



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Office of Commission Secretary *LES*

**DATE:** April 19, 2023

**SUBJECT:** *Ex Parte* Communication Advisory Opinion 2023-01  
(Diaz Barragán)

Transmitted herewith is an *ex parte* communication on April 18, 2023 with Chair Dara Lindenbaum, Vice Chairman Sean J. Cooksey, Commissioner Shana M. Broussard, Commissioner Allen Dickerson, Commissioner James E. "Trey" Trainor III, and Commissioner Ellen L. Weintraub regarding the above matter.

**Attachment**

**From:** [Hays, Caleb](#)  
**To:** [Dara Lindenbaum](#); [Sean Cooksey](#); [AO](#)  
**Cc:** [Allen Dickerson](#); [Trey Trainor](#); [Ellen Weintraub](#); [Shana Broussard](#); [Duane Pugh](#); [Monahan, Tim](#); [Schwalb, Janet](#); [Carney, Ryan](#); [O'Keefe, Kevin](#)  
**Subject:** Re: Advisory Opinion Request 2023-01 (Diaz Barragán)  
**Date:** Tuesday, April 18, 2023 6:59:38 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[Correspondence to FEC re ECMOs and AOR 2023-01 Second \(Diaz Barragan\) \(Apr 18 2023\).pdf](#)

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Chair Lindenbaum and Vice Chair Cooksey,

Please see the attached correspondence from Rep. Bryan Steil, Chairman of the U.S. House Committee on House Administration, with respect to Advisory Opinion Request 2023-01 (Diaz Barragán).<sup>1</sup>

Caleb Hays

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[1] See *Ex Parte* Communication Advisory Opinion 2023-01 (Diaz Barragán) (March 29, 2023), [https://www.fec.gov/files/legal/aos/2023-01/202301C\\_1.pdf](https://www.fec.gov/files/legal/aos/2023-01/202301C_1.pdf); *Ex Parte* Communication Advisory Opinion 2023-01 (Diaz Barragán) (April 4, 2023), [https://www.fec.gov/files/legal/aos/2023-01/202301C\\_2.pdf](https://www.fec.gov/files/legal/aos/2023-01/202301C_2.pdf). See also Comment Regarding AOR 2023-01 (U.S. Rep. Nanette Diaz Barragán) (April 12, 2023), [https://www.fec.gov/files/legal/aos/2023-01/202301C\\_3.pdf](https://www.fec.gov/files/legal/aos/2023-01/202301C_3.pdf).

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**From:** Hays, Caleb [REDACTED]  
**Date:** Tuesday, April 4, 2023 at 4:00 PM  
**To:** Dara Lindenbaum [REDACTED], Sean Cooksey [REDACTED]  
**Cc:** Allen Dickerson [REDACTED], Trey Trainor [REDACTED],  
[REDACTED]  
Duane Pugh [REDACTED], Monahan, Tim [REDACTED], Schwalb, Janet [REDACTED], Carney, Ryan [REDACTED],  
O'Keefe, Kevin [REDACTED]  
**Subject:** Re: Advisory Opinion Request 2023-01 (Diaz Barragán)

Chair Lindenbaum and Vice Chair Cooksey:

Please see the attached correspondence from Rep. Bryan Steil, Chairman of the U.S. House Committee on House Administration, with respect to Advisory Opinion Request 2023-01 (Diaz Barragán).<sup>1</sup>

Caleb Hays

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[1] *See Ex Parte* Communication Advisory Opinion 2023-01 (Diaz Barragán) (March 29, 2023), [https://www.fec.gov/files/legal/aos/2023-01/202301C\\_1.pdf](https://www.fec.gov/files/legal/aos/2023-01/202301C_1.pdf).

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**From:** Hays, Caleb [REDACTED]  
**Date:** Wednesday, March 29, 2023 at 3:55 PM  
**To:** Allen Dickerson [REDACTED]  
**Subject:** Advisory Opinion Request 2023-01 (Diaz Barragán)

Commissioner Dickerson,

Please be advised that correspondence with respect to Advisory Opinion Request 2023-01 (Diaz Barragán) is forthcoming from the U.S. House Committee on House Administration.

Caleb Hays

—  
**Caleb J. Hays**  
General Counsel & Deputy Staff Director  
Committee on House Administration  
[REDACTED]

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CHAIRMAN

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One Hundred Eighteenth  
Congress of the United States  
House of Representatives

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April 18, 2023

The Hon. Dara Lindenbaum  
Chair  
Federal Election Commission  
1050 First Street, N.W.  
Washington, D.C. 20463

The Honorable Sean J. Cooksey  
Vice-Chair  
Federal Election Commission  
1050 First Street, N.W.  
Washington, D.C. 20463

**Re: Advisory Opinion Request 2023-01 (Diaz Barragán)**

Dear Chair Lindenbaum and Vice-Chair Cooksey:

The Committee has reviewed the April 12, 2023, comment provided by counsel for Rep. Diaz Barragán concerning her request for an advisory opinion from the Commission with respect to the use of campaign funds by an eligible congressional member organization.

While the Committee commends Ms. Diaz Barragán for her diligent efforts to comply with complex law, rules, and regulations in this space, I am compelled to write again to confirm that it is the Committee on House Administration that regulates eligible congressional member organizations (ECMOs), including their funding. **Indeed, regardless of any action taken by the Federal Election Commission, no ECMO may use campaign funds to support the activities described in Advisory Opinion Request 2023-01 without subsequent action by the Committee on House Administration.**<sup>1</sup>

As acknowledged by the Committee in its April 4, 2023, correspondence, the Committee on Ethics (Ethics) is involved in determining for the whole House the official purposes for which campaign funds may be used. The Committee agrees with counsel for Ms. Diaz Barragán that the language used in the *Eligible Congressional Member Organizations Handbook (Handbook)* is simply an acknowledgement of Ethics' general operations in this space and not a unique exception to the regulations governing the operations of ECMOs.

