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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 23-03-A**  
**AGENDA ITEM**  
**For meeting of January 12, 2023**  
**SUBMITTED LATE**

January 6, 2023

**MEMORANDUM**

TO: The Commission

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

Neven F. Stipanovic *NFS*  
Associate General Counsel

Robert Knop *RMK*  
Assistant General Counsel

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Attorney

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Attorney

Subject: AO 2022-25 (Crapo) – Draft A

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 January 11, 2023.

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 2022-25

2

3 Jessica Furst Johnson, Esq.

4 Caleb Acker, Esq.

**DRAFT A**

5 Holtzman Vogel Baran Torchinsky & Josefiak PLLC

6 2300 N Street, Northwest, Suite 643A

7 Washington, DC 20037

8

9 Dear Ms. Johnson and Mr. Acker:

10 We are responding to your advisory opinion request on behalf of Mike Crapo for  
11 U.S. Senate (the “Committee”) regarding the application of the Federal Election  
12 Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the  
13 proposed use of the campaign funds to pay for various residential security installations  
14 and upgrades to the homes of Senator Michael D. Crapo. The Commission concludes  
15 that the proposed use of campaign funds for these security installations and upgrades to  
16 the Senator’s homes against threats arising from the Senator’s status as a federal  
17 officeholder is a permissible use of campaign funds 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 November 18, 2022.

22 The Committee is the principal campaign committee for Senator Michael D.  
23 Crapo.<sup>1</sup> The Committee “receives contributions and makes expenditures on behalf of the  
24 campaign.”<sup>2</sup>

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<sup>1</sup> See Advisory Opinion Request at AOR001. See also Mike Crapo for U.S. Senate, FEC Form 1 (Statement of Organization) (filed Nov. 21, 2022), <https://docquery.fec.gov/pdf/164/202211219546833164/202211219546833164.pdf>.

<sup>2</sup> AOR001.

1           The request lists numerous instances of “concrete threats of physical violence  
2 against Members [of Congress] and their families”<sup>3</sup> going back several years and  
3 continuing to the present<sup>4</sup> and goes on to state that “[t]he current threat environment that  
4 Members and their families face must again be met with increased security measures.”<sup>5</sup>

5           The U.S. Capitol Police recently completed surveys for Senator Crapo’s homes in  
6 Idaho and Washington, D.C., and provided the Senator with security recommendations.  
7 Both surveys explain that “[a]s a Member of Congress, one may become the target of  
8 potential acts of terrorism, civil disobedience, civil disturbance, threats of violence, theft  
9 of services, theft of physical or intellectual property, burglary, vandalism, other acts of  
10 criminal mischief, and unauthorized trespassing.”<sup>6</sup>

11           For both of his residences, the U.S. Capitol Police recommended that Senator  
12 Crapo make a series of security enhancements including:

13           1) Installing an electronic home security system. The recommended system  
14           would include an alarm system and intrusion detection system, video door

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<sup>3</sup>           *Id.*

<sup>4</sup>           See, e.g., John Bowden, *FBI Arrests Man Who Allegedly Threatened to Kill Pelosi*, The Hill (Jan. 12, 2021), <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/>; Joseph Wulfsohn, *Protestors 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>; 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>.

<sup>5</sup>           AOR002.

<sup>6</sup>           *Id.* (quoting the surveys entitled, “Physical Security Assessment” and “Residential Security Survey”).

1 intercom stations, arming stations, motion sensors, door contacts, window  
2 contacts and glass break sensors, and duress alarms and mobile alarm  
3 pendants. This system would be monitored at all times by a reputable service  
4 provider;

5 2) Installing an exterior closed-circuit video system to provide live monitoring,  
6 video recording and motion and sound detection. The recommendation is that  
7 such a system should provide camera views of all access points and sides of  
8 the residence;

9 3) Replacing outer doors with solid-core wood doors or metal-clad doors, install  
10 with non-removable hinges, and install deadbolts and peepholes. The  
11 recommendation also included additional keyed locks, security bars on sliding  
12 doors, and locking mechanisms on gates (which may require the installation of  
13 additional gate posts);

14 4) Installing security film on all accessible windows to prevent surreptitious  
15 observation into the residence;

16 5) Installing an automated residential lighting application for interior and add  
17 motion-activated lighting to exterior; and

18 6) Installing a lockable mailbox for mail delivery.<sup>7</sup>

19 ***Question Presented***

20 *May the Committee permissibly use campaign funds to pay for the various*  
21 *residential security installations and upgrades as recommended by the U.S. Capitol*

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<sup>7</sup> AOR002-3.

