

# Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

**RECEIVED**

By Office of General Counsel at 11:24 am, Nov 18, 2022

November 18, 2022

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By Office of the Commission Secretary at 10:36 am, Nov 28, 2022

Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

Re: Request for Advisory Opinion

Dear Commissioners:

Mike Crapo for U.S. Senate (“the Committee”), through the undersigned counsel, submits this request for an advisory opinion pursuant to 52 U.S.C. § 30108 of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Committee requests the Commission’s confirmation that a Member of the U.S. Senate may use campaign funds to pay for various residential security installations and upgrades (detailed below) as recommended by the Capitol Police to protect the Member from threatened harm. To assist, we are available to answer any questions the Commission or staff may have by electronic mail at any time and would be able to appear before the Commission at its earliest opportunity if the Commission believes a public hearing is necessary to resolve the question presented.

## Question Presented

May a Member of the U.S. Senate permissibly use campaign funds to pay for various residential security installations and upgrades (detailed below) as recommended by the Capitol Police to protect the Member? We seek the Commission’s confirmation that, consistent with Commission precedent, such a use of campaign funds would not constitute an impermissible personal use of campaign funds.

## Factual Background

Mike Crapo for U.S. Senate is the principal campaign committee of the Member, registered under the Act. The Committee receives contributions and makes expenditures on behalf of the campaign.

Current events involving concrete threats of physical violence against Members and their families have prompted Members to consider further security measures for themselves and their families. As has been well-documented in the media,<sup>1</sup> Members and their families continue to endure threats and security breaches, which are being timely reported to appropriate law enforcement officials.

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<sup>1</sup> See, e.g., Press Release, U.S. Attorney’s Office, E. Dist. N.Y., Queens Man Arrested for Threatening to Murder Members of Congress (Jan. 19, 2021), <https://www.justice.gov/usao-edny/pr/queens-man-arrested-threatening-murder-members-congress>; Michael D. Shear, Adam Goldman and Emily Cochrane, *Congressman Steve Scalise Gravely Wounded in Alexandria Baseball Field Ambush*, New York Times (June 14, 2017),

Over the previous decade, the Commission has provided essential and timely guidance to Senators and House Members in response to heightened security concerns, including in the aftermath of the shootings of Representatives Giffords and Scalise in 2011 and 2017, respectively. The current threat environment that Members and their families face must again be met with increased security measures. The Committee finds it imperative that the Member have additional options to protect himself within the residences in Washington, D.C. and Idaho. The Committee therefore seeks the Commission's guidance on the permissibility of using campaign funds to upgrade residential security measures.

Senator Crapo has two residences that are the subjects of this request: (1) a Washington, D.C. row home; and (2) a home in Idaho Falls, Idaho. The Capitol Police recently completed surveys for both homes and provided security recommendations to Senator Crapo.<sup>2</sup> Both surveys explain that “[a]s a Member of Congress, one may become the target of potential acts of terrorism, civil disobedience, civil disturbance, threats of violence, theft of services, theft of physical or intellectual property, burglary, vandalism, other acts of criminal mischief, and unauthorized trespassing.”

For both residences, the Capitol Police recommended that Senator Crapo make a series of security enhancements including:

- (1) Install electronic home security system. The recommended system would include an alarm system and intrusion detection system, video door intercom stations, arming stations, motion sensors, door contacts, window contacts and glass break sensors, and duress alarms and mobile alarm pendants. This electronic home security system would then be monitored at all times by a reputable service provider.
- (2) Install exterior closed-circuit video (CCV) system to provide live monitoring, video recording, and motion and sound detection. Capitol Police recommended a system that provides camera views of all access points and sides of the residence.
- (3) Replace outer doors with solid-core wood doors or metal-clad doors, install with non-removable hinges, and install deadbolt and peepholes. Capital Police also recommended additional keyed locks, security bars on sliding doors, and locking mechanisms on gates (which may require the installation of additional gate posts).

