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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 19-33-D
AGENDA ITEM
For meeting of August 22, 2019

August 9, 2019

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Kevin M. Paulsen *KMP*
Attorney

Subject: Draft AO 2019-10 (Price for Congress) Draft D

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 August 21, 2019.

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 2019-10

2

3 Stefan Passantino, Esq.

4

4 Nathan Groth, Esq.

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5 Elections, LLC

DRAFT D

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6 1000 Maine Avenue, SW

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7 Suite 400

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8 Washington, DC 20024

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11 Dear Messrs. Passantino and Groth:

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We are responding to your advisory opinion request on behalf of Price for

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Congress (the “Committee”), concerning the application of the Federal Election

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Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the

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Committee’s proposal to contribute funds to establish and operate a non-profit

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organization. The Commission concludes that the Act and Commission regulations

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permit the Committee to donate its funds to the organization as proposed.

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Background

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The facts presented in this advisory opinion are based on your letter received on

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June 5, 2019 and on reports filed with the Commission. Price for Congress is the

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principal campaign committee of former Congressman Dr. Thomas Price.¹ As of its

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April 15, 2019 quarterly report, the Committee had \$1,767,729.00 in total assets.

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Advisory Opinion Request at AOR002.² The Committee now proposes to transfer some,

¹ Price for Congress, Statement of Organization, Amend., FEC Form 1 (Dec. 14, 2018), <https://docquery.fec.gov/pdf/255/201812149143521255/201812149143521255.pdf>. Dr. Price is also a former chairman of the House Budget Committee and most recently served as Secretary of the Department of Health and Human Services. See Robert Pear and Thomas Kaplan, *Tom Price Is Confirmed as Health Secretary*, N.Y. TIMES (Feb. 10, 2017), <https://www.nytimes.com/2017/02/10/us/politics/tom-price-health-and-human-services.html>.

² See also Price for Congress, April Quarterly Report, FEC Form 3 at 2 (April 15, 2019), <https://docquery.fec.gov/pdf/546/201904159146141546/201904159146141546.pdf>.

1 but not all, of the Committee’s assets to establish and operate a non-profit organization
2 (the “Organization”) that will register as a tax-exempt social welfare organization under
3 section 501(c)(4) of the Internal Revenue Code.³ AOR002. Funds donated by the
4 Committee to the Organization and any income generated therefrom will be placed in a
5 separate segregated account and will not be comingled with other assets of the
6 Organization. AOR002. Such funds would be used to advance the Organization’s social
7 welfare purpose of engaging in research, education, and publications related to health,
8 budget, and public policy matters. AOR001. The Organization will publish research,
9 presentations, or other publications under Dr. Price’s name in connection with his official
10 duties as President and CEO of the Organization, and neither Dr. Price nor any member
11 of his family will be eligible to receive any type of royalties or fees for such works.
12 AOR004. The Organization “will not attempt to influence legislation nor participate or
13 intervene in any political campaign on behalf of, or in opposition to, any candidate for
14 public office.” AOR001. The Organization may promote and organize unpaid
15 opportunities for Dr. Price to speak, write, publish, or otherwise make appearances to
16 present the work of the Organization. AOR001-002.

17 Dr. Price will serve as the Organization’s president and chief executive officer.
18 AOR001. In these capacities, Dr. Price would have authority to make staffing decisions,
19 including hiring and firing decisions and setting compensation for employees. *Id.* The
20 Organization’s bylaws would prohibit Dr. Price from receiving any compensation from
21 the Organization. *Id.* This restriction would also apply to any members of Dr. Price’s

³ The Committee also notes that “[i]t is contemplated that the Committee may also transfer funds to the Organization at a future time.” AOR002.

