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By Office of General Counsel at 12:36 pm, Nov 07, 2018

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November 7, 2018

RE: Comments on Advisory Opinion Request 2018-15, Draft A

The Campaign Legal Center (“CLC”) respectfully submits these comments on Draft A of Advisory Opinion 2018-15 (Wyden).

Senator Ron Wyden asks whether he may use campaign funds to protect personal electronic devices and accounts from the cyber threats he faces in his role as an elected official. AOR at 1.

CLC supports Draft A’s conclusion that an officeholder may permissibly use campaign funds for such cybersecurity expenses. Draft A at 1; *see also* Draft A at 3 (describing the specific anticipated cybersecurity expenses).

The request references the unique “dangers elected officials face in the cyber realm, including attacks by sophisticated state-sponsored hackers and intelligence agencies against personal devices and accounts.” AOR at 1. Letters from Michael Rogers, then-director of the National Security Agency, *see* AOR 2-3, and Professor Thomas Rid, a cybersecurity expert at Johns Hopkins University’s School of Advanced International Studies, *see* AOR 19-22, describe the nature of those threats.

FECA and Commission regulations prohibit the conversion of campaign funds to “personal use.” 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e). Conversion to personal use occurs when a contribution or amount is used “to fulfill any commitment, obligation, or expense” of a federal officeholder “that would exist irrespective” of one’s duties as an officeholder. 52 U.S.C. § 30114(b)(2); *see also* 11 C.F.R. § 113.1(g).

Given the unique cybersecurity risks faced by officeholders, by virtue of their status as officeholders, using campaign funds to protect against those threats is a permissible use of campaign funds. The cybersecurity expenses described in the request would not exist irrespective of Sen. Wyden’s status as an officeholder, and are analogous to those expenses the Commission has previously approved allowing the use of campaign funds to

protect against physical threats to an officeholder's residence. *See* Advisory Opinion 2011-17 (Giffords), Advisory Opinion 2011-05 (Terry), Advisory Opinion 2009-08 (Gallegly), Advisory Opinion 2017-07 (Sergeant at Arms).

Sincerely,

/s/

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Adav Noti  
Senior Director, Trial Litigation and Strategy

/s/

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Brendan Fischer  
Director, Federal Reform Program