1 *Police to protect Senator Crapo and his family at their Idaho and Washington, D.C.*

2 *homes?*<sup>8</sup>

3 ***Legal Analysis***

4 Yes, the Committee may use campaign funds to pay for the requested residential  
5 security installations and upgrades to Senator Crapo’s homes in Idaho and Washington,  
6 D.C. as recommended by the U.S. Capitol Police to protect from the ongoing threat  
7 environment arising from the Senator’s status as a federal officeholder.

8 The Act identifies six categories of permissible uses of contributions accepted by  
9 a federal candidate, two of which are “ordinary and necessary expenses incurred in  
10 connection with duties of the individual as a holder of Federal office,” and “any other  
11 lawful purpose” not prohibited by 52 U.S.C. § 30114(b). 52 U.S.C. § 30114(a); *see also*  
12 11 C.F.R. § 113.2(a)-(e).

13 The Commission has issued numerous advisory opinions authorizing the use of  
14 campaign funds to protect against threats to federal officeholders’ physical safety, on the  
15 grounds that the need for such security expenses would not exist irrespective of the  
16 officeholders’ activities or duties. In Advisory Opinion 2022-02 (Steube), Advisory  
17 Opinion 2020-06 (Escobar), Advisory Opinion 2011-17 (Giffords), Advisory Opinion  
18 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), members of Congress faced  
19 specific and ongoing threats to the safety of themselves and their families. The facts

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<sup>8</sup> The advisory opinion request asks whether “Members of Congress” may use campaign funds for the proposed residential security costs. Commission regulations provide that requests regarding the activities of third parties do not qualify as advisory opinion requests. 11 C.F.R. § 112.1(b). As such, the Commission is responding to your request only as it applies to you and your principal campaign committee. Other federal officeholders may rely on this advisory opinion to the extent their factual circumstances are materially indistinguishable from those described herein. *See* 11 C.F.R. § 112.5(a)(2).

1 presented in those advisory opinions suggested that the threats were motivated by the  
2 requestors' election campaign, duties as a holder of federal office, or both.

3 The Commission concluded in each instance that the expenses for the proposed  
4 security upgrades would not have existed irrespective of the requestors' duties as federal  
5 officeholders or election campaigns. Therefore, the Commission concluded that the use  
6 of campaign funds to pay for the security upgrades was permissible under the Act or  
7 Commission regulations.<sup>9</sup>

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, *i.e.*, "cameras, sensors, distress devices and similar non-structural  
18 security devices, as well as locks, in and around a Member's residence"<sup>10</sup> would  
19 constitute ordinary and necessary expenses incurred in connection with Members' duties

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<sup>9</sup> See Advisory Opinion 2022-02 (Steube) at 5; Advisory Opinion 2020-06 (Escobar) at 3; Advisory Opinion 2011-17 (Giffords) at 3; Advisory Opinion 2011-05 (Terry) at 4; Advisory Opinion 2009-08 (Gallegly) at 4.

<sup>10</sup> Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

1 as federal officeholders, and that therefore Members of Congress may use campaign  
2 funds to pay reasonable costs associated with home security systems.<sup>11</sup>

3         The Commission has also considered the Members’ safety when they are not at  
4 home or protected by federal agents. The Commission concluded that in the face of  
5 ongoing threats and the continuing heightened threat environment stemming from  
6 Members’ duties as federal officeholders, it would not be personal use for Members to  
7 use campaign funds to pay the costs “for bona fide, legitimate, professional personal  
8 security personnel to protect themselves and their immediate families due to threats  
9 arising from their status as officeholders, when federal agents are not protecting the  
10 Members or the Members’ families.”<sup>12</sup>

