

February 2, 2023

RECEIVED

By Office of General Counsel at 4:39 pm, Feb 02, 2023

Lisa J. Stevenson, Esq.
Acting General Counsel
Office of General Counsel
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

Re: Request for an Advisory Opinion Regarding Use of Campaign Funds for Officeholder Expenses

Dear Ms. Stevenson:

On behalf of U.S. Representative Nanette Diaz Barragán, the Chair of the Congressional Hispanic Caucus (“CHC” or “Caucus”), we seek an advisory opinion to confirm that Representative Barragán may use principal campaign committee funds to pay ordinary and necessary travel expenses for Members of Congress solely to attend official CHC events.¹

BACKGROUND

Representative Barragán serves California’s 44th Congressional District in the United States House of Representatives. Her principal campaign committee is Barragán for Congress.

Representative Barragán is Chair of the Congressional Hispanic Caucus.² The CHC serves as a forum for Hispanic Members of Congress to coalesce around a collective legislative agenda and pursue common legislative objectives.³ As an official Congressional Membership Organization (“CMO”), the CHC is registered with the U.S. House of Representatives Committee on House Administration (“CHA”) and is subject to that committee’s regulations, as well as the broader rules

¹ To comply with House Rules, Representative Barragán has sought and obtained informal advice from the Committee on Ethics on the application of House rules to her question. Having been advised by Committee staff that her question also implicates the FEC’s jurisdiction, and that she should follow also the FEC’s guidance on the matter, Representative Barragán submits the instant request.

² See Congressional Hispanic Caucus Announces Leadership for 118th Congress, <https://chc.house.gov/media-center/press-releases/congressional-hispanic-caucus-announces-leadership-for-118th-congress> (Dec. 15, 2022).

³ See Congressional Hispanic Caucus, <https://chc.house.gov/about>. A CMO is a working group of Members of Congress organized under House rules to pursue common legislative objectives. See U.S. House of Representatives Committee on Ethics, *Official Support Organizations*, https://ethics.house.gov/official-outside-organizations/official-support-organizations#org_fnote4 (“Official Support Organizations”).

of the House of Representatives.⁴ Under CHA rules, CMOs are considered extensions of the individual offices of participating Members, who assist the CMO in carrying out its legislative objectives.⁵

On Chair Barragán’s initiative, the CHC plans to host official policy events in various locations across the country. The events will allow CHC Members to hear directly from constituents and stakeholders on issues of importance to Latino communities and to discuss the legislative and policy work of the CHC and its Members. Events may include town halls, listening sessions, roundtables with Members and policy experts, and other formats designed to drive engagement with communities with growing Latino populations. Events may be held in both CHC Member districts and non-CHC Member districts. The events will be organized to comply with House rules and would not involve express advocacy of the election or defeat of any candidate or political party, nor would they involve any solicitations of contributions.

As CHC Chair, Representative Barragán will drive the planning of the policy events and is deeply invested in their success, which depends in no small part on CHC Member participation. However, the CHC has no travel budget of its own. So that Members can attend these official events, regardless of the limited resources available, Chair Barragán plans to offer to pay the ordinary and necessary travel expenses of CHC Members by using funds from Barragán for Congress. Covered travel expenses may include airfare, lodging, and taxi or car service for the attending CHC Members, their staff, and others participating in the events, such as the aforementioned policy experts. As a condition to Barragán for Congress paying the expenses, travelers must agree that they will not engage in any campaign-related activity at the point of destination besides incidental contacts.⁶ Nor will Barragán for Congress pay any incremental or other expenses associated with any personal activities.⁷ The payment of travel expenses will be exclusively for the Member’s attendance at CHC events.

QUESTION PRESENTED

May Barragán for Congress pay for CHC Members to travel to attend official Caucus events?

ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the “Act”) expressly permits the use of campaign funds “for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office,” and also for “any other lawful purpose” that does not convert the funds to “personal use.”⁸ “Personal use” means any use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office[.]”⁹ Commission regulations

⁴ See Committee on House Administration, [https://cha.house.gov/member-services/congressional-member-and-staff-organizations/cmoco-registration-submission#:~:text=A%20Congressional%20Staff%20Organization%20\(CSO,the%20Committee%20on%20House%20Administration\)](https://cha.house.gov/member-services/congressional-member-and-staff-organizations/cmoco-registration-submission#:~:text=A%20Congressional%20Staff%20Organization%20(CSO,the%20Committee%20on%20House%20Administration);); Official Support Organizations.

⁵ See Official Support Organizations.

⁶ See 11 C.F.R. § 106.3(b)(3).

⁷ See *id.* § 113.1(g)(1)(ii)(C).

⁸ 52 U.S.C. § 30114(a)(2), (6).

⁹ *Id.* § 30114(b)(2).

provide a list of expenses, such as household food items and clothing, that are considered *per se* personal use. If an expense is not on that list, the Commission considers the permissibility of the use of campaign funds for that purpose on a case-by-case basis.¹⁰ Travel is among the types of expenses that the Commission evaluates on a case-by-case basis.¹¹ If travel expenses would exist irrespective of a candidate's campaign or duties as a Federal officeholder, they may not be paid with campaign funds.

The Commission has consistently held that candidates and officeholders have wide discretion over the use of campaign funds for official activities: "If the 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."¹² True to this long-standing principle, the Commission has repeatedly permitted the use of campaign funds for a wide range of officeholder expenses.¹³ Specifically through advisory opinions, it has repeatedly allowed Members of Congress to use campaign funds to pay for a wide range of travel expenses: for a chief of staff to engage in officially connected activities at a national party convention;¹⁴ for spouses and children of Members to attend a bipartisan Congressional retreat;¹⁵ for minor children to accompany a Member and spouse, and thereby enable their participation in officially connected activities.¹⁶

The Commission has likewise repeatedly permitted Members to use campaign funds for other official purposes, which in some cases are very closely analogous to the contemplated CHC events. For example, it has allowed Members to use campaign funds to hold an official seminar focusing "on ways in which participants can become more sensitive and responsive to persons from different racial and ethnic backgrounds;"¹⁷ to take a language immersion course to improve communication with their constituents;¹⁸ to give medals to veterans of the Normandy invasion;¹⁹ to move out of the Washington area upon their retirement;²⁰ to store their officeholder materials;²¹ and to defray a wide range of security expenses in response to potential threats arising from their official positions.²² In each case, whether the campaign paid for the Member's own expenses or someone else's, and whether the expenses were for travel or other purposes, the justification was

¹⁰ 11 C.F.R. § 113.1(g)(1).

¹¹ *Id.* § 113.1(g)(1)(ii)(C).

¹² See Contribution and Expenditure Limitations and Prohibitions; Personal Use of Campaign Funds; Final Rule, 60 Fed. Reg. 7,862, 7,867 (1995).

¹³ While not binding on the Commission, the use of campaign funds for officially connected travel is broadly consistent with the advice historically given by the Committee on Ethics, which states that campaign funds may be used to pay for the travel of "a speaker or guest at an official House event" or "for travel expenses associated with a proper officially-connected trip when the sponsor is not able to cover all of the expenses." House Ethics Manual at 176.

¹⁴ See Advisory Opinion 1996-20 (Lucas).

¹⁵ See Advisory Opinion 1997-02 (Skaggs/LaHood).

¹⁶ See Advisory Opinion 2005-09 (Dodd).

¹⁷ See Advisory Opinion 1996-45 (Roybal-Allard).

¹⁸ See Advisory Opinion 1997-11 (Roybal-Allard).

¹⁹ See Advisory Opinion 2000-37 (Udall).

²⁰ See Advisory Opinion 2010-26 (Baird); Advisory Opinion 1996-44 (Wilson); Advisory Opinion 1996-14 (de la Garza); Advisory Opinion 1987-11 (Zorinsky).

²¹ See Advisory Opinion 2013-05 (Gallegly).

