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Washington, DC 20463

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For meeting of June 24, 2021
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June 21, 2021

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by NFS*
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Subject: Draft AO 2021-06 (Rep. Kelly and DPI) – Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00am (Eastern Time) on June 24, 2021.

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 2021-06
2
3 Charles E. Borden, Esq.
4 Samuel C. Brown, Esq.
5 Holland & Knight
6 800 17th St., NW
7 Suite 1100
8 Washington, DC 20006

DRAFT B

9 Dear Messrs. Borden and Brown:

10 We are responding to your advisory opinion request on behalf of United States
11 Representative Robin Kelly and the Democratic Party of Illinois (“the state party”)
12 concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45
13 (the “Act”), and Commission regulations to Congresswoman Kelly’s election to serve as
14 chair of the Democratic State Central Committee (“central committee”), which governs
15 the state party. The requestors ask whether adopting any one of three proposed
16 governance structures during Congresswoman Kelly’s tenure as chair would permit the
17 state party to raise and spend funds through its non-federal account in amounts and from
18 sources prohibited by the Act but permitted under Illinois law. The requestors further ask
19 whether the Congresswoman’s name and title as chair may be included on the letterhead
20 of solicitations for the non-federal account.

21 The Commission concludes that the state party may raise funds in amounts and
22 from sources prohibited by the Act but permitted under Illinois law through its non-
23 federal account if the non-federal account is administered by a special committee without
24 the review or approval of Congresswoman Kelly and the majority of the special
25 committee’s members are automatically appointed to the special committee by virtue of
26 holding a specific office not appointed by the chair. Under those circumstances, the non-
27 federal account would not be directly or indirectly established, financed, maintained or

1 controlled by, or acting on behalf of, Congresswoman Kelly. The Commission further
2 concludes that Congresswoman Kelly's name and title as chair must not be included on
3 the letterhead of any solicitation that solicits funds in amounts and from sources
4 prohibited by the Act because using her name and title in that manner would identify the
5 solicitation as being sent on Congresswoman Kelly's behalf in violation of the Act's soft
6 money prohibition.

7 ***Background***

8 The facts presented in this advisory opinion are based on your letter dated May 5,
9 2021, email dated May 16, 2021, and the central committee bylaws provided with your
10 letter.

11 The Democratic Party of Illinois is the state political party for the Democratic
12 Party in Illinois. Advisory Opinion Request ("AOR") at AOR001. The state party is
13 governed by the central committee, which consists of 36 members, two from each of the
14 state's 18 congressional districts, directly elected by the voters in those districts.

15 AOR001, AOR011. Among other responsibilities, the central committee is required to:

16 (1) "promote, and aid and assist in, the election of all candidates for public office on the
17 ticket of the Democratic Party in all general elections in the State," (2) develop and
18 maintain public relations for the party, (3) "devise and execute ways and means of
19 financing all activities and to cooperate and work with other segments of Party
20 organization at national and local levels in the development of an integrated and
21 coordinated finance plan for the Party," and (4) plan and conduct the state convention and
22 consider the state convention platform. AOR011-012.

1 On March 3, 2021, Congresswoman Robin Kelly, a member of the U.S. House of
2 Representatives, was elected chair of the central committee. AOR001. Under central
3 committee bylaws, all other officers are members of the central committee and
4 designated by the chair. AOR013. Under the bylaws, the chair is “chief executive
5 officer” for the central committee with “full authority to exercise the executive powers”
6 of the central committee. *Id.* She is authorized to appoint and dismiss “any and all
7 personnel or staff” of the central committee. *Id.* Among other duties, the chair presides
8 over all central committee meetings and, under current bylaws, “serve[s] ex-officio on all
9 committees of the Central Committee with the right to vote.” *Id.* The chair is authorized
10 to establish standing committees, determine the number of appointments for the standing
11 committees, and appoint the members of such committees from the membership of the
12 central committee. AOR014.

13 The state party maintains both a federal account, subject to the Act’s contribution
14 limits, source prohibitions, and reporting requirements, and a non-federal account.
15 AOR003.¹ The non-federal account “long predates” Congresswoman Kelly’s election as
16 chair. AOR004 n.20. Illinois law allows the non-federal account to receive contributions
17 that exceed the Act’s contribution limits and permits the non-federal account to receive
18 contributions from corporations and labor unions, which are prohibited from making
19 contributions under the Act. 10 ILCS 5/9-8.5(c), (g); *see* State of Illinois Board of
20 Elections, Contributions Limits Per Election Cycle at 1 (Jan. 1, 2021);² AOR003.

