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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 17-45-B**  
**AGENDA ITEM**  
**For meeting of October 26, 2017**  
**SUBMITTED LATE**

October 20, 2017

**MEMORANDUM**

TO: The Commission

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

Erin Chlopak *ERC by RMK*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

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Attorney

Subject: AO 2017-11 (Gallegly) Draft B

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

1 ADVISORY OPINION 2017-11

2

3 Honorable Elton Gallegly

4 Gallegly for Congress

5 P.O. Box 940001

6 Simi Valley, CA 93094-0001

7

8 Dear Mr. Gallegly:

**DRAFT B**

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

19 **Background**

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

23           You were a member of the United States House of Representatives from 1987 to 2013,  
24 and you established Gallegly for Congress (the “Committee”) as your principal campaign  
25 committee. AOR001. You are no longer an officeholder or candidate; however, the Committee  
26 remains active and had \$173,632.99 in cash on hand as of September 30, 2017.<sup>1</sup>

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<sup>1</sup> See Gallegly for Congress, *FEC Financial Summary of Reported Activity*,

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

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

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

1 **Question Presented**

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

4 **Legal Analysis and Conclusions**

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

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

13 The Act and Commission regulations also specify prohibited uses of federal campaign  
14 funds. Under 52 U.S.C. § 30114(b), contributions accepted by a candidate may not be converted  
15 to "personal use" by any person. 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to  
16 personal use occurs when a contribution is used "to fulfill any commitment, obligation, or  
17 expense of a person that would exist irrespective of the candidate's election campaign or  
18 individual's duties as a holder of [f]ederal office." 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. §  
19 113.1(g).

20 The Act and Commission regulations provide a non-exhaustive list of items that would  
21 constitute personal use *per se*, none of which applies here. *See* 52 U.S.C. § 30114(b)(2)(A)-(I);  
22 11 C.F.R. § 113.1(g)(1)(i)(A)-(J). For items not on this list, such as the proposed payment of  
23 costs related to a residential security system, the Commission determines on a case-by-case basis

1 whether the expense would fall within the definition of “personal use”; that is, whether the  
2 expense would exist irrespective of a candidate’s campaign or an individual’s duties as an  
3 officeholder. 11 C.F.R. § 113.1(g)(1)(ii). The Commission has long recognized that if a current  
4 officeholder or candidate “can reasonably show that the expenses at issue resulted from  
5 campaign or officeholder activities, the Commission will not consider the use to be personal  
6 use.” Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed.  
7 Reg. 7862, 7867 (Feb. 9, 1995).

8         The Commission has previously concluded that payments for, or improvements to, a  
9 residential security system do not constitute personal use under the Act and Commission  
10 regulations when the security system or security system upgrades are in response to threats  
11 resulting from an individual’s role as a current federal officeholder and/or candidate. In  
12 Advisory Opinion 2011-17 (Giffords for Congress), Advisory Opinion 2011-05 (Terry), and  
13 Advisory Opinion 2009-08 (Gallegly for Congress), Members of Congress faced specific and  
14 ongoing threats to themselves and their families. The facts presented in those advisory opinions  
15 suggested that the threats were motivated by the Members’ public roles as federal officeholders  
16 and/or candidates. In all three instances, the United States Capitol Police recommended specific  
17 security upgrades to the Members’ residences due to the ongoing nature of the threats. The  
18 Commission concluded that the threats would not have occurred had the Members not been  
19 federal officeholders or candidates, and that the expenses for the proposed residential security  
20 upgrades would not have existed irrespective of their duties as federal officeholders or  
21 candidates. The Commission thus concluded that the use of campaign funds to pay for the  
22 security upgrades recommended by the Capitol Police in those circumstances would not  
23 constitute a prohibited personal use of campaign funds under the Act or Commission regulations.

1 More recently, in Advisory Opinion 2017-07 (Sergeant at Arms), the Commission  
2 concluded that Members of Congress may, while in office, use campaign funds to pay for certain  
3 reasonable costs associated with installing, upgrading, and monitoring security systems at  
4 Members' residences, regardless of whether those officeholders have received specific threats.  
5 *Id.* at 3. The Commission emphasized that its conclusion was based on "the current heightened  
6 threat environment" experienced by Members of Congress, as assessed by the Capitol Police, *id.*  
7 at 3-4, and was limited to the use of campaign funds "by current federal officeholders," not by  
8 candidates or former officeholders, *id.* at n.2. *See also id.* at n.3 (directing candidates who are  
9 not federal officeholders to rely on Advisory Opinion 2011-17 (Giffords for Congress), Advisory  
10 Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly for Congress) "if the  
11 relevant facts are materially indistinguishable from the facts of those advisory opinions").<sup>2</sup>

12 Unlike in these prior advisory opinions, you are not a current candidate or officeholder  
13 (and have not been for several years). The instant proposal is thus materially different from  
14 those the Commission has previously approved, which involved specific threats, Advisory  
15 Opinion 2011-17 (Giffords for Congress) at 2; Advisory Opinion 2011-05 (Terry) at 1-2;

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<sup>2</sup> Although Commission regulations and advisory opinions recognize that former officeholders may use campaign funds to pay the costs of winding down their federal offices, *see* 11 C.F.R. § 113.2(a)(2), the proposed use of campaign funds to repair the requestor's residential security system four years after leaving office would fall outside the scope of winding-down activities. *See* 11 C.F.R. §§ 110.1(b)(3)(ii) (describing necessary administrative costs of winding down campaign to include office space rental, staff salaries, and office supplies), 116.1(a) (same); Advisory Opinion 2013-05 (Gallegly) at 3 (concluding that former officeholder may use campaign funds to pay to archive and store 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, and to archive and store campaign materials); Advisory Opinion 1996-14 (de la Garza) at 2 (concluding that former officeholder may use campaign funds to pay to transfer congressional office furnishings to his home); *see also* 11 C.F.R. §§ 9004.9(a)(4) (describing winding down costs for candidates eligible for public funding from Presidential Election Campaign Fund), 9004.11(a) (same), 9034.11(a) (describing winding down costs for candidates eligible for public funding from Presidential Primary Matching Payment Account), 9034.5(b)(2) (same).

1 Advisory Opinion 2009-08 (Gallegly for Congress) at 2, or a heightened threat environment,  
2 Advisory Opinion 2017-07 (Sergeant at Arms) at 3, resulting from current candidacy or service  
3 as a federal officeholder. Nor do the facts presented here indicate that a current security threat  
4 arises from your past candidacies or service as a federal officeholder. Absent facts  
5 demonstrating that the proposed use of campaign funds would fulfill a commitment, obligation,  
6 or expense that would not exist irrespective of your past candidacies or duties when you were a  
7 federal officeholder, the Commission concludes that the proposed use of campaign funds would  
8 be an impermissible personal use under the Act and Commission regulations. *See* 52 U.S.C.  
9 § 30114(b)(1); 11 C.F.R. § 113.2(e).

10 This response constitutes an advisory opinion concerning the application of the Act and  
11 Commission regulations to the specific transaction or activity set forth in your request. *See*  
12 52 U.S.C. § 30108. Please note that the analysis or conclusions in this advisory opinion may be  
13 affected by subsequent developments in the law including, but not limited to, statutes,  
14 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
15 on the Commission's website.

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On behalf of the Commission,

Steven T. Walther,  
Chairman.