1 family, former employees of the Committee, and former employees of Dr. Price's official
2 public offices, if any, who serve the Organization in any capacity. *Id.* The Organization
3 may, however, decide to amend its bylaws and compensate such individuals or Dr. Price
4 in the future if permitted by applicable law (as further described below). AOR002.
5 Additionally, the Organization may reimburse Dr. Price for out-of-pocket expenses
6 incurred on behalf of the Organization in his role as president and CEO. AOR001.
7 Notwithstanding the foregoing, until such time as all funds donated by the Committee
8 have been expended by the Organization, neither Dr. Price, members of his family,
9 former employees of the Committee nor any former employees of Dr. Price's official
10 public offices shall be eligible for any form of compensation, gift or grant, or materials or
11 reimbursement for any expenses that would constitute a "personal use" described in 52
12 U.S.C. § 30114(b)(2)(A)-(I) and section 113.1(g)(1)(i)(A)-(J) of Commission regulations.
13 AOR002.

14 ***Question Presented***

15 *May the Committee donate its funds to establish and operate the Organization?*

16 ***Legal Analysis***

17 Yes, the Committee may donate its funds to the Organization because the
18 donation of funds to a 501(c)(4) social welfare organization as proposed constitutes a
19 "lawful purpose" under 52 U.S.C. § 30114(a)(6) and 11 C.F.R. § 113.2(e), and no
20 Committee funds will be converted to personal use for the benefit of Dr. Price or any
21 other person.

22 The Act identifies six categories of permissible uses of contributions accepted by
23 a federal candidate, including "for any other lawful purpose." 52 U.S.C. § 30114(a)(6);

1 *see also* 11 C.F.R. § 113.2(e). Such contributions may not, however, be converted by any
2 person to personal use. 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to
3 personal use occurs when a contribution or amount is used “to fulfill any commitment,
4 obligation, or expense of a person that would exist irrespective of the candidate’s election
5 campaign or individual’s duties as a holder of Federal office.” 52 U.S.C. § 30114(b)(2);
6 *see also* 11 C.F.R. § 113.1(g).

7 The Committee represents in its request that the Organization will operate and
8 qualify as a tax-exempt, not-for-profit corporation under section 501(c)(4) of the Internal
9 Revenue Code, and will use any Committee-donated funds to advance the Organization’s
10 social welfare purpose of engaging in research, education, and publications related to
11 health, budget, and public policy matters.⁴ AOR001-2. The Act and Commission
12 regulations do not prohibit the contribution of campaign funds to a 501(c)(4) organization
13 for this purpose.⁵ Accordingly, the only question for the Commission to consider is

⁴ In pertinent part, organizations eligible for section 501(c)(4) status are “[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, . . . and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes,” where “no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.” 26 U.S.C. § 501(c)(4); *see also* 26 C.F.R. § 1.501(c)(4)-1.

⁵ 52 U.S.C. § 30114(a)(3) and 11 C.F.R. § 113.2(b) permit the donation of campaign funds to “an organization described in section 170(c)” of the Internal Revenue Code (“I.R.C.”). Section 170(c) describes the types of organizations for which charitable donations by individuals are tax deductible. 26 U.S.C. § 170(c). In various prior advisory opinions, the Commission has permitted the donation of campaign funds to organizations that qualify for tax-exempt status under section 501(c)(3) of the I.R.C., because it determined that such entities qualify as section 170(c) organizations. *See, e.g.*, Advisory Opinion 2012-05 (Lantos); Advisory Opinion 2005-06 (McInnis). For purposes of this advisory opinion, the Commission makes no determination as to whether a 501(c)(4) organization could qualify as an organization described in section 170(c) of the I.R.C. under the Act and Commission regulations. Rather, the Commission analyzes the proposed transfer of Committee funds under the “any other lawful purpose” prong of 52 U.S.C. § 30114(a)(6). *See* Advisory Opinion 1993-10 (Colorado) at 3 (“The Commission has found that transfers and donations to other recipients where section 170[(c)] does not apply may still be permissible under the ‘any other lawful purpose’ clause of section [30114(a)]”).

1 whether the proposed donation of campaign funds to the Organization will result in the
2 conversion of any of the donated funds to personal use.