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<https://www.nytimes.com/2017/06/14/us/steve-scalise-congress-shot-alexandria-virginia.html>; John Bowden, *FBI Arrests Man Who Allegedly Threatened to Kill Pelosi*, The Hill (Jan. 12, 2012), <https://thehill.com/policy/national-security/533843-fbi-arrests-man-who-allegedly-threatened-to-kill-pelosi>; Jeff Pegues and Gina Martinez, *Suspect in Paul Pelosi Attack Had List of Targets, Law Enforcement Sources Say*, CBS News (Oct. 31, 2022) <https://www.cbsnews.com/news/paul-pelosi-attack-suspect-target-list-sources-say-nancy-pelosi-husband/>.

<sup>2</sup> Both surveys were conducted by the United States Capitol Police Security, Services Bureau, Security Coordination Division, and both are titled “Physical Security Assessment” and “Residential Security Survey.” Both surveys include a cover sheet indicating “SCSI,” or “Statutory Congressional Sensitive Information” meaning the survey is “restricted from unauthorized disclosure according to 2 U.S.C. 1979.” The two reviews are not included as attachments for this reason, but the Requestor affirms that the summary of the two surveys contained herein is accurate. Requestor has omitted certain recommendations for which it does not seek to use campaign funds.

- (4) Install security film on all accessible windows to prevent surreptitious observation into the residence.
- (5) Install automated residential lighting application for interior and add motion-activated lighting to exterior.
- (6) Install lockable mailbox for mail delivery.

## Legal Background

### *The Act and Commission Regulations*

The use of campaign funds is governed by the Act’s permitted use provision and personal use prohibition. *See* 52 U.S.C. § 30114(a), (b); 11 C.F.R. §§ 113.1, 113.2. The Act identifies six broad categories of permitted uses of campaign funds, including: (1) 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 not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a)(1)–(6); *see also* 11 C.F.R. § 113.2(a)–(e). With respect to prohibited uses of campaign funds, the Act contains a list of commitments, obligations, or expenses of a person that would exist irrespective of a candidate’s campaign or individual’s duties as an officeholder, including: Home mortgages, rent, utility payments, clothing, vacations, household items, tuition, and country club or health club memberships. Spending campaign funds on these categories of expenses constitutes an impermissible conversion of contributions to personal use. 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g). Commission regulations provide that other uses of funds are considered on a case-by-case basis to determine whether a particular use of funds would fulfill a commitment, obligation, or expense that would exist irrespective of the candidate’s campaign or duties as a federal officeholder, and thereby constitute an impermissible personal use of campaign funds.

### *Commission Precedent*

In numerous advisory opinions regarding use of campaign funds for security-related expenses, the Commission has concluded “that if a candidate ‘can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.’” Advisory Opinion 2018-15 (Wyden) at 3 (quoting Explanation and Justification for Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995)). The Commission has issued a series of advisory opinions that approved the use of campaign funds for upgraded home security systems for individual Members of Congress. *See* Advisory Opinions 2009-08 (Gallegly), 2011-05 (Terry), 2011-17 (Giffords), 2020-06 (Escobar), and 2022-02 (Steube). In each of these opinions, the Commission applied its case-by-case “irrespective” test to

conclude that using campaign funds to pay for necessary elements of home security systems, with certain restrictions, would not constitute a personal use of funds.

In Advisory Opinion 2009-08 (Gallegly), the requestor detailed specific threats that had been made against the requesting Member and his spouse at their home and demonstrated that the threats were made as a result of “the Congressman’s public role as a candidate ... and/or his activities as a Member of Congress.” Advisory Opinion 2009-08 at 3. As explained in the request for that advisory opinion, “Representative Gallegly consulted the U.S. Capitol Police” which “recommended various upgrades to Representative Gallegly’s home security system for the Congressman’s and Mrs. Gallegly’s safety.” *Id.* at 2. “Representative Gallegly confirmed that the security upgrades would not involve any structural improvements to, and are not intended to increase the value of, the Galleglys’ property.” *Id.* The Commission “conclude[d] that the need for the proposed upgrades to the Congressman’s security system would not exist irrespective of the Congressman’s campaign or duties as a Federal officeholder.” *Id.* at 4. Accordingly, “the use of campaign funds to pay for these security system upgrades would not constitute personal use of campaign contributions, and would not be prohibited by the Act or Commission regulations.” *Id.*

