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FEDERAL ELECTION COMMISSION  
Washington, DC

**AGENDA DOCUMENT NO. 24-37-B**  
**AGENDA ITEM**  
**For meeting of September 19, 2024**

September 12, 2024

**MEMORANDUM**

TO: The Commission

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

Neven F. Stipanovic *NFS*  
Associate General Counsel

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Assistant General Counsel

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Attorney

Subject: AO 2024-09 (Nanette Barragán and Barragán for Congress) - Draft B

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.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00pm (Eastern Time) on September 18, 2024.

Members of the public may also 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 2024-09

2

3 Rebecca J. Olson, Esq.  
4 Greenberg Traurig, LLP  
5 400 Capitol Mall, Suite 2400  
6 Sacramento, CA 95814

**DRAFT B**

7

8 Dear Ms. Olson:

9

We are responding to your advisory opinion request on behalf of Congresswoman  
10 Nanette Barragán and Barragán for Congress concerning the application of the Federal Election  
11 Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the use of  
12 campaign funds to pay for eldercare expenses incurred by Congresswoman Barragán as the  
13 primary caretaker of her mother. As explained further below, the Commission concludes that  
14 Congresswoman Barragán may use campaign funds to pay eldercare expenses to the extent that  
15 they are incurred as a direct result of her campaign activity for her own campaign. The  
16 Commission also concludes that Congresswoman Barragán may not use campaign funds to pay  
17 eldercare expenses she incurs when she is: (1) traveling in her official capacity as Chair of the  
18 Congressional Hispanic Caucus; (2) traveling for official business out of state or internationally,  
19 such as for a Congressional Member Delegation (“CODEL”); (3) traveling to, from, or in  
20 Washington, D.C. or her district to attend events in her official capacity as a member of  
21 Congress; or (4) in Washington, D.C. to cast votes in Congress.

22 ***Background***

23 The facts presented in this advisory opinion are based on your letter received on July 18,  
24 2024, and email dated August 6, 2024.

1           Congresswoman Barragán serves California’s 44<sup>th</sup> Congressional District in the U.S.  
2 House of Representatives.<sup>1</sup> Her principal campaign committee is Barragán for Congress.

3           Congresswoman Barragán’s mother suffers from several severe health conditions.<sup>2</sup> Due  
4 to her conditions, she requires “constant round-the-clock 24-hour care and supervision.”<sup>3</sup> In late  
5 2021, Congresswoman Barragán moved into her mother’s home in Los Angeles to serve as her  
6 caregiver. Congresswoman Barragán cared for her mother and voted by proxy in Congress until  
7 the option to do so ended in January 2023, at which point she returned to her duties in  
8 Washington, D.C. and arranged for additional caregivers to ensure full-time care for her mother.  
9 Congresswoman Barragán continues to reside in her mother’s home, holds her mother’s power of  
10 attorney, and manages her mother’s care.

11           Because her mother is eligible for benefits under California’s Medi-Cal program,  
12 Congresswoman Barragán has been able to secure the services of several caregivers provided by  
13 Los Angeles County’s In-Home Supportive Services (“In-Home”) program and the Home and  
14 Community Based Services (“Community Services”) program.<sup>4</sup> Under these programs,  
15 caregivers are paid hourly to care for Congresswoman Barragán’s mother when Congresswoman  
16 Barragán is away from their home.<sup>5</sup> Due to significant turnover among In-Home program  
17 workers, however, and missed shifts for illnesses or other reasons, “it can be difficult to ensure

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<sup>1</sup> AOR001.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Congresswoman Barragán registered as a caregiver herself under the In-Home program in 2022 and provided approximately 1600 hours of care for her mother. AOR001-2.

1 constant, continual care.”<sup>6</sup> Moreover, gaps in coverage “can happen without notice.”<sup>7</sup>  
2 Congresswoman Barragán covers gaps in coverage by either caring for her mother herself or  
3 paying for a caregiver through a private agency. In 2023, Congresswoman Barragán’s out-of-  
4 pocket expenses to cover gaps in her mother’s care were nearly \$27,000.

5 Congresswoman Barragán expects that gaps in coverage will continue and would like to  
6 use campaign funds to pay for caregiving to cover gaps that arise when she is not able to provide  
7 the care herself for campaign or officeholder-related reasons. She provides five factual  
8 scenarios, which appear in the questions below.