¹ The state party first registered its federal account with the Commission in 1983. *See*
<https://www.fec.gov/data/committee/C00167015/?tab=filings&cycle=1984>.

² <https://www.elections.il.gov/downloads/campaigndisclosure/pdf/contributionssummary.pdf>.

1 The Act prohibits a federal officeholder or an “entity directly or indirectly
2 established, financed, maintained or controlled by or acting on behalf of 1 or more ...
3 individuals holding federal office” from soliciting, receiving, directing, transferring, or
4 spending funds in connection with “any election other than an election for Federal
5 office,” unless the funds do not exceed the Act’s contribution limits and are not from
6 sources prohibited by the Act. 52 U.S.C. § 30125(e)(1)(B). Given this prohibition, the
7 state party and Congresswoman Kelly propose alternate “governance structures” intended
8 to provide that the congresswoman is “appropriately insulated” from the state party’s
9 non-federal account activities. AOR001-002. Requestors ask whether adopting any one
10 of the proposed structures would be sufficient to permit Congresswoman Kelly to serve
11 in her position as chair of the central committee while still allowing the state party to
12 raise and spend funds through its non-federal account in amounts and from sources
13 prohibited by the Act but permitted under Illinois law. AOR002.

14 For each proposal, the central committee would amend its bylaws to reflect the
15 limits on the chair’s authority, and Congresswoman Kelly would be required to annually
16 certify compliance with those restrictions on her conduct. AOR007-008. Policies would
17 also require annual training and establish recordkeeping requirements for the individuals
18 charged with administering the governance structure adopted. AOR008.

19 For all of the proposed options, Congresswoman Kelly would not supervise or
20 review the work of any officer or employee with respect to that person’s work on non-
21 federal account matters and would be prohibited from terminating an individual’s
22 employment, or otherwise taking adverse employment action against an officer or
23 employee of the state party, for reasons related to that person’s non-federal account work.

1 AOR007-008. Congresswoman Kelly would retain the general authority granted by the
2 bylaws to hire staff and appoint officers to the central committee and dismiss staff who
3 work on the non-federal account for reasons unrelated to their non-federal account work.
4 AOR007-008, AOR013-014.

5 Under all three proposed options, Congresswoman Kelly would not make any
6 contributions or transfers to the non-federal account from her personal funds or her
7 congressional campaign and would not solicit or receive funds on behalf of the non-
8 federal account. AOR007-008; AOR Supplement (“AOR Supp.”) at 001.
9 Congresswoman Kelly would, however, solicit funds on behalf of the state party’s federal
10 account. AOR Supp. at 001. Under all of the proposals, Congresswoman Kelly would
11 retain authority to endorse and campaign for non-federal candidates. AOR009.

12 **A. Option One: Special Committee**

13 Under proposed option one, the state party would establish a special committee,
14 consisting of individuals who are not federal candidates or officeholders, to administer
15 the non-federal account. AOR007. The special committee “would be responsible for the
16 [non-federal account]’s fundraising (including solicitations), and spending (including
17 decisions related to contributions by the [non-federal account], advertising on behalf of
18 candidates, and transfers),” without review or approval by Congresswoman Kelly. *Id.*
19 The special committee would further be authorized to delegate responsibilities to
20 individuals associated with the state party who are not federal candidates or
21 officeholders. *Id.*

1 **B. Option Two: Vice Chair**

2 Under proposed option two, a vice chair would administer the non-federal account
3 and have “complete responsibility for the [non-federal account]’s operations and
4 activities, without the review or approval of Congresswoman Kelly.” *Id.* The vice chair
5 “would be responsible for the [non-federal account]’s fundraising (including
6 solicitations), and spending (including decisions related to contributions by the [non-
7 federal account], advertising on behalf of candidates, and transfers).” AOR008.

8 **C. Option Three: Recusal**

9 Under proposed option three, Congresswoman Kelly would recuse herself from
10 matters involving the non-federal account, including: “fundraising, including
11 solicitations” and “spending, including decisions related to contributions by the [non-
12 federal account], advertising on behalf of candidates, and transfers.” AOR008.