11         Here, the Commission again considers the need for a federal officeholder to take  
12 proactive measures to protect himself and his immediate family due to threats arising  
13 from his duties as a federal officeholder. As in Advisory Opinion 2017-07 (Sergeant at  
14 Arms), the Committee seeks to install or upgrade security features in and around the  
15 Senator’s homes, as recommended by the U.S. Capitol Police, to protect the Senator and  
16 his family due to threats that arise from his duties as an officeholder. The Commission  
17 has previously considered the use of campaign funds to pay for most of the specific  
18 security features recommended by the U.S. Capitol Police in this matter, and found it to

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<sup>11</sup> *Id.*

<sup>12</sup> Advisory Opinion 2021-03 (NRSC/NRCC) at 3. *See also* Advisory Opinion 2022-17 (Warren Democrats) at 4-5 (approving use of campaign funds to purchase enhanced cybersecurity measures for officeholder’s home network because officeholder was subject to heightened cybersecurity threats due to her role as federal officeholder).

1 be permissible.<sup>13</sup> Although security film has not yet been directly addressed by the  
2 Commission, it is a removeable security measure designed to mitigate potential threats  
3 stemming from the Senator’s duties as a federal officeholder, and therefore falls within  
4 the category of “non-structural security devices” for which the use of campaign funds  
5 was authorized in Advisory Opinion 2017-07 (Sergeant at Arms). Thus, each of the  
6 requested security items falls within the previously approved categories of “cameras,  
7 sensors, distress devices and similar non-structural security devices, as well as locks, in  
8 and around a Member’s residence.”<sup>14</sup>

9 Accordingly, the Committee may use campaign funds to pay the costs<sup>15</sup> for the  
10 requested installations and upgrades of security systems to protect Senator Crapo and his  
11 family in their Idaho and Washington, D.C. homes as ordinary and necessary expenses  
12 incurred in connection with the Senator’s duties as an officeholder. Consistent with prior  
13 advisory opinions, the Commission emphasizes that this conclusion is based on the  
14 information you provided about the current heightened threat environment experienced

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<sup>13</sup> See Advisory Opinion 2022-02 (Steube) at 4-5 (approving use of campaign funds for installation of security gate); Advisory Opinion 2020-06 (Escobar) at 4 (approving use of campaign funds for installation of security lighting); Advisory Opinion 2017-07 (Sergeant at Arms) at 3 (approving use of campaign funds to purchase non-structural residential security systems); Advisory Opinion 2011-07 (Giffords) at 3 (approving use of campaign funds for security lighting and locks); Advisory Opinion 2011-05 (Terry) at 4 (approving use of campaign funds to purchase CCTV system).

<sup>14</sup> Advisory Opinion 2017-07 (Sergeant at Arms) at 3. In Advisory Opinion 2022-02 (Steube), the Commission determined that while the costs of purchasing and installing a locking steel gate at the entry of the Congressman’s property may not fall within the category of being for “non-structural security devices” authorized in Advisory Opinion 2017-07 (Sergeant at Arms), they do fall within the category of ‘locks[ ] in and around a Member’s home.’ Advisory Opinion 2022-02 (Steube) at 5, quoting Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

<sup>15</sup> The Commission assumes that the Committee will pay the fair market value for the residential security measures described in this request to avoid receiving potentially impermissible in-kind contributions from vendors.



1 by Members of Congress, as assessed by the Capitol Police, and that if the threat  
2 environment should diminish significantly at some point in the future, this conclusion  
3 may no longer apply.<sup>16</sup>

4 This response constitutes an advisory opinion concerning the application of the  
5 Act and Commission regulations to the specific transaction or activity set forth in your  
6 request.<sup>17</sup> The Commission emphasizes that, if there is a change in any of the facts or  
7 assumptions presented, and such facts or assumptions are material to a conclusion  
8 presented in this advisory opinion, then the requestor may not rely on that conclusion as  
9 support for its proposed activity. Any person involved in any specific transaction or  
10 activity which is indistinguishable in all its material aspects from the transaction or  
11 activity with respect to which this advisory opinion is rendered may rely on this advisory  
12 opinion.<sup>18</sup> 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  
15 available on the Commission's website.

16 On behalf of the Commission,

17  
18 Dara Lindenbaum,

19 Chair

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<sup>16</sup> See, e.g., Advisory Opinion 2017-07 (Sergeant at Arms); Advisory Opinion 2011-17 (Giffords) at 3.

<sup>17</sup> See 52 U.S.C. § 30108.

<sup>18</sup> See *id.* § 30108(c)(1)(B).