9 ***Questions Presented***

10 1. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother’s*  
11 *caregiving when Congresswoman Barragán is in her district or traveling to other*  
12 *destinations for campaign events such as fundraising events, meetings with campaign*  
13 *supporters, traveling with presidential or other congressional candidates, or to the*  
14 *national convention?*

15  
16 2. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother’s*  
17 *caregiving when Congresswoman Barragán is:*

18  
19 a. *Traveling in her official capacity as Chair of the Congressional Hispanic*  
20 *Caucus?*

21  
22 b. *Traveling for official business out of state or internationally, such as for a*  
23 *CODEL?*

24  
25 c. *Traveling to, from, or in Washington, D.C. or her district to attend events in her*  
26 *official capacity as a member of Congress?*

27  
28 d. *In Washington, D.C. to cast votes in Congress?*  
29

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<sup>6</sup> AOR002.

<sup>7</sup> *Id.*

1 ***Legal Analysis***

2 1. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother’s*  
3 *caregiving when Congresswoman Barragán is in her district or traveling to other*  
4 *destinations for campaign events such as fundraising events, meetings with campaign*  
5 *supporters, traveling with presidential or other congressional candidates, or to the*  
6 *national convention?*

7  
8 Yes, Congresswoman Barragán may use campaign funds to pay for gaps in her mother’s  
9 caregiving when Congresswoman Barragán is in her district or traveling to other destinations for  
10 campaign events such as fundraising events, meetings with campaign supporters, traveling with  
11 presidential or congressional candidates, or to the national convention to the extent the expenses  
12 are incurred as a direct result of campaign activity for her own campaign, because these expenses  
13 would not exist irrespective of Congresswoman Barragán’s campaign.

14 Under the Act and Commission regulations, a candidate and individual holding federal  
15 office may use campaign funds for several specific purposes, including (1) “for otherwise  
16 authorized expenditures in connection with the campaign for Federal office of the candidate or  
17 individual,” (2) “for ordinary and necessary expenses incurred in connection with duties of the  
18 individual as a holder of Federal office,” and (3) for any other lawful purpose” that does not  
19 convert the campaign funds to “personal use.”<sup>8</sup> The Act and Commission regulations define  
20 “personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense  
21 of a person that would exist irrespective of the candidate’s election campaign or individual’s  
22 duties as a holder of Federal office.”<sup>9</sup>

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<sup>8</sup> 52 U.S.C. § 30114(a)(1)-(2), (a)(6); *see also* 11 C.F.R. § 113.2(a), (e).

<sup>9</sup> 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.5(g)(1).

1           The Act and Commission regulations provide a non-exhaustive list of expenses that,  
2 when paid using campaign funds, constitute *per se* personal use.<sup>10</sup> For expenses not included on  
3 this list — such as eldercare expenses — the Commission determines, on a case-by-case basis,  
4 whether the use is a prohibited “personal use.”<sup>11</sup> When the Commission engages in a case-by-  
5 case determination, it does so in light of its “long-standing opinion that candidates have wide  
6 discretion over the use of campaign funds.”<sup>12</sup>

7           Although the Commission has not previously addressed in advisory opinions the use of  
8 campaign funds to pay eldercare expenses, the Commission has considered the use of campaign  
9 funds in the context of childcare expenses. The Commission has approved the use of campaign  
10 funds to pay candidates’ childcare expenses incurred when the candidates travel for their own  
11 campaigns,<sup>13</sup> and when their campaign responsibilities and activities for their own campaigns  
12 otherwise prevent them from caring for their children themselves.<sup>14</sup> In these advisory opinions,  
13 the Commission concluded that the candidates could use campaign funds to pay childcare

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<sup>10</sup> See 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

<sup>11</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

<sup>12</sup> Personal Use of Campaign Funds, 60 Fed. Reg. 7867 (Feb. 9, 1995).

<sup>13</sup> Advisory Opinion 2022-07 (Swalwell) at 3 (concluding that candidate could use campaign funds to pay childcare expenses incurred when candidate travels for own campaign to extent expenses are direct result of candidate’s campaign travel, because expenses “would not have existed irrespective of the candidates’ campaigns”); Advisory Opinion 1995-42 (McCrery) at 2 (concluding that candidate could use campaign funds to pay childcare expenses resulting from candidate’s and spouse’s attendance at campaign events because “the childcare expenses [were] incurred only as a direct result of campaign activity and would not otherwise exist”).

<sup>14</sup> Advisory Opinion 2018-06 (Liuba for Congress) at 3 (concluding that candidate who had given up in-home consulting to campaign for Congress could use campaign funds to pay childcare expenses “incurred as a direct result of campaign activity, [because the expenses] would not exist irrespective of” campaign); Advisory Opinion 2019-13 (MJ for Texas) at 3 (concluding that candidate who had left her job to campaign full-time could use campaign funds to pay children’s daycare expenses “to the extent they are a direct result of campaign activity, [because the expenses] would not exist irrespective of” campaign).