13 ***Questions Presented***

14 1. *Would option one be sufficient to permit Congresswoman Kelly to serve in*
15 *her position as chair of the central committee without precluding the state party from*
16 *raising and spending non-federal funds through the non-federal account? If not, would*
17 *option one be sufficient if the bylaws provided that a majority of special committee*
18 *members would not be appointed to the special committee by the chair, but instead would*
19 *automatically be members of the special committee by virtue of holding a specific office*
20 *not appointed by the chair (e.g., President or Minority Leader of the Illinois State Senate,*
21 *or the Speaker or Minority Leader of the Illinois House of Representatives, as*
22 *applicable)?*

1 2. *Would option two be sufficient to permit Congresswoman Kelly to serve in*
2 *her position as chair of the central committee without precluding the state party from*
3 *raising and spending non-federal funds through the non-federal account?*

4 3. *Would option three be sufficient to permit Congresswoman Kelly to serve*
5 *in her position as chair of the central committee without precluding the state party from*
6 *raising and spending non-federal funds through the non-federal account?*

7 4. *If the Commission finds that one of the three options is sufficient to permit*
8 *Congresswoman Kelly to serve in her position as chair without precluding the state party*
9 *from raising and spending non-federal funds through the non-federal account, may the*
10 *chair be included on state party letterhead for solicitations on behalf of the non-federal*
11 *account, or would the state party be required to have separate letterheads for the federal*
12 *and non-federal accounts?*

13 ***Legal Analysis***

14 1. *Would option one be sufficient to permit Congresswoman Kelly to serve in*
15 *her position as chair of the central committee without precluding the state party from*
16 *raising and spending non-federal funds through the non-federal account? If not, would*
17 *option one be sufficient if the bylaws provided that a majority of special committee*
18 *members would not be appointed to the special committee by the chair, but instead would*
19 *automatically be members of the special committee by virtue of holding a specific office*
20 *not appointed by the chair (e.g., President or Minority Leader of the Illinois State Senate,*
21 *or the Speaker or Minority Leader of the Illinois House of Representatives, as*
22 *applicable)?*

1 Under the circumstances proposed, the non-federal account would not be an entity
2 directly or indirectly established, financed, maintained or controlled by, or acting on
3 behalf of, Congresswoman Kelly if the non-federal account is administered by a special
4 committee without the review or approval of Congresswoman Kelly and the majority of
5 the special committee’s members are automatically appointed to the special committee by
6 virtue of holding a specific office not appointed by the chair. Under those circumstances,
7 the Congresswoman would possess only limited control over the appointment of
8 members of the special committee and would have no personnel control over any officer
9 or employee related to their work on the non-federal account. As a result, the state party
10 could continue to raise and spend funds through its non-federal account in amounts and
11 from sources prohibited by the Act but permitted under Illinois law.

12 Under the Act, as amended by the Bipartisan Campaign Reform Act of 2002
13 (“BCRA”), a federal officeholder or an “entity directly or indirectly established, financed,
14 maintained or controlled by or acting on behalf” of a federal officeholder shall not:

15 (B) solicit, receive, direct, transfer, or spend funds in connection
16 with any election other than an election for Federal office or disburse
17 funds in connection with such an election unless the funds—
18 (i) are not in excess of the amounts permitted with respect to
19 contributions to candidates and political committees ... and
20 (ii) are not from sources prohibited by [the] Act from making
21 contributions in connection with an election for Federal office.

22 52 U.S.C. § 30125(e)(1)(B); *see also* 11 C.F.R. § 300.62. This “soft money” prohibition
23 was one of the “central” provisions of BCRA and “designed to address Congress’

1 concerns about the increasing use of soft money ... to influence federal elections.” *Shays*
2 *v. FEC*, 528 F.3d 914, 918 (D.C. Cir. 2008) (“*Shays III*”) (internal quotations omitted).³

3 To determine whether a federal officeholder directly or indirectly established,
4 finances, maintains, or controls an entity, the Commission examines a non-exclusive list
5 of ten factors set forth in 11 C.F.R. § 300.2(c)(2).⁴ Relevant here, the Commission
6 considers whether a federal officeholder, directly or through an agent, does any of the
7 following: (1) “has the authority or ability to direct or participate in the governance of
8 the entity through provisions of constitutions, bylaws, contracts, or other rules, or through
9 formal or informal practices or procedures”; (2) “has the authority or ability to hire,
10 appoint, demote, or otherwise control the officers, or other decision-making employees or
11 members of the entity”; (3) “provides funds or goods in a significant amount or on an
12 ongoing basis to the entity, such as through direct or indirect payments for administrative,
13 fundraising, or other costs”; (4) “causes or arranges for funds in a significant amount or
14 on an ongoing basis to be provided to the entity”; or (5) “had an active or significant role
15 in the formation of the entity.” *Id.*⁵ The Commission considers the regulatory factors “in
16 the context of the overall relationship between the sponsor and the entity to determine

³ The statute sets forth three exceptions to the soft money prohibition, none of which apply to this request. *See* 52 U.S.C. § 30125(e)(2-4).

