representative Barragán proposes to go beyond CHA and Ethics Committee requirements and obtain the travelers’ agreement that they will not engage in any campaign-related activity at the point of destination besides incidental contacts. See Request at 2.

<sup>6</sup> U.S. House of Representatives Comm. on House Administration, *Eligible Congressional Member Organizations Handbook 2* (2023), [https://cha.house.gov/sites/evo-subsites/republicans-cha.house.gov/files/evo-media-document/2021\\_117th\\_eligible\\_congressional\\_member\\_organizations\\_2\\_16.pdf](https://cha.house.gov/sites/evo-subsites/republicans-cha.house.gov/files/evo-media-document/2021_117th_eligible_congressional_member_organizations_2_16.pdf).

<sup>7</sup> U.S. House of Representatives Comm. on House Administration, *Member’s Congressional Handbook 2* (2023), <https://cha.house.gov/sites/evo-subsites/republicans-cha.house.gov/files/evo-media-document/2023-03-31-members-congressional-handbook.pdf>.

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officially-related travel expenses. This authority is especially useful for travel that is official in nature, but the expenses of which may not be payable from official allowances ...”<sup>8</sup>

Thus, rather than reflecting a unique restriction on Congressional Member Organization travel, the governing rule implements the general limits on supplementing official resources with private funds, which the Ethics Committee enforces. While the House long operated under a near-absolute prohibition on unofficial office accounts, the governing statute and House rule were changed in 2003 and 2005, respectively, to permit the use of principal campaign committee funds to pay for official expenses, except when involving communications, services, office space, furniture, equipment, and information technology services other than handheld communications devices.<sup>9</sup> The Ethics Committee’s current guidance reflects this change and CHA’s regulations are consistent with it.

We respectfully request that the Commission address the narrow question presented. It need not and indeed cannot opine on matters within the exclusive jurisdiction of the House of Representatives. Representative Barragán’s request is simple: she seeks only to confirm that her campaign’s proposed payment of travel expenses to attend official Caucus events is consistent with the Act and Commission regulations.

We appreciate the Commission’s consideration of these views.

Very truly yours,



Brian G. Svoboda  
Antoinette M. Fuoto  
Counsel to Representative Nanette Diaz Barragán

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<sup>8</sup> U.S. House of Representatives Comm. on Ethics, House Ethics Manual 176 (2022), <https://ethics.house.gov/sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf>.

<sup>9</sup> See 2 U.S.C. § 503(d); House R. 24 cl. 1(b); *see also* House Ethics Manual at 174.