3 The Act and Commission regulations provide a non-exhaustive list of uses of
4 campaign funds that are *per se* personal use. 52 U.S.C. § 30114(b)(2); 11 C.F.R.
5 § 113.1(g)(1)(i). For uses of campaign funds not included on this list, the Commission
6 determines, on a case-by-case basis, whether the use is a prohibited “personal use,” *i.e.*,
7 whether campaign funds are used to pay expenses that would exist irrespective of the
8 candidate’s campaign or federal officeholder duties. 11 C.F.R. § 113.1(g)(1)(ii).

9 In Advisory Opinion 1993-10 (Colorado), the Commission recognized that
10 transfers and donations to a non-profit corporation not covered by section 170(c) of the
11 Internal Revenue Code would constitute a “lawful purpose” so long as the former
12 candidate donor “would not receive any compensation for his involvement in the
13 proposed non-profit corporation beyond reimbursement of ordinary expenses incurred on
14 its behalf.” Advisory Opinion 1993-10 (Colorado) at 3; *see also* Advisory Opinion 1986-
15 39 (Carafiello) at 2 (approving the donation of a former candidate’s campaign funds to a
16 trust fund for an orphaned child unrelated to the candidate because the donation “would
17 not benefit [the former candidate] in any apparent financial respect”). Similarly, here, the
18 Committee has represented that Dr. Price will be eligible for reimbursement of out-of-
19 pocket expenses incurred in connection with his official Organization-related duties;
20 however, he will not receive compensation for his role as President and CEO of the
21 Organization and neither Dr. Price nor any member of his family will be eligible to
22 receive any type of royalties or fees for the Organization’s works. AOR001-002.

1 This proposal is also consistent with practices approved by the Commission in
2 prior advisory opinions addressing the donation of campaign funds by former federal
3 candidates and officeholders to nonprofit organizations under 11 C.F.R. § 113.2(b).⁶ In
4 Advisory Opinion 1996-40 (Hancock), for instance, the Commission approved the
5 donation of funds from a retiring congressman’s campaign committee to a nonprofit
6 organization for which the congressman served as president and chairman of the board of
7 directors. *See* Advisory Opinion 1996-40 (Hancock) at 2; *see also* Advisory Opinion
8 1983-27 (McDaniel) (approving donation of campaign committee funds to nonprofit
9 organization for which the donor-candidate served as chairman of the board of directors);
10 Advisory Opinion 1997-01 (Bevill) (approving donation of campaign committee funds to
11 foundation for which the donor-former congressman, his wife and daughter would serve
12 as board directors). In each of the aforementioned advisory opinions, the donor-
13 candidates or officeholders retained significant authority over the donee organization
14 after the committee funds were contributed; nevertheless, the Commission found that the
15 contributed funds would not accrue to their personal benefit because they would not
16 receive compensation from the donee organization until such time as the organization had
17 expended the donated funds. *See* Advisory Opinion 1996-40 (Hancock) at 2; Advisory
18 Opinion 1983-27 (McDaniel) at 2; Advisory Opinion 1997-01 (Bevill) at 3. It follows
19 that, because Dr. Price will receive no compensation from the Organization, his role as

⁶ Although in each of these advisory opinions the recipient non-profit organization was registered as a 501(c)(3) rather than a 501(c)(4) organization, the personal use analysis therein is applicable to the present facts given the similarities between the present facts and the donor-candidates’ relationships with the recipient organizations in those advisory opinions.

1 president and CEO of the Organization will not result in his personal use of the donated
2 funds.

3 The request also states that, although the Organization’s bylaws will prohibit Dr.
4 Price, his family members, former Committee employees, and the former employees of
5 Dr. Price’s official public offices from receiving compensation, the Organization will
6 leave open the possibility that in the future, after all Committee funds have been
7 expended by the Organization for social welfare purposes, these individuals could
8 become eligible for compensation. AOR001-002. Further, as stated above, Dr. Price will
9 be eligible for reimbursement of out-of-pocket expenses incurred in connection with his
10 official Organization-related duties; however, he will not receive any reimbursement for
11 expenses that would constitute “personal use” under the Act or Commission regulations
12 until such time as the Organization has exhausted all funds donated by the Committee.
13 *Id.*