⁴ These factors are adapted from the Commission’s regulation at 11 C.F.R. § 100.5(g), which provides factors for determining whether committees are affiliated. *See* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,083-84 (July 29, 2002) (explaining Commission’s decision to adopt affiliation factors).

⁵ Other regulatory factors, such as “[w]hether a sponsor, directly or through its agent, owns controlling interest in the voting stock or securities of the entity,” 11 C.F.R. § 300.2(c)(2)(i), are not relevant to the circumstances of this request.

1 whether the presence of any factor or factors is evidence that the sponsor directly or
2 indirectly established, finances, maintains, or controls the entity.” *Id.*

3 The Commission has determined that a federal candidate may serve as “honorary
4 chairman” of publicly funded state candidates’ campaigns where the campaigns would
5 not engage in any further fundraising. Advisory Opinion 2007-21 (Holt) at 3. On the
6 other hand, where a federal officeholder established a political organization that
7 undertakes activity in connection with an election other than an election for federal
8 office, the political organization “must not solicit, receive, direct, transfer, spend, or
9 disburse funds in excess of the amounts permitted with respect to contributions to
10 candidates and political committees or from prohibited sources under the Act.” Advisory
11 Opinion 2003-12 (Stop Taxpayer Money for Politicians Committee *et al.*) at 11. The
12 prohibition “applies regardless of whether [a fund] is established as a separate bank
13 account of a candidate’s authorized committee or a separate entity.” Advisory Opinion
14 2006-24 (National Republican Senatorial Committee *et al.*) at 4 (recount fund established
15 by federal officeholder subject to soft money prohibition). The Commission has not
16 previously considered under what circumstances a federal officeholder controls the non-
17 federal account of a state political party.⁶

⁶ Although requestors ask the Commission to evaluate their request using precedent specific to the Act’s foreign national prohibition, *see* AOR008, the Commission is bound to evaluate the request under the regulations it has adopted to implement the soft money prohibition. The courts have made clear that the Commission lacks authority to create additional exceptions to the soft money prohibition beyond those explicitly included in the statute. *See Shays III*, 528 F.3d at 933 (“when Congress wanted to create an exception to the ban on federal candidates soliciting soft money, it did so explicitly”).

1 **A. Governance**

2 The first relevant factor is whether Congresswoman Kelly, or her agent, “has the
3 authority or ability to direct or participate in the governance of the [non-federal account]
4 through provisions of constitutions, bylaws, contracts, or other rules, or through formal or
5 informal practices or procedures.” 11 C.F.R. § 300.2(c)(2)(ii). Authority under bylaws
6 to appoint those who oversee an entity, such as a board of directors, is relevant to this
7 element. *See* Advisory Opinion 2016-02 (Enable Midstream Services) at 7 (finding
8 authority to appoint 25 percent corporate board members weighed in favor of finding
9 affiliation but did not weigh heavily given low percentage of membership). Under this
10 proposed option, the bylaws would be amended to remove Congresswoman Kelly’s
11 authority to directly oversee the non-federal account. AOR007. Instead, a special
12 committee “consisting entirely of individuals who are not Federal candidates or
13 officeholders ... would have complete responsibility” for the non-federal account’s
14 activities “without the review or approval of Congresswoman Kelly.” *Id.* A majority of
15 the special committee’s members would “automatically be members” of the special
16 committee because they hold an elected office not appointed by the chair. *Id.* The chair
17 would retain authority to appoint the remaining members of the special committee.
18 AOR014. Because Congresswoman Kelly would continue to appoint some of the special
19 committee’s members, this factor weighs in favor of finding that Congresswoman Kelly
20 controls the non-federal account. *See* Advisory Opinion 2016-02 (Enable Midstream
21 Services) at 7. However, it does not weigh heavily given that Congresswoman Kelly

