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April 22, 2022

MEMORANDUM

TO: The Commission

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Subject: Draft AO 2022-02 (Steube) – 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 April 27, 2022.

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 2022-02

2

3 Honorable W. Gregory Steube

4 Member of Congress

5 Greg Steube for Congress

6 5317 Fruitville Road, #102

7 Sarasota, FL 34232

8

9 Dear Congressman Steube:

DRAFT A

10 We are responding to your advisory opinion request, concerning the application of
11 the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
12 regulations to the use of campaign funds for expenses related to purchasing and installing
13 a locking steel security gate for your residence.

14 The Commission concludes that the proposed use of campaign funds for the
15 purchase and installation of a locking steel security gate as part of the residential security
16 system as specifically recommended by your county sheriff’s office, and more generally
17 by the Office of the House Sergeant at Arms, is permissible under the Act and
18 Commission regulations and would not constitute a prohibited conversion of campaign
19 funds to personal use.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on
22 March 7, 2022, and public disclosure reports filed with the Commission.

23 You are a member of the United States House of Representatives from Florida’s
24 17th Congressional District¹ and Greg Steube for Congress is your principal campaign
25 committee.² You state that since taking office you have received direct and specific

¹ See <https://steube.house.gov/>; last visited on Mar. 22, 2022.

² See <https://docquery.fec.gov/cgi-bin/forms/H8FL17053/1506161/>; last visited on Mar. 24, 2022.

1 threats to your safety, and you document eight specific threat incidents since March 2021
2 that your congressional and district offices have reported to the United States Capitol
3 Police. Advisory Opinion Request at AOR001, AOR003-11. You further provide a
4 threat summary prepared by the House Sergeant at Arms documenting a threat incident
5 directed at you that was investigated by local law enforcement. AOR004. Additionally,
6 you note that the Office of the House Sergeant at Arms has recommended that Members
7 take adequate steps to protect their residences. AOR001.

8 Your residence sits on five acres of land next to a 141-acre cattle ranch, and the
9 residence is approximately 30 miles from any incorporated city. *Id.* Currently, your
10 property is fenced in and there is an aluminum cattle gate located on the driveway to your
11 residence, which could easily be breached by a vehicle. *Id.* You state that there were two
12 attempted burglaries at your residence before the fence and cattle gate were installed on
13 your property. In each incidence, one occurring when you were present at the residence,
14 and one occurring when you were not, you state that it took law enforcement at least 20
15 minutes to respond due to the distance of your property from the city. *Id.*

16 Due to the nature of the property, security professionals and your county sheriff
17 have recommended the installation of a locking steel security gate at the entrance of the
18 driveway. AOR002; AOR012-13. Specifically, the county sheriff's "crime prevention
19 unit recommends a steel gate securely attached to solid posts to prevent any further
20 criminal activity or access to your property through this gate." AOR013. You state that a
21 steel security gate is needed to fully secure the property as part of a comprehensive
22 security system, because sensors, cameras, and other security equipment cannot reach
23 certain areas of the property and do not prevent vehicles from driving up to the residence.

1 AOR002. You state that the steel gate in question “does not provide aesthetic or
2 decorative enhancements and only serves as a lockable barrier to the entrance” of your
3 residence. *Id.* Such a gate requires professional installation, and much like security
4 cameras, “can be removed if [you] ever move from the premises.” *Id.*

5 ***Questions Presented***

6 May your principal campaign committee use campaign funds to pay for the costs
7 of purchasing and installing a locking steel security gate as part of a residential security
8 system at your home.³

9 ***Legal Analysis and Conclusions***

10 Yes, your principal campaign committee may use campaign funds to pay for the
11 purchase and installation of a locking steel security gate as part of the residential security
12 system, as recommended by the county sheriff, without such payments constituting
13 prohibited conversion to personal use of campaign funds.

14 The Act identifies six categories of permissible uses of contributions accepted by
15 a federal candidate, two of which are “ordinary and necessary expenses incurred in
16 connection with the duties of the individual as a holder of Federal office,” and “any other
17 lawful purpose not prohibited by 52 U.S.C. § 30114(b).” 52 U.S.C. § 30114(a)(2); *see*
18 *also* 11 C.F.R. § 113.2(a)-(e).