14 This compensation and reimbursement arrangement is consistent with those in
15 Advisory Opinion 2012-05 (Lantos), where the Commission approved the donation of a
16 former congressman’s campaign funds to a non-profit foundation that employed and paid
17 salaries to several of the congressman’s family members, including his daughter, who
18 served as the foundation’s president. Advisory Opinion 2012-05 (Lantos) at 2.⁷ Because

⁷ The Commission’s approval of the donation was conditioned upon several representations, including the foundation’s pledges to: (1) deposit donated funds into a separate account segregated from other foundation assets, (2) not use donated funds or any income generated therefrom to provide compensation, gifts or grants, or any materials or reimbursement for any expenses within the scope of 52 U.S.C. § 30114(b)(2)(A)-(I) or 11 C.F.R. § 113.1(g)(1)(i)(A)-(J) to any member of the late congressman’s family, or former campaign committee or congressional office employees, and (3) not use the donated funds or any income generated therefrom to influence any election. *See* Advisory Opinion 2012-05 (Lantos) at 2. The requestor here has made identical representations.

1 the Committee has represented that it and the Organization will adhere to the conditions
2 approved by the Commission in Advisory Opinion 2012-05 (Lantos) until such time as
3 all Committee funds have been expended by the Organization, the proposed
4 compensation and reimbursement framework are similarly permissible under the Act and
5 Commission regulations.⁸

6 Finally, the organization has also stated its intention to publish research,
7 presentations and publications under Dr. Price's name and promote or organize unpaid
8 opportunities for Dr. Price to speak, write, publish, or otherwise make appearances to
9 present the Organization's work. AOR001-002. None of these activities would result in
10 the personal use of Committee funds by Dr. Price or any other person. Because Dr. Price
11 will not be compensated for these activities, and the Organization has already pledged not
12 to provide compensation to Dr. Price while Committee funds remain in the
13 Organization's accounts, no personal financial benefit will directly accrue to Dr. Price,
14 his family or former employees as a result of the Organization's publication of research,
15 presentations, or other publications under Dr. Price's name, or Dr. Price's appearances on
16 behalf of the Organization. Consequently, the Organization's intention to publish
17 research, presentations and publications under Dr. Price's name and promote or organize
18 unpaid opportunities for Dr. Price to speak, write, publish or otherwise make appearances
19 to present the Organization's work do not alter the Commission's conclusion that the

⁸ The Advisory Opinion Request notes that the Committee will initially transfer only some of its assets to the Organization and may transfer additional remaining funds at a later date. AOR002. In the event that, after the initial funds contributed to the Organization by the Committee have been expended by the Organization, the Committee then contributes additional funds to the Organization, the conditions and limitations regarding the use of donated funds described herein will apply to any later donated funds until such time as all funds donated by the Committee have been expended by the Organization.

1 proposed donation of Committee funds to the Organization is a permissible use of
2 contributions accepted by the Committee.

3 ***Conclusion***

4 The Commission concludes that the Act and Commission regulations permit the
5 Committee to donate its funds to the Organization because the donation of campaign
6 funds to a 501(c)(4) organization as proposed constitutes a “lawful purpose” under 52
7 U.S.C. § 30114(a)(6) and 11 C.F.R. § 113.2(e) and no Committee funds will be converted
8 to personal use for the benefit of Dr. Price or any other person.

9 This response constitutes an advisory opinion concerning the application of the
10 Act and Commission regulations to the specific transaction or activity set forth in your
11 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change
12 in any of the facts or assumptions presented, and such facts or assumptions are material to
13 a conclusion presented in this advisory opinion, then the requestor may not rely on that
14 conclusion as support for its proposed activity. Any person involved in any specific
15 transaction or activity which is indistinguishable in all its material aspects from the
16 transaction or activity with respect to which this advisory opinion is rendered may rely on
17 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or
18 conclusions in this advisory opinion may be affected by subsequent developments in the
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1 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

2 Any advisory opinions cited herein are available on the Commission's website.

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On behalf of the Commission,

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Ellen L. Weintraub

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Chair