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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 21-19-A**  
**AGENDA ITEM**  
**For meeting of March 25, 2021**  
**SUBMITTED LATE**

March 22, 2021

**MEMORANDUM**

TO: The Commission

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

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Associate General Counsel

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Subject: Draft AO 2021-03 (NRSC and NRCC) Draft A

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 9:00 am (Eastern Time) on March 25, 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 2021-03

2

3 Jessica Furst Johnson, Esq.  
4 Chris Winkelman, Esq.  
5 Holtzman Vogel Josefiak Torchinsky PLLC  
6 15405 John Marshall Highway  
7 Haymarket, VA 20169

**DRAFT A**

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9 Dear Ms. Johnson and Mr. Winkelman:

10 We are responding to your advisory opinion request on behalf of the National  
11 Republican Senatorial Committee (the “NRSC”) and the National Republican  
12 Congressional Committee (the “NRCC”) regarding the application of the Federal  
13 Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations  
14 to the proposed use of committee members’ campaign funds to pay for personal security  
15 to protect themselves and their families. The Commission concludes that the proposed  
16 use of campaign funds for personal security against threats arising from the members’  
17 status as officeholders is a permissible use of campaign funds under the Act and  
18 Commission regulations.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on  
21 January 27, 2021, and on public disclosure reports filed with the Commission.

22 The NRSC and NRCC are national party committees. Advisory Opinion  
23 Request at AOR002.<sup>1</sup> The NRSC is comprised of all sitting Republican members of the  
24 United States Senate, and the NRCC is comprised of all sitting Republican members of

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<sup>1</sup> See also NRSC, FEC Form 1 (Statement of Organization) (filed Oct. 3, 2020), <https://docquery.fec.gov/pdf/753/202010039285004753/202010039285004753.pdf>; NRCC, FEC Form 1 (Statement of Organization) (filed Feb. 5, 2021), <https://docquery.fec.gov/pdf/441/202102059427031441/202102059427031441.pdf>.

1 the United States House of Representatives. *Id.* The NRSC’s and NRCC’s primary  
2 functions are to aid in the election of Republican candidates for office, and in that role the  
3 NRSC and NRCC provide guidance to Republican candidates for federal office and  
4 officeholders. *Id.* The NRSC and NRCC seek this advisory opinion “on behalf of their  
5 Members currently serving in federal office.”

6 The request lists numerous instances of “concrete threats of physical violence  
7 against Members and their families” and responses by law enforcement agencies, going  
8 back several years and continuing to the present, and the “worsened” threat environment  
9 as assessed by the Capitol Police. *Id.* AOR003-007. In response to the recent and  
10 ongoing threats of physical violence against senators and representatives and their  
11 families due to their status as officeholders, some officeholders have considered  
12 increasing security measures, including hiring personal security personnel. AOR002.  
13 Senators’ and Representatives’ “vulnerability to potential threats is significantly  
14 heightened when they are away from home,” while the responsibilities of their offices  
15 require them and their families to appear frequently in public settings. AOR005. Thus  
16 “the most practical and effective solution for protecting the safety of Members and their  
17 families is the employment of personal security personnel.” *Id.*

18 ***Question Presented***

19 *May the Members of the United States Senate and United States House of*  
20 *Representatives that comprise the NRSC and NRCC permissibly use campaign funds to*  
21 *pay for personal security personnel to protect both the Member and the Member’s*  
22 *immediate family due to threats arising from his or her officeholder status?*

1 ***Legal Analysis and Conclusion***

2 Yes, Members of the United States Senate and United States House of  
3 Representatives that comprise the NRSC and the NRCC may use campaign funds to pay  
4 for personal security personnel to protect themselves and their immediate families due to  
5 threats arising from their status as officeholders.<sup>2</sup>

6 The Act identifies six categories of permissible uses of contributions accepted by  
7 a federal candidate, two of which are “ordinary and necessary expenses incurred in  
8 connection with the duties of the individual as a holder of Federal office,” and “any other  
9 lawful purpose” not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a); *see also*  
10 11 C.F.R. § 113.2(a)-(e).

11 The Commission has issued a number of advisory opinions authorizing the use of  
12 campaign funds to protect against threats to officeholders’ physical safety, on the grounds  
13 that the need for such security expenses would not exist if not for the officeholders’  
14 activities or duties. In Advisory Opinion 2020-06 (Escobar), Advisory Opinion 2011-17  
15 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08  
16 (Gallegly), members of Congress faced specific and ongoing threats to the safety of  
17 themselves and their families. The facts presented in those advisory opinions suggested  
18 that the threats were motivated by the requestors’ public roles as federal officeholders,  
19 candidates, or both.

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<sup>2</sup> As indicated in the request, “immediate family” means members of the officeholder’s household, including a spouse, minor children, or other relatives who normally reside with the officeholder. AOR001 n.3

1           The Commission concluded in each instance that the expenses for the proposed  
2 security upgrades would not have existed irrespective of the requestors' duties as federal  
3 officeholders or candidates. Therefore, the Commission concluded that the use of  
4 campaign funds to pay for the security upgrades was permissible under the Act or  
5 Commission regulations. *See* Advisory Opinion 2020-06 (Escobar) at 3; Advisory  
6 Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory  
7 Opinion 2009-08 (Gallegly) at 4.

8           The Commission has also previously considered the implications of the  
9 heightened threat environment faced by Members of Congress collectively, necessitating  
10 increased residential security measures even if an individual Member has not received  
11 direct threats. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission  
12 considered information from the House Sergeant at Arms about the threats faced by  
13 Members of Congress due to their status as federal officeholders, and the  
14 recommendation of the Capitol Police that Members of Congress install or upgrade  
15 residential security systems to protect themselves and their families. In light of that  
16 information, the Commission concluded that certain costs of installing or upgrading home  
17 security systems would constitute ordinary and necessary expenses incurred in  
18 connection with Members' duties as federal officeholders, and that therefore Members of  
19 Congress may use campaign funds to pay for reasonable costs associated with home  
20 security systems. *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

21           Here, the Commission considers the need for officeholders to take proactive  
22 measures to protect themselves and their immediate families due to threats arising from  
23 their status as officeholders. Similar to the need for increased residential security, the

1 need for personal security for officeholders and their immediate family members in the  
2 context requested arises due to officeholders' roles as elected officials. Under these  
3 circumstances, the reasonable costs of such security for officeholders and their immediate  
4 family members constitute ordinary and necessary expenses incurred in connection with  
5 officeholders' duties and are a permissible use of campaign funds under the Act and  
6 Commission regulations.

7       Accordingly, the Members that comprise the NRSC and NRCC may use  
8 campaign funds to pay for personal security personnel to protect themselves and their  
9 immediate families due to threats arising from their status as officeholders. The  
10 Commission emphasizes this conclusion is based on the information provided about  
11 security threats that exist due to the Members' duties as federal office holders. *See*  
12 *Advisory Opinion 2017-07 (Sergeant at Arms); Advisory Opinion 2011-17 (Giffords)* at  
13 3.

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

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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Shana M. Broussard

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Chair