MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson LJS
Acting General Counsel

Erin Chlopak CRC
Acting Associate General Counsel

Robert M. Knop JSW for RMK
Assistant General Counsel

Joanna S. Waldstreicher JSW
Attorney

Subject: AO 2017-11 (Gallegly for Congress) Draft A

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 12:00 pm (Eastern Time) on October 25, 2017.

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
Dear Mr. Gallegly:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to your proposed use of campaign funds to pay for the repair or replacement of a home security system. The Commission concludes that under the circumstances presented in your request — which include your status as a former Member of Congress, but not a current officeholder or candidate, and a lack of any specific information demonstrating a current need for residential security related to your former position — the use of campaign funds to pay for the proposed repair or replacement of your residential security equipment would constitute a personal use of campaign funds that would be prohibited under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on September 11, 2017, and your email received on September 19, 2017 (collectively “advisory opinion request” or “AOR”).

You were a member of the United States House of Representatives from 1987 to 2013, and you established Gallegly for Congress (the “Committee”) as your principal campaign committee. AOR001. You are no longer an officeholder or candidate, however, the Committee remains active and had $173,632.99 in cash on hand as of September 30, 2017.¹

¹ See Gallegly for Congress, FEC Financial Summary of Reported Activity,
In April 2009, while you were serving as a Member of Congress, you requested an advisory opinion from the Commission concerning the use of campaign funds to pay for a security system at your home due to threats that you and your wife had received during your reelection campaign in the fall of 2008. Advisory Opinion 2009-08 (Gallegly for Congress). The Commission concluded, based on the facts you provided, that those threats stemmed from your role as an officeholder and candidate, and, therefore, that campaign funds could be used to pay for the security system without violating the Act’s prohibition on personal use of campaign funds. Advisory Opinion 2009-08 (Gallegly for Congress) at 1.

Currently, you are neither a Member of Congress nor a candidate seeking federal office, but you “remain a fairly high profile citizen in [y]our community.” AOR001. On two or more occasions within the past year, your home alarm system was triggered in the middle of the night. AOR001-002. Although you do not know who (or what) triggered the alarm, and no physical evidence was left, you believe a person had approached your home. Id. The three cameras and recording system that are part of your home security system are not functioning properly so no visual record of the incidents was captured. AOR001-002. The police were called on each of these occasions but they were unable to determine who or what had approached the house. AOR002.

The estimated cost of repairing or replacing the nonfunctioning cameras and recording system is approximately $2,800–$3,500. AOR002. You do not propose to add any new equipment to your home security system. Id.

https://www.fec.gov/data/committee/C00194803 (reflecting Committee’s reported cash-on-hand balance as of September 30, 2017).
Question Presented

May the Committee’s campaign funds be used to pay for the repair or replacement of Mr. Gallegly’s home security system?

Legal Analysis and Conclusions

No, the Committee’s campaign funds may not be used to pay for the repair or replacement of Mr. Gallegly’s home security system, because doing so would constitute an impermissible personal use of campaign funds under the Act and Commission regulations.

The Act and Commission regulations identify a variety of permissible uses of contributions accepted by a federal candidate, which include, *inter alia*, ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of federal office, and “any other lawful purpose” not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a); see also 11 C.F.R. § 113.2(a)-(e).

The Act and Commission regulations also specify prohibited uses of federal campaign funds. Under 52 U.S.C. § 30114(b), contributions accepted by a candidate may not be converted to “personal use” by any person. 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to personal use occurs when a contribution or amount is used “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of [f]ederal office.” 52 U.S.C. § 30114(b)(2); see also 11 C.F.R. § 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of items that would constitute personal use *per se*, none of which applies here. See 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list, such as the proposed payment of
costs related to a residential security system, the Commission determines on a case-by-case basis
whether the expense would fall within the definition of “personal use,” that is, whether the
type expense would exist irrespective of a candidate’s campaign or an individual’s duties as an
officeholder. 11 C.F.R. § 113.1(g)(1)(ii). The Commission has long recognized that if a current
officeholder or candidate “can reasonably show that the expenses at issue resulted from
campaign or officeholder activities, the Commission will not consider the use to be personal
use.” Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed.
Reg. 7862, 7867 (Feb. 9, 1995).