Advisory Opinion 2011-05 (Terry) involved similar facts, and U.S. Capitol Police again “recommended the installation of various components of a security system, including CCTV video surveillance, at Representative Terry’s home.” Advisory Opinion 2011-05 at 2. The Commission applied the same analysis as in Advisory Opinion 2009-08 and again concluded that “the expenses for the proposed upgrades to the Congressman’s security system would not exist irrespective of the Congressman’s campaign or duties as a Federal officeholder.” *Id.* at 4. Again, “the use of campaign funds to pay for these security system upgrades would not constitute personal use of campaign contributions.” *Id.*

Likewise, in Advisory Opinion 2011-17 (Giffords), the Commission approved a request to use campaign funds to pay for “upgrades to the security system at Representative Giffords’ family home” following the tragic 2011 severe wounding of Representative Giffords. Advisory Opinion 2011-17 at 2. U.S. Capitol Police “made several recommendations to increase the home’s security that are specific to the identified security needs of Representative Giffords.” *Id.* The Commission concluded that “the use of campaign funds to pay for these security system upgrades would not constitute personal use of campaign contributions.” *Id.* at 3.

Less than one month after the shooting of Representative Scalise, the Commission issued Advisory Opinion 2017-07, which broadly concluded that “Members of Congress may use campaign funds to pay for costs associated with installing (or upgrading) and monitoring a security system at the Members’ residences without such payments constituting an impermissible conversion of campaign funds to personal use, under the Act and Commission regulations.” Advisory Opinion 2017-07 (Irving) at 1. This advisory opinion request was submitted by the Sergeant at Arms of the U.S. House of Representatives, who informed the Commission that “Members receive threatening communications on a daily basis,” “the incidence of such threats is increasing,” and that Members face a “new daily threat environment.” *Id.* According to the request, “[i]n calendar year 2016, the United States Capitol Police investigated 902 threatening communications received by Members,

while in approximately the first six months of 2017 they have investigated 950 such communications.” *Id.*<sup>3</sup>

As noted above, in Advisory Opinions 2009-08 (Gallegly), 2011-05 (Terry), and 2011-17 (Giffords), the Commission reached its conclusion using the case-by-case “irrespective” standard set forth at 11 C.F.R. § 113.1(g)(1)(ii) (“The Commission will determine, on a case-by-case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder, and therefore are personal use.”). In Advisory Opinion 2017-07 (Irving), however, the Commission concluded that residential security systems that do not constitute structural improvements to Members’ houses “fall within the uses defined as permissible under the Act: ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of federal office.” Advisory Opinion 2017-07 (Irving) at 2. The Commission made clear that this conclusion applies “regardless of whether those Members have received specific or ongoing threats.” *Id.* at 3. This shift in approach rendered the installation, upgrading, and maintenance of Members’ residential security systems *per se* permitted uses of campaign funds.

In Advisory Opinion 2020-06 (Escobar), the Commission concluded that using campaign funds to pay the costs of lighting and wiring a garage on a residential property necessary for security cameras to function properly did not constitute an impermissible personal use. Even though the wiring and lighting installation might not fit the “non-structural security devices” category, the funds were still appropriately used because the recommended security cameras would not function properly without the wiring and lighting. *Id.* at 4. Likewise, in Advisory Opinion 2022-02 (Steube), the Commission authorized use of campaign funds to purchase and install a locking steel security gate as part of a residential security system although those “particular costs may not fall within the category of being for ‘non-structural security devices’ authorized in Advisory Opinion 2017-07 (Sergeant at Arms).” *Id.* at 5. The gate fell within the category of locks in and around the Member’s home. *Id.* Therefore, while a gate might be described as structural in nature, “the purchase and installation of the gate is intended to provide an effective security system and is not intended for the purpose of improving [the Member’s] home.” *Id.* at 4–5. The gate served as a “lockable barrier to the entrance” of the Member’s residence. *Id.* at 5. Campaign funds could be used for the gate. *Id.*