²² See Advisory Opinion 2022-25 (Crapo); Advisory Opinion 2022-17 (Warren); Advisory Opinion 2021-03 (NRSC and NRCC); Advisory Opinion 2017-07 (Sergeant at Arms); Advisory Opinion 2011-17 (Giffords); Advisory Opinion 2011-05 (Terry); Advisory Opinion 2009-08 (Gallegly).

the same: the Member could “reasonably show” that the expense resulted from officeholder activity, and so the expense was permissible.

Representative Barragán’s proposal for her campaign to pay for her colleagues to travel to attend CHC events is fully in line with the statute, regulations, and advisory opinions. She chairs an official Congressional Membership Organization governed by the rules of the U.S. House of Representatives and seeks to pay the expenses because of this leadership role. The events will be official events, helping the CHC and its Members to develop their legislative agenda and implement their official objectives. The expenses would in no way exist irrespective of Representative Barragán’s duties as a federal officeholder. The conditions that the travelers abstain from campaign-related activity at the point of destination, and that the campaign will not pay for any incremental personal expenses, removes any risk of a prohibited personal use or contribution. Because the proposed expenses are demonstrably in connection with Representative Barragán’s federal officeholder duties, because the Act accords her wide discretion over the use of her campaign funds for bona fide political and official purposes, and because she can reasonably show that the expenses will result from her officeholder activity, the Commission should grant her campaign permission to pay them.

CONCLUSION

We respectfully request that the Commission affirm the permissibility of Representative Barragán’s campaign committee paying the travel expenses of Members of the Congressional Hispanic Caucus to attend official Caucus events.

Very truly yours,



Brian G. Svoboda
Antoinette M. Fuoto

Counsel to Representative Nanette Diaz Barragán

Sarah Peck

From: Svoboda, Brian (WDC) <BSvoboda@perkinscoie.com>
Sent: Tuesday, February 21, 2023 2:30 PM
To: Sarah Peck; Fuoto, Annie (WDC)
Cc: Amy Rothstein; Lindsay Bird
Subject: RE: Submission on behalf of Representative Barragán

Dear Ms. Peck:

We can confirm the accuracy of the statement below.

We are glad to have provided additional information in response to the Office of General Counsel's questions, and we hope it assists the Commission's consideration of Representative Barragán's request. As we discussed when we last spoke, we would ask that the Commission will consider her request as soon as possible. While we have been and remain glad to provide further information to assist the Commission, we would respectfully submit that our February 2 letter was substantially complete at that time. We hope that the Commission will issue the opinion timely in response, so that the Congresswoman may proceed as she proposes, while enjoying 52 U.S.C. § 30108(c)'s protections.

Please let us know when the request has been released for public comment, and please do not hesitate to ask if we can provide further assistance.

Very truly yours,

=B.

Brian Svoboda | Perkins Coie LLP

PARTNER

700 Thirteenth Street, N.W. Suite 800

Washington, DC 20005-3960

D. +1.202.434.1654

F. +1.202.654.9150

E. BSvoboda@perkinscoie.com

From: Sarah Peck <SPeck@fec.gov>
Sent: Tuesday, February 21, 2023 9:20 AM
To: Fuoto, Annie (WDC) <AFuoto@perkinscoie.com>; Svoboda, Brian (WDC) <BSvoboda@perkinscoie.com>
Cc: Amy Rothstein <ARothstein@fec.gov>; Lindsay Bird <lbird@fec.gov>
Subject: RE: Submission on behalf of Representative Barragán

Good morning, Mr. Svoboda and Ms. Fuoto:

This email is to confirm the additional information that you provided. Please respond to this email and either confirm the accuracy of the information as set out below or revise the statements as necessary for accuracy. Your response may become part of an advisory opinion request and, if so, will be posted on the Commission's website.

1. Representative Barragán seeks to use campaign funds to pay for travel expenses of staff members who are official employees of the CHC itself. The staff members will provide services directly to the CHC, including assisting with logistics, content, and other tasks necessary in the administration of the CHC event.