The Commission has previously concluded that payments for, or improvements to, a
residential security system do not constitute personal use under the Act and Commission
regulations when the security system or security system upgrades are in response to threats
motivated by an individual’s public role as a current federal officeholder and/or candidate. In
Advisory Opinion 2011-17 (Giffords for Congress), Advisory Opinion 2011-05 (Terry), and
Advisory Opinion 2009-08 (Gallegly for Congress), Members of Congress faced specific and
ongoing threats to themselves and their families. The facts presented in those advisory opinions
suggested that the threats were motivated by the Members’ public roles as federal officeholders
and/or candidates. In all three instances, the United States Capitol Police recommended specific
security upgrades to the Members’ residences due to the ongoing nature of the threats. The
Commission concluded that the threats would not have occurred had the Members not been
federal officeholders or candidates, and that the expenses for the proposed residential security
upgrades would not have existed irrespective of their duties as federal officeholders or
candidates. The Commission thus concluded that the use of campaign funds to pay for the
security upgrades recommended by the Capitol Police in those circumstances would not constitute a prohibited personal use of campaign funds under the Act or Commission regulations. More recently, in Advisory Opinion 2017-07 (Sergeant at Arms), the Commission concluded that due to a “heightened threat environment” affecting current Members of Congress, federal officeholders may, while in office, use campaign funds to pay for certain reasonable costs associated with installing, upgrading, and monitoring security systems at Members’ residences, regardless of whether those officeholders have received specific threats. Advisory Opinion 2007-07 (Sergeant at Arms) at 3. The Commission emphasized that its conclusion was based on “the current heightened threat environment” experienced by current officeholders, as assessed by the Capitol Police. Id. at 3-4.

None of the advisory opinions described above addresses the permissibility of using campaign funds to pay for costs related to a security system at the residence of a former candidate or officeholder. Commission regulations recognize that former officeholders may permissibly use campaign funds to pay certain expenses related to winding down their office. See 11 C.F.R. § 113.2(a)(2) (recognizing as “ordinary and necessary” costs of winding down former officeholder’s office and permitting use of campaign funds to pay for such expenses for period of six months after officeholder leaves office). Commission advisory opinions, including one responding to another request from Mr. Gallegly, similarly have recognized that former officeholders may permissibly use campaign funds to pay certain expenses related to winding

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2 See Advisory Opinion 2017-07 (Sergeant at Arms) at 2 n.2, 3 n.3 (explaining that Advisory Opinion 2017-07 (Sergeant at Arms) is “limited to payments by current federal officeholders,” and that Advisory Opinion 2011-17 (Giffords for Congress), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly for Congress) may be relied on by “[c]andidates who are not federal officeholders” in circumstances where the relevant facts are materially indistinguishable from the facts of those advisory opinions (emphases added)).
down campaign activity. See Advisory Opinion 2013-05 (Gallegly) at 3 (concluding that former
officeholder may use campaign funds to pay cost of archiving and storing campaign papers, files,
and other materials); Advisory Opinion 1993-06 (Citizens for Congressman Panetta) at 4, 6
(concluding that former officeholder may use campaign funds to pay hotel, telephone, and
clerical costs of winding-down activities, as well as archival and storage of campaign materials);
Advisory Opinion 1996-14 (de la Garza) at 2 (concluding that former officeholder may use
campaign funds to pay for transfer of Congressional office furnishings to his home). The
proposed payments for a former officeholder’s residential security systems, however, are well
outside the scope of these winding-down activities.

The Commission concludes that the proposed use of campaign funds to pay for the repair
or replacement of your residential security equipment would constitute an impermissible
personal use of campaign funds. Even setting aside the fact that you are not a current candidate
or officeholder, your request indicates that you are not able to identify any particular facts
suggesting a security threat related to your status as a former officeholder. Your proposal is thus
materially different than those the Commission has previously approved, all of which involved
specific threats, e.g., Advisory Opinion 2011-17 (Giffords for Congress) at 2; Advisory Opinion
2011-05 (Terry) at 1-2; Advisory Opinion 2009-08 (Gallegly for Congress) at 2, or a heightened
threat environment affecting current officeholders, see Advisory Opinion 2017-07 (Sergeant at
Arms) at 3. Here, there are no facts to suggest any similar connection between your position as a
former officeholder and the recent incidents prompting the suggested repair or replacement of
your residential security equipment. Accordingly, the Commission concludes that the proposed
use of campaign funds for those purposes would constitute an impermissible personal use of
campaign funds under the Act and Commission regulations.\(^3\) This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. \(\text{See} \) 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. \(\text{See} \) 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission’s website.

On behalf of the Commission,

Steven T. Walther,
Chairman.

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\(^3\) This request does not present the question whether a former candidate or officeholder could permissibly use campaign funds to pay for residential security expenses where such expenses have resulted from campaign or officeholder activities, \(i.e.,\) where the requestor identifies particular facts demonstrating a security threat related to his or her status as a former officeholder or candidate. Because this request does not identify any facts suggesting a security threat related to the requestor’s status as a former officeholder or candidate, the Commission does not answer that hypothetical question here.