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July 17, 2024

Federal Election Commission  
Office of General Counsel  
1050 First Street, NE  
Washington DC 20463

Re: Advisory Opinion Request

Dear Commissioners and General Counsel:

I serve as counsel to Congresswoman Nanette Barragán and Barragán for Congress. On behalf of the Congresswoman and her principal campaign committee, this letter requests an advisory opinion regarding the use of campaign funds to pay for elder care expenses incurred by a candidate and officeholder.

### **Background**

Congresswoman Barragán currently represents California's 44th Congressional District. Congresswoman Barragán's mother, Teresa Somers, is 83 years old and suffers from Alzheimer's disease, diabetes, and a number of other health conditions. Ms. Somers has suffered from Alzheimer's for years and in 2019 underwent a neuropsych exam at UCLA that confirmed her declining cognitive condition and the need for constant round-the-clock 24-hour care and supervision. Ms. Somers can no longer perform the activities of daily living on her own. She is unable to dress herself, bathe herself, prepare meals, suffers from incontinence and other related Alzheimer's symptoms. Ms. Somers is losing her ability to speak and communicate, and she is also often confused and needs constant supervision. Ms. Somers's advanced Alzheimer's means she does not know Congresswoman Barragán's name but understands that she is her daughter. During the COVID-19 pandemic, her mother could no longer care for herself, so the Congresswoman assisted in the care of her mother. In late 2021, Congresswoman Barragán had to move into her mother's home to serve as her caregiver. During this time, Congresswoman Barragán cared for her mother in Los Angeles and continued to represent her constituents by voting in the House via proxy through the end of the 117<sup>th</sup> Congress. Congresswoman Barragán continues to reside with her mother to provide and manage her mother's care.

Because her mother is considered low-income and on Medi-Cal, Ms. Somers was able to secure several caregiver providers through Los Angeles County's In-Home Supportive Services (IHSS) program and the Home and Community Based Services Program (HCBS). The Congresswoman has provided many unpaid hours of care but eventually officially registered as a caregiver under the IHSS and HCBS program and earned \$16.00 per hour in 2022. In 2022, the Congresswoman

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provided an estimated 1600 hours of care for her mother and earned \$29,457, which was barely under the permissible ethics limit of \$29,700 on outside employment at the time.

In 2023, the out of pocket cost to cover gaps in care was almost \$27,000. Hourly rates for caregivers run from \$25 to \$37 per hour.

Once the proxy option in the House ended, the Congresswoman returned to her duties in Washington, DC full-time and she arranged for additional caregivers so her mother would have nearly full-time care through IHSS and HCBS providers. As is the case for many families in this program, it can be difficult to ensure constant, continual care. There is significant turnover with IHSS workers, and if a worker needs to miss a shift for illness or any other reason, families like the Barragán family must cover those shifts. They can happen without notice. When those gaps occur, the burden falls on the Congresswoman. She has often had to miss official events, meetings, House votes and campaign events. Congresswoman Barragán has also had to turn down invitations to the White House from President Biden in order to cover the gap in staff and ensure her mother has continuous 24/7 care.

Additionally, the Congresswoman serves as the Chair of the CHC, a official Congressional Membership Organization, which often requires travel.

In the future, the Congresswoman anticipates needing to use campaign funds for caregiving costs in the following situations:

- (1) When the Congresswoman is in Washington, DC to cast votes in Congress,
- (2) When traveling to/from or in Washington, DC or her district to attend events in her official capacity as a Member of Congress,
- (3) When in district or traveling to other destinations for campaign events such as fundraising events, meetings with campaign supporters, traveling with presidential or other congressional candidates, or to the national convention,
- (4) When traveling for official business out of state or internationally, such as for a Congressional Member Delegation (CODEL), and
- (5) When traveling in her official capacity as Chair of CHC.<sup>1</sup>

The Congresswoman does and will continue to hire only bona fide, qualified caregivers for her mother when there is a gap in care. The caregivers are found through the IHSS program, Care.com, or a caregiver agency, all of which have qualified caregivers.

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<sup>1</sup> The Commission previously advised the Congresswoman regarding using campaign funds for travel related to CHC. (AO 2023-01).

## Question Presented

Can Congresswoman Barragán use campaign funds to pay for gaps in her mother’s in home caregiving while she is conducting campaign or officeholder activity as described in the situations above?

## Discussion

Under the Act, a candidate’s authorized committee may use its funds for several specific purposes. They are (1) otherwise authorized expenditures in connection with the candidate’s campaign for Federal office; (2) ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office; (3) contributions to organizations described in 26 U.S.C. 170(c); (4) transfers, without limitation, to national, State or local political party committees; (5) donations to State and local candidates subject to the provisions of State law; and (6) any other lawful purpose.<sup>2</sup>

However, an authorized committee may not convert campaign funds to “personal use.”<sup>3</sup> “Conversion to personal use” is defined as the use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign.”<sup>4</sup> The Act and Commission regulations provide a list of expenses that are personal use. That list is non-exhaustive. For expenses that are not on that list, the Commission determines whether the expense is personal use on a case-by-case basis.

The Act and regulations do not explicitly reference caregiving expenses, so the Commission must evaluate whether such expenses would exist irrespective of the candidate’s campaign to determine whether it would be a permissible use of campaign funds.

The Commission has not previously advised on caregiving expenses, but they have advised that childcare expenses are permissible in certain circumstances. In Advisory Opinion 2022-07, the Commission concluded Congressman Swalwell could use campaign funds to pay for overnight childcare if he traveled for campaign events, but the Commission could not reach a conclusion on whether campaign funds could be used for campaign events other than his own or for official foreign travel. In Advisory Opinion 2018-06, the Commission concluded the candidate could use campaign funds to pay for such care to the extent that the expenses were a “direct result of campaign activity,” because such expenses would not have existed but for the campaign. In Advisory Opinion 1995-42, the Commission concluded it was permissible for a candidate to use campaign funds to pay for occasional childcare costs because the expenses would have resulted only from campaign activity and would not otherwise exist. In Advisory Opinion 2019-13, the Commission determined that childcare expenses that were a direct result of campaign activity would not exist irrespective of the campaign, so they could be paid for with campaign funds.

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<sup>2</sup> 52 U.S.C. §30114(a)(6).

<sup>3</sup> 52 U.S.C. §30114(b).

<sup>4</sup> 52 U.S.C. §30114(b)(2).

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Again, these advisory opinions do not directly speak to caregiving for a parent, only childcare, but because both types of care require constant supervision of family members, the Congresswoman is requesting that the similarities be considered in the analysis of this request.

Because the necessary elder care would not be required if Congresswoman Barragán was not a member of Congress and running for reelection, these expenses are not for personal use. While it is the Congresswoman's belief that elder care is similar to child care and should be permissible under federal law, she will not pay for services without express permission of the Commission.

We appreciate the Commission's consideration of our request. If you need additional information, please do not hesitate to contact me.

Sincerely,



Rebecca J. Olson  
Counsel  
Barragán for Congress