In relevant portion, the *Handbook* states, “[e]xcept where authorized by the Committee on Ethics, campaign funds may not pay for an ECMO’s official and representational expenses[]” (the “Ethics Exception”). Further, the *Handbook* notes that ECMOs may engage only in “official and representational” activities but not in any political, personal, or otherwise non-official activity.<sup>2</sup> Therefore, the restriction is clear: Except for the limited number of *official* activities laid out in the *House Ethics Manual*<sup>3</sup> for which an ECMO may use a Member’s campaign funds,<sup>4</sup> an ECMO may not otherwise use campaign funds.

<sup>1</sup> *Eligible Congressional Member Organization Handbook* [hereinafter *Handbook*] 2 (Feb. 10, 2021). See also clause 1(k) of Rule X of the Rules of the U.S. House of Representatives. For an explanation of the interplay between the relevant jurisdictions of the Committee on House Administration (CHA) and the Committee on Ethics (Ethics), please refer to the Committee’s letter dated April 4, 2023.

<sup>2</sup> *Handbook* 2.

<sup>3</sup> See also 2 U.S.C. § 503 (d).

<sup>4</sup> These permissible activities include the following:

(1) “Expenses of a Motor Vehicle That Is Used for *Official* House Travel”;

In fact, the *House Ethics Manual* repeats the Committee on House Administration’s regulation in substantive portion:

Congressional Member Organizations (“CMOs”) are **official** House entities that have no independent funding, and campaign funds may not be used to provide funding for, or otherwise directly support such organizations (other than food and beverage expenses at meetings).” However, Member or staff involvement in CMOs may be supported with the use of campaign funds, subject to the [limitations described on the previous pages].<sup>5</sup>

Indeed, as counsel notes, the *House Ethics Manual* permits the use of campaign funds to defray the “[e]xpenses of **official** or **officially**-[r]elated travel.”<sup>6</sup> And the Committee on Ethics certainly could include in its *Manual* additional permissible uses of campaign funds for **official** activities.<sup>7</sup>

But neither the existing permissions nor additional permissions would control because it is the Committee on House Administration that determines whether an activity qualifies as “**official**” under its regulations.<sup>8</sup> As detailed in the Committee’s earlier correspondence, the Committee on House Administration has determined that travel by ECMOs is not an **official** activity.<sup>9</sup>

Therefore, neither the Ethics Exception in the *Handbook*, nor the cited provisions from the *House Ethics Manual* with respect to the use of campaign funds for **official** purposes apply.<sup>10</sup> Both exceptions, as well as Rule XXIV of the Rules of the U.S. House of Representatives, apply only to the use of campaign funds for **official** activities. Travel by a Member on behalf of an ECMO is not **official**; therefore, no campaign funds may be used.<sup>11</sup>

As noted in the *Eligible Congressional Member Organizations Handbook*, the Committee on House Administration stands ready to provide advice and guidance to Members of the House of Representatives on matters within its jurisdiction. The Committee is strongly committed to doing its part to ensure that each of the entities that regulate activity in this space work cooperatively so that Members and their staffs are not presented with conflicting or incomplete information. The Committee appreciates the Federal Election Commission’s attention to and careful consideration of this matter.<sup>12</sup>

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- (2) “Expenses of a Cell Phone or BlackBerry That Is Used for **Official** House Business”;
  - (3) “Expenses of **Official** or **Officially**-Related Travel”;
  - (4) “Expenses in Connection With **Official** House Events”; and
  - (5) “Gifts for Foreign Dignitaries”. *House Ethics Manual* 183-85.

In each case, campaign funds may only be used in furtherance of “**official**” activities. As noted in the text, CHA has determined that travel by ECMOs is not “**official**” in nature, so the Ethics Exception does not apply.

<sup>5</sup> *House Ethics Manual* 185.

<sup>6</sup> *Id.* at 184.

<sup>7</sup> See also clause 1(k) of Rule X of the Rules of the U.S. House of Representatives.

<sup>8</sup> See 2 U.S.C. 5341 (d). The Members’ Representational Allowance, which Members may use to fund the activities of ECMOs, may only be used for those activities deemed “**official**” by CHA. As detailed in the Committee’s earlier letter, this authority extends to the regulation of all operations of ECMOs.

<sup>9</sup> *Handbook* 3.

<sup>10</sup> *House Ethics Manual* (2022) 182.

<sup>11</sup> See *Handbook* 2-3.

<sup>12</sup> Emphasis has been added throughout this letter.

The Hon. Dara Lindenbaum  
The Hon. Sean J. Cooksey  
April 18, 2023  
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Should you have questions or require additional information, please contact Caleb Hays, Committee on House Administration General Counsel and Deputy Staff Director.

Sincerely,



Bryan Steil  
Chairman  
Committee on House Administration

BGS/cjh

CC: The Hon. Joseph D. Morelle, Ranking Member, Committee on House Administration  
The Hon. Laurel Lee, Chair, Subcommittee on Elections, Committee on House Administration  
The Hon. Terri Sewell, Ranking Member, Subcommittee on Elections, Committee on House Administration  
The Hon. Michael Guest, Chairman, Committee on Ethics  
The Hon. Susan Wild, Ranking Member, Committee on Ethics  
The Honorable Members of the Federal Election Commission