1 would not appoint and could not dismiss the majority of the special committee’s
2 members. *Id.*⁷

3 **B. Personnel**

4 The second relevant factor is whether Congresswoman Kelly, or her agent, “has
5 the authority or ability to hire, appoint, demote, or otherwise control the officers, or other
6 decision-making employees or members of the” non-federal account. 11 C.F.R.
7 § 300.2(c)(2)(iii). Under this option, the bylaws would be amended to prevent
8 Congresswoman Kelly from supervising the work of any central committee officer or
9 employee with respect to that person’s work on non-federal account matters, and she
10 would further be prohibited from terminating an employee’s employment or otherwise
11 taking adverse action based on an employee’s work on such matters. AOR007. Because
12 Congresswoman Kelly would be restricted from supervising or taking adverse personnel
13 actions against any officer or employee related to their work on the non-federal account,
14 this factor weighs against finding that Congresswoman Kelly controls the non-federal
15 account.

16 **C. Provision of Funds or Goods or Arranging Provision of Funds or**
17 **Goods**

18 The third and fourth relevant factors are whether Congresswoman Kelly, or her
19 agent, “provides funds or goods in a significant amount or on an ongoing basis to the
20 [non-federal account], such as through direct or indirect payments for administrative,

⁷ The request does not state what procedures the special committee would use to make decisions. The Commission concludes that this factor does not weigh heavily in favor of finding that Congresswoman Kelly controls the account based on the understanding that special committee decisions would require a majority vote by members of the special committee, and the special committee could not be controlled by individuals appointed to the special committee by Congresswoman Kelly.

1 fundraising, or other costs,” 11 C.F.R. § 300.2(c)(2)(vii), or “causes or arranges for funds
2 in a significant amount or on an ongoing basis to be provided to the [non-federal
3 account],” *Id.* § 300.2(c)(2)(viii).

4 Congresswoman Kelly would not make contributions or transfers to the non-
5 federal account from her personal funds or her congressional campaign account and
6 would not solicit or receive funds on behalf of the non-federal account; AOR007; AOR
7 Supp. at 001. Accordingly, Congresswoman Kelly would not provide funds or goods or
8 cause funds or goods to be provided in a significant amount or on an ongoing basis to the
9 non-federal account. These factors weigh against finding that Congresswoman Kelly
10 finances the non-federal account.

11 **D. Formation**

12 The fifth relevant factor is whether Congresswoman Kelly, or her agent, “had an
13 active or significant role in the formation of the [non-federal account].” 11 C.F.R.
14 § 300.2(c)(2)(ix). Because the non-federal account “long predates” Congresswoman
15 Kelly’s election as chair, AOR004 n.20, this factor weighs against finding that
16 Congresswoman Kelly established the non-federal account.

17 **E. Overall Relationship**

18 The Commission considers the foregoing factors in light of the “overall
19 relationship between sponsor and the entity to determine whether the presence of any
20 factor or factors is evidence that the sponsor directly or indirectly established, finances,
21 maintains, or controls the entity.” 11 C.F.R. § 300.2(c)(2). While the governance factor
22 weighs slightly in favor of finding that Congresswoman Kelly controls the non-federal
23 account, all other relevant factors weigh against determining that Congresswoman Kelly

1 directly or indirectly established, finances, maintains, or controls the non-federal account.

2 The presence of a single factor that does not weigh heavily is insufficient for the

3 Commission to conclude that Congresswoman Kelly established, finances, maintains, or

4 controls the non-federal account. As a result, under this option, the state party may

5 continue to raise and spend funds through its non-federal account in amounts and from

6 sources prohibited by the Act but permitted under Illinois law.

7 If, on the other hand, Congresswoman Kelly retains the authority provided by the

8 current bylaws to appoint all members of any special committee, AOR014, then the

9 analysis of the “governance” factor would change significantly. In that circumstance,

10 Congresswoman Kelly would have authority to select all of the individuals who would

11 make decisions about the raising and spending of non-federal funds through the non-

12 federal account, and that factor would weigh heavily in favor of finding that

13 Congresswoman Kelly would continue to exert at least indirect control over the non-

14 federal account. Accordingly, if Congresswoman Kelly retains this authority, then the

15 non-federal account would be directly or indirectly established, financed, maintained, or

16 controlled by her. As a result, the non-federal account would be prohibited from

17 soliciting, receiving, directing, transferring, or spending funds in excess of the Act’s

18 contribution limits and from prohibited sources.