Taken together, these advisory opinions demonstrate the Commission’s recognition that the current environment has made a variety of residential security precautions “ordinary and necessary” officeholder expenses.<sup>4</sup>

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<sup>3</sup> Advisory Opinion 2020-06 (Escobar), issued on January 22, 2021, reiterated the conclusions reached in previous advisory opinions, and extended the Commission’s approval to the installation of “additional wiring and lighting” around Representative Escobar’s home.

<sup>4</sup> The Commission has also approved requests by Members of Congress to use campaign funds to pay for internet-based security measures on the grounds that they were ordinary and necessary expenses incurred in connection with a federal officeholder’s duties. *See* Advisory Opinion 2018-15 (Wyden) and 2022-17 (Warren). And, in Advisory Opinion 2021-03 (NRSC/NRCC), the Commission concluded that the use of campaign funds for the “use of campaign funds for bona fide, legitimate, professional personal security personnel against threats arising from the members’ status as officeholders is a permissible use of campaign funds under the Act and Commission regulations.”

### Analysis

The security enhancements recommended to Senator Crapo by the U.S. Capitol Police, as described above, are all similar in nature to (if not materially indistinguishable from) security measures previously approved by the Commission as expenses that may be paid using campaign funds consistent with the Act's personal use restrictions. In each case, the Commission has concluded either that the expenses would not exist irrespective of the Member's officeholder duties or that they are ordinary and necessary officeholder expenses. Accordingly, the Committee asks the Commission to conclude that campaign funds may permissibly be used to pay for the recommended security installations and upgrades detailed herein.

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The Commission concluded in Advisory Opinion 2017-07 (Irving) that residential security system upgrades and/or installations are ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office, meaning campaign funds may be spent on such systems consistent with 52 U.S.C. § 30114. In that opinion, the Commission "[s]pecifically ... authorize[d] the use of campaign funds to pay for the installation (or upgrade) and monitoring costs of cameras, sensors, distress devices, and similar non-structural security devices, as well as locks, in and around a Member's residence." Advisory Opinion 2017-07 (Irving) at 3.

The Commission cautioned that its conclusion was "based on information ... provided about the current heightened threat environment experienced by Members of Congress, as assessed by the Capitol Police, and that if the threat environment should diminish significantly at some point in the future, this conclusion may no longer apply." *Id.* at 3–4. In light of well-publicized events that have transpired since July 2017, the "threat environment" faced by federal officeholders clearly has not "diminish[ed] significantly," and has actually worsened. Members are confronted in public on a routine basis, and it has become increasingly common for protesters to gather outside Members' homes. In August 2019, it was reported that "a group of protesters supporting gun control gathered outside the home of then-Sen. Majority Leader Mitch McConnell ... where one expressed that someone should 'stab [him] in the heart.'"<sup>5</sup> The homes of Senator McConnell and Speaker Pelosi were vandalized in 2021, and a severed pig's head left in Speaker Pelosi's driveway.<sup>6</sup> The collective threat faced by Members of Congress warrants increased security measures even when an individual Member has not yet received direct threats. Advisory Opinion 2017-17 (Sergeant at Arms) at 3. In Advisory Opinion 2021-03 (NRSC/NRCC), the Commission acknowledged that the heightened security risk referenced in Advisory Opinion 2017-17 continued

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<sup>5</sup> Joseph Wulfsohn, *Protesters gather outside McConnell's Kentucky home, one calls for his stabbing 'in the heart'*, Fox News, Aug. 6, 2019, <https://www.foxnews.com/media/protestors-gather-outside-mcconnells-ky-home-one-calls-for-his-stabbing-in-the-heart>.