³ The advisory opinion request asks whether “Members of Congress” may use campaign funds for the proposed residential security costs. Commission regulations provide that requests regarding the activities of third parties do not qualify as advisory opinion requests. 11 C.F.R. § 112.1(b). As such, the Commission is responding to your request only as it applies to you and your principal campaign committee. Other federal officeholders may rely on this advisory opinion to the extent their factual circumstances are materially indistinguishable from those described here. *See* 11 C.F.R. § 112.5(a)(2).

1 Under the Act and Commission regulations, contributions accepted by a candidate
2 may not be converted to “personal use” by any person. 52 U.S.C. § 30114(b)(1);
3 11 C.F.R. § 113.2(e). Conversion to personal use occurs when a contribution is used “to
4 fulfill any commitment, obligation, or expense” of a federal officeholder “that would
5 exist irrespective” of the officeholder’s duties. 52 U.S.C. § 30114(b)(2);
6 11 C.F.R. § 113.1(g).

7 The Act and Commission regulations provide a non-exhaustive list of items that
8 would constitute conversion to personal use *per se*, none of which applies here. *See* 52
9 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,
10 such as payments for residential security systems, the Commission determines on a case-
11 by-case basis whether such expenses would fall within the definition of “personal use.”
12 11 C.F.R. § 113.1(g)(1)(ii). The Commission has long recognized that if a candidate
13 “can reasonably show that the expenses at issue resulted from campaign or officeholder
14 activities, the Commission will not consider the use to be personal use.” *Personal Use of*
15 *Campaign Funds*, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995).

16 The Commission has previously concluded that payments for, or improvements
17 to, a residential security system, under certain circumstances, do not constitute personal
18 use under the Act and Commission regulations. In Advisory Opinion 2020-06 (Escobar),
19 Advisory Opinion 2011-17 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory
20 Opinion 2009-08 (Gallegly), Members of Congress faced specific and ongoing threats to
21 the safety of themselves and their families. The facts presented in those advisory
22 opinions suggested that the threats were motivated by the requestors’ public roles as
23 federal officeholders, candidates, or both. In all four instances, the U.S. Capitol Police

1 recommended specific security upgrades to the members' homes due to the continuing
2 nature of those threats.

3 The Commission concluded in each instance that the threats would not have
4 occurred had the members not been federal officeholders or candidates, and that the
5 expenses for the proposed security upgrades would not have existed irrespective of their
6 duties as federal officeholders or candidates. Therefore, the Commission concluded that
7 the use of campaign funds to pay for the security upgrades recommended by the U.S.
8 Capitol Police would not constitute a prohibited personal use of campaign contributions
9 under the Act or Commission regulations. *See* Advisory Opinion 2020-06 (Escobar) at 3;
10 Advisory Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4;
11 Advisory Opinion 2009-08 (Gallegly) at 4.

12 The Commission has also previously considered the implications of the
13 heightened threat environment faced by Members of Congress collectively, necessitating
14 increased residential security measures even if an individual member has not received
15 direct threats. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission
16 considered information from the House Sergeant at Arms about the threats faced by
17 Members of Congress due to their status as federal officeholders, and the
18 recommendation of the U.S. Capitol Police that Members of Congress install or upgrade
19 residential security systems to protect themselves and their families. In light of that
20 information, the Commission concluded that certain costs of installing or upgrading home
21 security systems would constitute ordinary and necessary expenses incurred in
22 connection with members' duties as federal officeholders, and that therefore members of
23 Congress may use campaign funds to pay for reasonable costs associated with home

1 security systems. *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 3. The
2 Commission’s conclusion in that advisory opinion was limited to the use of campaign
3 funds for the installation or upgrade of “cameras, sensors, distress devices, and similar
4 non-structural security devices, as well as locks, in and around a Member’s residence.”
5 *Id.*

6 Since Advisory Opinion 2017-07 (Sergeant at Arms) was issued, in the face of
7 actual threats as well as the heightened threat environment that arises from the duties of a
8 federal officeholder, the Commission concluded that the use of campaign funds for the
9 costs of lighting and wiring a garage on a Member’s property, without which “the
10 recommended security cameras would not function properly” were not personal use even
11 though the costs did not, on their face, fit into the “non-structural security devices”
12 limitation of Advisory Opinion 2017-07 (Sergeant at Arms). *See* Advisory Opinion
13 2020-06 (Escobar) at 4. In Advisory Opinion 2021-03 (NRSC and NRCC), the
14 Commission considered the issue of Members’ safety when they are not at home or
15 protected by federal agents. The Commission concluded that in the face of ongoing
16 threats and the continuing heightened threat environment stemming from Members’
17 duties as federal officeholders, it would not be personal use for Members of the NRSC
18 and NRCC to use campaign funds to pay the costs of bona fide, legitimate, professional
19 personal security personnel when they are not under the protection of federal agents. *See*
20 Advisory Opinion 2021-03 (NRSC and NRCC).