19 2. *Would option two be sufficient to permit Congresswoman Kelly to serve in*

20 *her position as chair of the central committee without precluding the state party from*

21 *raising and spending non-federal funds through the non-federal account?*

22 This question is moot given the Commission’s response to question one.

1 3. *Would option three be sufficient to permit Congresswoman Kelly to serve*
2 *in her position as chair of the central committee without precluding the state party from*
3 *raising and spending non-federal funds through the non-federal account?*

4 This question is moot given the Commission’s response to question one.

5 4. *If the Commission finds that one of the three options is sufficient to permit*
6 *Congresswoman Kelly to serve in her position as chair without precluding the state party*
7 *from raising and spending non-federal funds through the non-federal account, may the*
8 *chair be included on state party letterhead for solicitations on behalf of the non-federal*
9 *account, or would the state party be required to have separate letterheads for the federal*
10 *and non-federal accounts?*

11 Congresswoman Kelly’s name and title of chair must not appear on the letterhead
12 of any solicitation soliciting funds in amounts and from sources prohibited by the Act
13 because using her name and title in that manner would identify the solicitation as being
14 sent on Congresswoman Kelly’s behalf in violation of the Act’s soft money prohibition.

15 As discussed above, federal officeholders “may solicit ... funds in connection
16 with any non-Federal election, only in amounts and from sources that are consistent with
17 State law, and that do not exceed the Act’s contribution limits or come from prohibited
18 sources under the Act.” 11 C.F.R. § 300.62; *see also* 52 U.S.C. § 30125(e)(1)(B). This
19 request is unlike Advisory Opinion 2007-21 (Holt), in which the Commission concluded
20 that a federal candidate could be included on letterhead as an “honorary chairman” in
21 communications sent by state candidates’ campaigns where the campaigns were publicly
22 funded and no further fundraising would be conducted. At 3. Instead, here, requestors
23 ask whether Congresswoman Kelly’s name and title as elected “chair” of the central

1 committee could be included on the letterhead of solicitations seeking non-federal funds
2 for the non-federal account. A solicitation identifying Congresswoman Kelly as “chair”
3 of the central committee, which governs the state party, would indicate that the
4 solicitation by the state party was being sent on Congresswoman Kelly’s behalf.
5 Accordingly, under 52 U.S.C. § 30125(e)(1)(B), Congresswoman Kelly’s name and title
6 as chair must not appear on the letterhead of any solicitation soliciting funds in amounts
7 and from sources prohibited by the Act.⁸

8 ***Conclusions***

9 The Commission concludes that the state party may raise funds in amounts and
10 from sources prohibited by the Act but permitted under Illinois law through its non-
11 federal account if the non-federal account is administered by a special committee without
12 review or approval by Congresswoman Kelly and the majority of the members of the
13 special committee are automatically appointed by virtue of holding a specific office not
14 appointed by the chair. The Commission further concludes that Congresswoman Kelly’s
15 name and title as chair must not be included on the letterhead of any solicitation that

⁸ Section 300.64 of the Commission’s regulations addresses the use of a federal officeholder’s name and likeness in publicity for a non-federal fundraising event. That section provides that for event publicity “that contains a solicitation of funds outside the amount limitations and source prohibitions of the Act,” a federal officeholder may consent to the use of her name and likeness only if the “officeholder is identified as a featured guest, honored guest, special guest, featured speaker, or honored speaker, or in any other manner not specifically related to fundraising;” and the publicity contains “a clear and conspicuous disclaimer that the solicitation is not being made by the Federal candidate or officeholder.” 11 C.F.R. § 300.64(c)(3)(i). On the other hand, a federal officeholder must not be “identified as serving in a position specifically related to fundraising, such as honorary chairperson or member of a host committee ... even if the communication contains a written disclaimer.” *Id.* at § 300.64(c)(3)(v)(A). Section 300.64 only covers publicity for fundraising events, while the requestors ask about solicitations generally, and so that regulation does not directly apply to the circumstances presented. Even if it did apply, however, the position of “chair” is a position that is specifically related to fundraising. As a result, Congresswoman Kelly’s name and title could not appear on the letterhead for solicitations soliciting funds in amounts and from sources prohibited by the Act even if section 300.64 did apply.