1 expenses to the extent that the expenses were a “direct result of campaign activity,” because such  
2 expenses would not have existed irrespective of the candidate’s campaign.<sup>15</sup>

3 Here, similarly, Congresswoman Barragán’s campaign activities as described in the  
4 request will require her to be away from home from time to time. As her mother’s primary  
5 caregiver, Congresswoman Barragán is responsible for ensuring that her mother receives the  
6 necessary care during those times. Congresswoman Barragán also has power of attorney over her  
7 mother, giving her legal responsibility to provide for and manage her mother’s care.<sup>16</sup> When  
8 gaps arise in care previously arranged through the In-Home and Community Service programs  
9 and Congresswoman Barragán’s campaign activities for her own campaign prevent her from  
10 caring for her mother herself, the additional expenses that she incurs in obtaining alternative care  
11 for her mother are a direct result of those campaign activities. Consistent with the Commission’s  
12 conclusions in the childcare advisory opinions discussed above, the Commission concludes that  
13 Congresswoman Barragán may use campaign funds to pay the additional eldercare expenses that  
14 she incurs to the extent that the expenses are the direct result of campaign activities for her own  
15 campaign, because those expenses would not exist irrespective of her campaign

16 2. *May Congresswoman Barragán use campaign funds to pay for gaps in her mother’s*  
17 *caregiving when Congresswoman Barragán is:*

18  
19 a. *Traveling in her official capacity as Chair of the Congressional Hispanic*  
20 *Caucus?*  
21

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<sup>15</sup> Advisory Opinion 2022-07 (Swalwell) at 3-4; Advisory Opinion 2019-13 (MJ for Texas) at 3; Advisory Opinion 2018-07 (Liuba for Congress) at 3; Advisory Opinion 1995-42 (McCrery) at 2; *c.f.* Advisory Opinion 1995-20 (Roemer) at 2 (approving use of campaign funds to pay expenses of candidate’s children to travel with candidate and spouse to campaign events, where such travel is “only required because of the campaign”).

<sup>16</sup> AOR Supp. at 1; *see also* Advisory Opinion 2018-06 (Liuba for Congress) at 3 (observing that requestor was “the full-time caregiver for [her] young children, and, because of [her] campaign activity,” would have to “incur expenses for part-time or full-time childcare.”).

- 1           b. *Traveling for official business out of state or internationally, such as for a*  
2            *CODEL?*  
3  
4           c. *Traveling to, from, or in Washington, D.C. or her district to attend events in her*  
5            *official capacity as a member of Congress?*  
6  
7           d. *In Washington, D.C. to cast votes in Congress?*  
8

9           No, Congresswoman Barragán may not use campaign funds to pay to fill gaps in her  
10 mother’s caregiving that arise when Congresswoman Barragán is away from home in any of  
11 these scenarios, because the expenses would exist irrespective of Congresswoman Barragán’s  
12 duties as a federal officeholder. As such, the use of campaign funds to pay the expenses would  
13 convert the funds to personal use.

14           As noted above, federal officeholders may use campaign funds to defray “ordinary and  
15 necessary expenses incurred in connection with [their] duties . . . as a holder of Federal office.”<sup>17</sup>  
16 The Commission has previously concluded that Congresswoman Barragán may use campaign  
17 funds to pay for travel to attend certain Congressional Hispanic Caucus events in her official  
18 capacity as Caucus Chair because the events were directly connected to her duties as a federal  
19 officeholder.<sup>18</sup> Further, for purposes of this advisory opinion, the Commission assumes that  
20 Congresswoman Barragan’s travel “for official business” out of state or internationally, such as  
21 for CODELs, and to, from, or in Washington, D.C. to attend events “in her official capacity as a  
22 Member of Congress,” as well as her presence in in Washington, D.C. “to cast votes in  
23 Congress,” are directly connected to her duties as a federal officeholder.<sup>19</sup>

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<sup>17</sup> 52 U.S.C. § 30114(a)(2); *see also* 11 C.F.R. § 113.2(a).

<sup>18</sup> Advisory Opinion 2023-01 (Barragán) at 1-2.

<sup>19</sup> AOR002.



1           Commission regulations provide that an officeholder may use campaign funds to pay the  
2 costs of travel for the officeholder (and an accompanying spouse) to participate in a function  
3 directly connected to the officeholder’s *bona fide* official responsibilities, such as a fact-finding  
4 meeting or an event at which the officeholder provides services by making a speech or  
5 appearance in an official capacity.<sup>20</sup> As the Commission has stated previously, expenses  
6 incurred by an officeholder for travel to a function that is directly connected to the officeholder’s  
7 *bona fide* official responsibilities “clearly would not exist irrespective of [the individual’s] . . . .  
8 duties as a Federal officeholder.”<sup>21</sup> Thus, the use of campaign funds to pay those expenses  
9 would not be personal use.