21 As in the previous advisory opinions concerning federal officeholders who faced
22 direct threats, you have also received direct threats since taking office as a Member of
23 Congress, and your county sheriff has recommended that you install specific security

1 measures at your home in response. AOR002. According to your request, your
2 congressional office has reported to the United States Capitol Police eight incidents of
3 threats made against you due to your role as a federal officeholder. *See* AOR006-09.
4 And the Sarasota County Sheriff’s Office, in recommending the installation of a locking
5 steel security gate, has described “several threats and intrusions” on your home, including
6 threats aimed at you as a federal officeholder. AOR013. Thus, similar to the
7 circumstances of the previous advisory opinions, your need for a residential security
8 system arose due to your role as a federal officeholder. Further, the purchase and
9 installation of the gate is intended to provide an effective security system and is not
10 intended for the purpose of improving your home. The proposed purchase and
11 installation of the gate “does not provide aesthetic or decorative enhancements and only
12 serves as a lockable barrier to the entrance” of your residence, which “just like security
13 cameras can be removed” if you ever move from the residence. AOR002; *see* Advisory
14 Opinion 2020-06 (Escobar) at 2; Advisory Opinion 2011-17 (Giffords) at 2; Advisory
15 Opinion 2011-05 (Terry) at 2; Advisory Opinion 2009-08 (Gallegly) at 2. Therefore, the
16 costs of purchasing and installing the recommended residential security measures would
17 not constitute a prohibited personal use of campaign funds.

18 Moreover, even in the absence of specific threats directed at you, you are
19 currently subject to the heightened threat environment faced by Members of Congress
20 that was considered by the Commission in Advisory Opinion 2017-07 (Sergeant at
21 Arms). As such, the costs of installing a residential security system as recommended by
22 the House Sergeant at Arms constitute ordinary and necessary expenses incurred in

1 connection with your duties as a federal officeholder and are a permissible use of
2 campaign funds.

3 The specific recommendation of the county sheriff in your case requires the
4 purchase and installation of a locking steel gate. AOR002. Similar to Advisory Opinion
5 2020-06 (Escobar), while these particular costs may not fall within the category of being
6 for “non-structural security devices” authorized in Advisory Opinion 2017-07 (Sergeant
7 at Arms), they do fall within the category of “locks[] in and around a Member’s home”
8 authorized in that opinion. Advisory Opinion 2017-07 (Sergeant at Arms) at 3. The size
9 of your residential property does not allow usual security of cameras and sensors to reach
10 the entire property. The locking steel gate to secure your property at its entry thus is a
11 necessary component of your residential security system. As such, these costs⁴ constitute
12 an integral part of an ordinary and necessary expense that may be paid with campaign
13 funds under the Act.

14 Accordingly, your principal campaign committee may use campaign funds to pay
15 those costs without such payment resulting in a prohibited conversion of campaign funds
16 to personal use.

17 This response constitutes an advisory opinion concerning the application of the
18 Act and Commission regulations to the specific transaction or activity set forth in your
19 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change
20 in any of the facts or assumptions presented, and such facts or assumptions are material to
21 a conclusion presented in this advisory opinion, then the requestor may not rely on that

⁴ The Commission assumes that your principal campaign committee will pay the fair market value of the locking steel gate and its installation to prevent the acceptance of potentially impermissible in-kind contributions from vendors.

1 conclusion as support for its proposed activity. Any person involved in any specific
2 transaction or activity which is indistinguishable in all its material aspects from the
3 transaction or activity with respect to which this advisory opinion is rendered may rely on
4 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or
5 conclusions in this advisory opinion may be affected by subsequent developments in the
6 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
7 Any advisory opinions cited herein are available on the Commission’s website.

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On behalf of the Commission,

Allen J. Dickerson
Chairman