<sup>6</sup> See Allyson Waller, *Homes of Mitch McConnell and Nancy Pelosi Are Reported Vandalized*, New York Times, Jan. 2, 2021, <https://www.nytimes.com/2021/01/02/us/mcconnell-pelosi-house-vandalized.html>; Editorial, *Protesters targeting the homes of politicians are crossing the line – and possibly the law*, Washington Post, Jan. 5, 2021, [https://www.washingtonpost.com/opinions/pelosi-mcconnell-houses-vandalized-break-law/2021/01/05/1fccb94c-4f8b-11eb-b96e-0e54447b23a1\\_story.html](https://www.washingtonpost.com/opinions/pelosi-mcconnell-houses-vandalized-break-law/2021/01/05/1fccb94c-4f8b-11eb-b96e-0e54447b23a1_story.html).

to exist. Recent events demonstrate that the security risks that Members of Congress face have not been alleviated and that the premises underlying previous Advisory Opinions remain valid.

Each installation or upgrade requested by the Committee and recommended by the Capitol Police fits into one of the categories the Commission has previously approved as a permissible use of campaign funds to protect against threats arising out of federal officeholding.

First are the “non-structural security devices” recommended by the Capitol Police: Intrusion detection systems; video door intercom stations; arming stations; ceiling-mounted passive infrared motion sensors; balance magnetic switch door contacts; window contacts and glass break sensors; duress alarms and mobile alarm pendants; security film on windows; peepholes; lighting apps; motion-activated exterior lighting; and exterior closed-circuit video cameras. Each of these security devices is of a kind with the general upgrades to home security the Commission has already found to be appropriate expenses paid for with campaign funds. *See, e.g.*, Advisory Opinion 2017-07 (Irving) (“the Commission authorizes the use of campaign funds to pay for the installation (or upgrade) and monitoring costs of cameras, sensors, distress services, and similar non-structural security devices”); Advisory Opinion 2011-17 (Giffords) (regarding general home security upgrades); Advisory Opinion 2011-05 (Terry) (regarding various components of home security system, including CCTV video surveillance); Advisory Opinion 2009-08 (Gallegly) (regarding “various upgrades” to the home security system).

Next are the various locks, foot locks, security bars, and gate-locking mechanisms requested by the Committee and recommended by the Capitol Police. All of these fit squarely into advisory opinions already rendered by the Commission. *See* Advisory Opinion 2017-07 (Irving) at 3 (Campaign funds may be used to “pay for the installation (or upgrade) and monitoring costs of . . . locks, in and around a Member’s residence.”). The Capitol Police’s recommended locking mailbox also falls within this category.

Third are the replacement of the doors with solid-core wood or metal-clad with non-removable hinges, including deadbolts, as well as the replacement of various accessible windows and the addition of a post to the pedestrian gate for the Idaho residence. To the extent paying for doors and windows, like for a gate, traditionally “may not fall within the category of being for ‘non-structural security devices,’” the purchase and installation of these doors and windows is “intended to provide a security system and is not intended for the purpose of improving [the Member’s] home.” *See* Advisory Opinion 2022-02 (Steube) at 4–5. As the Capitol Police recommend, the new doors and windows are reinforced, harder to breach, and more secure. Therefore, they exemplify the Commission’s concept of a “lockable barrier to the entrance” of the Member’s residence, a permissible use of campaign funds. *See id.* at 5.

### **Conclusion**

As the Commission has repeatedly recognized, it is essential that Members be able to adequately protect themselves at home from credible threats directed at them because of their status as officeholders. Accordingly, for the reasons set forth above, the Committee requests that the Commission confirm that a Member of the U.S. Senate may permissibly use campaign funds to

pay for all of the security measures requested herein and recommended by the Capitol Police to protect the Member, and that such use of campaign funds is not an impermissible personal use.

Please feel free to contact us if you have any questions about this request.

Sincerely,



/s/ \_\_\_\_\_

Jessica Furst Johnson

Caleb Acker

Holtzman Vogel Baran Torchinsky & Josefiak

Counsel to Mike Crapo for U.S. Senate