10           Here, however, Congresswoman Barragán does not propose to use campaign funds to  
11 travel to or participate in events in connection with her *bona fide* official responsibilities.  
12 Instead, she proposes to use campaign funds to pay for gaps in her mother’s caregiving that arise  
13 when the Congresswoman is away from home on official business.

14           Although campaign funds may be used to pay the “costs of travel”<sup>22</sup> that are incurred  
15 when an officeholder is away from home in connection with the officeholder’s *bona fide* official  
16 responsibilities, the Commission has generally described travel costs as the costs of the traveler’s  
17 transportation and, sometimes, subsistence (food and lodging).<sup>23</sup> Eldercare expenses do not fall  
18 into either category.

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<sup>20</sup> 11 C.F.R. § 113.2(a)(1).

<sup>21</sup> Personal Use of Campaign Funds, 60 Fed. Reg. at 7872.

<sup>22</sup> 11 C.F.R. § 113.2(a)(1).

<sup>23</sup> See, e.g., *id.* § 113.1(g)(1)(ii)(C) (listing “[t]ravel expenses, including subsistence expenses incurred during travel,” as expenses analyzed on a case-by-case basis for personal use); 100.79 (exempting certain unreimbursed

1           The Commission has previously approved certain proposals to use campaign funds to pay  
2 for an officeholder’s children to travel with the officeholder in connection with the officeholder’s  
3 *bona fide* official responsibilities.<sup>24</sup> The Commission has never, however, approved the use of  
4 campaign funds to pay expenses that are not themselves travel costs but are, instead, merely  
5 incident to an officeholder’s travel. To do so would risk inviting a range of abuses by enabling  
6 officeholders to use campaign funds to pay their personal expenses.

7           In sum, Congresswoman Barragán’s obligation to ensure that her mother receives care  
8 when the Congresswoman is away from home would exist irrespective of her official duties.<sup>25</sup>  
9 Accordingly, the Commission concludes that Congresswoman Barragán may not use campaign  
10 funds to pay for gaps in her mother’s care that arise when the Congresswoman is traveling in her  
11 official capacity as Chair of the Congressional Hispanic Caucus; traveling out of state or  
12 internationally, such as for a CODEL; traveling to, from, or in Washington, D.C. or her district to  
13 attend events as a member of Congress; or when she is in Washington, D.C. to cast votes in  
14 Congress.

15           This response constitutes an advisory opinion concerning the application of the Act and

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personal transportation expenses paid by individuals traveling on behalf of candidates or party committees from definition of “contribution” under Act’s exemption for unreimbursed “travel expenses,” 52 U.S.C. § 30101(8)(b)(iv)); 11 C.F.R. §§ 100.39 (containing parallel exemption from definition of “expenditure”); 9034.4(e)(7) (describing “travel costs” as “[e]xpenditures for campaign-related transportation, food, and lodging by an individual” under Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001-9012).

<sup>24</sup> See, e.g., Advisory Opinion 2005-09 (Dodd) (approving use of campaign funds to pay travel costs of officeholder’s minor children when accompanying their parents traveling to participate in function directly connected to officeholder’s *bona fide* official responsibilities); Advisory Opinion 1997-02 (Skaggs/LaHood) (approving use of campaign funds to pay travel expenses and attendance fees of Members and their spouses and children to participate in Bipartisan Congressional Retreat).

<sup>24</sup> See MUR 7923 (Friends of David Schweikert, *et al.*), Factual and Legal Analysis at 17-18 (finding reason to believe officeholder’s use of campaign funds to pay childcare expenses was personal use).

1 Commission regulations to the specific transactions or activities set forth in the request.<sup>26</sup> The  
2 Commission emphasizes that, if there is a change in any of the facts or assumptions presented,  
3 and such facts or assumptions are material to a conclusion presented in this advisory opinion,  
4 then the requestors may not rely on that conclusion as support for their proposed transactions or  
5 activity. Any person involved in any specific transaction or activity which is indistinguishable in  
6 all its material aspects from the transaction or activity with respect to which this advisory  
7 opinion is rendered may rely on this advisory opinion.<sup>27</sup> Please note that the analysis or  
8 conclusions in this advisory opinion may be affected by subsequent developments in the law  
9 including, but not limited to, statutes, regulations, advisory opinions, and case law. Any  
10 advisory opinions cited herein are available on the Commission’s website.

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On behalf of the Commission,

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Sean J. Cooksey

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Chairman

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<sup>26</sup> See 52 U.S.C. § 30108.

<sup>27</sup> See *id.* § 30108(c)(1)(B).