Thank you,
Sarah

Sarah Herman Peck
Attorney | Policy Division
Federal Election Commission | Office of General Counsel
(202) 694-1341 | speck@fec.gov

Sarah Herman Peck
Attorney | Policy Division
Federal Election Commission | Office of General Counsel
(202) 694-1341 | speck@fec.gov

From: Fuoto, Annie (WDC) <AFuoto@perkinscoie.com>
Sent: Thursday, February 16, 2023 5:06 PM
To: Lindsay Bird <lbird@fec.gov>; Svoboda, Brian (WDC) <BSvoboda@perkinscoie.com>
Cc: Amy Rothstein <ARothstein@fec.gov>; Sarah Peck <SPeck@fec.gov>
Subject: RE: Submission on behalf of Representative Barragán

Ms. Bird,

Thank you for your email. We can confirm that your understanding of items 2, 5, and 6 are correct as drafted. Item 1 is correct as well, though we would like to clarify that CHC has one upcoming event planned, but Representative Barragán has not tendered offer to any Member or any other person to pay for travel to the event and does not intend to make such an offer for this particular event. Regarding item 3, it is correct that the events will primarily be targeted to individuals in the district where the events will take place, though individuals in adjacent districts may attend as well. Finally, regarding item 4, Representative Barragán may use campaign funds to pay for staff members of the CHC itself, but does not currently plan to use campaign funds to pay for the staff of Members. You are correct that she also seeks to use campaign funds for CHC Members who are serving as speakers or headliners at the particular CHC event and non-CHC Member participants who are helping to facilitate or lead the events (e.g., a public policy expert). The request does not extend to any other theoretical attendees, such as the spouses or children of event participants.

Thank you, and please let us know if you need any additional information.

Annie Fuoto | **Perkins Coie LLP**
ASSOCIATE
She/her
700 Thirteenth Street, N.W. Suite 800
Washington, DC 20005-3960
D. +1.202.654.3354
F. +1.202.624.9556
E. AFuoto@perkinscoie.com

From: Lindsay Bird <lbird@fec.gov>
Sent: Wednesday, February 15, 2023 9:13 AM
To: Svoboda, Brian (WDC) <BSvoboda@perkinscoie.com>; Fuoto, Annie (WDC) <AFuoto@perkinscoie.com>
Cc: Amy Rothstein <ARothstein@fec.gov>; Sarah Peck <SPeck@fec.gov>
Subject: Submission on behalf of Representative Barragán

Mr. Svoboda and Ms. Fuoto:

Thank you for speaking with us last week about your submission on behalf of Representative Barragán.

We would like to verify our understanding of the information that you provided during our call. Please respond to this email to confirm the accuracy of the information below, or to clarify or correct any information as necessary. Please note that your response may become part of an advisory opinion request. If so, it will be posted on the Commission's website.

1. Representative Barragán has not planned any specific Congressional Hispanic Caucus ("CHC") events that relate to this advisory opinion request. Rather, the specific plans for future events are dependent on the outcome of the request.
2. The CHC events that Representative Barragán asks about would be akin to townhalls or meetings where some CHC members, among potential other guests, would serve as speakers or headliners and answer questions from the audience. Representative Barragán does not anticipate that all CHC members will attend every event. Other potential guests may include, for example, non-CHC Members of Congress, members of the current administration, and public policy experts, all of whom would similarly be used as a "draw" to raise public interest in the events and encourage attendance.
3. The targeted attendees of the CHC events are constituents in the district where a particular event will be held.
4. Representative Barragán seeks to use her principal campaign committee funds to pay the travel expenses for: (1) CHC members who are serving as speakers or headliners at the particular CHC event; (2) those CHC members' staff, and (3) non-CHC member participants who are helping to facilitate or lead the events (*e.g.*, a public policy expert). Representative Barragán's request does not extend to any other theoretical attendees (such as the spouses or children of event participants).
5. Representative Barragán seeks to use her principal campaign committee funds to pay for travel expenses only if the primary purpose of the travel is to participate in the official CHC event. Members will not engage in campaign activity during the trip, and campaign funds will not be used to pay for personal or collateral expenses.
6. Representative Barragán has received informal advice from the House Ethics Committee that her proposed use of funds is permissible under House Rules.

Thank you for your cooperation.

Sincerely,

Lindsay Bird
Staff Attorney
Federal Election Commission

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.