No. 127253

IN THE

SUPREME COURT OF ILLINOIS

BYRON SIGCHO-LOPEZ, Plaintiff-Appellant, v. STATE OF ILLINOIS BOARD OF ELECTIONS and 25TH WARD REGULAR DEMOCRATIC ORGANIZATION, a political party committee, Defendants-Appellees.	)	Appeal from the Appellate Court of Illinois, First District, No. 1-20-0561. There heard on Appeal from the Petition for Administrative Review of Decision and Final Order of Illinois State Board Of Elections State Board of Elections Case No. 19 CD 094

APPELLANT'S BRIEF

FOR BYRON SIGCHO-LOPEZ, PLAINTIFF-APPELLANT

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SUPREME COURT CLERK

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

Byron Sigcho-Lopez, the current Alderman of Chicago's 25th Ward, filed a complaint with the Illinois State Board of Elections ("Board") alleging that the 25th Ward Regular Democratic Organization, a political committee, violated section 9-8.10(a) and the spirit and letter of the Campaign Disclosure Act of the Illinois Election Code when it used $220,000 of campaign money to pay Foley & Lardner, LLC, legal fees owed for defending Daniel Solis, the former Alderman of Chicago's 25th Ward, against allegations of public corruption arising from a 2-year, criminal investigation by the Federal Bureau of Investigation. The Board found that the Campaign Disclosure Act does not prohibit the use of campaign money to pay for such legal fees. Consequently, the Board found that Sigcho-Lopez did not file the complaint upon justifiable grounds and dismissed the case. The First District Court of Appeals affirmed the Board's decision. This appeal follows.

ISSUE PRESENTED FOR REVIEW

Whether legal fees incurred to pay for an individual's criminal defense against investigations or charges of public corruption are, as a matter of law, personal debts pursuant to the plain language and spirit of section 9-8.10(a)(3) of the Campaign Disclosure Act of the Illinois Election Code?

STANDARD OF REVIEW

Courts interpret the Illinois Election Code *de novo*, employing the same basic principles of statutory construction applicable to statutes generally. *Jackson-Hicks v. East St. Louis Bd. of Election Comm'rs*, No. 118929, 2015 IL 118929, ¶¶ 20-21, 28 N.E.3d 170, 175-176, 390 Ill. Dec. 1, 10-11 (March 26, 2015).

STATUTES INVOLVED

(10 ILCS 5/9-8.10)

Sec. 9-8.10. Use of political committee and other reporting organization funds.

(a) A political committee shall not make expenditures:

(1) In violation of any law of the United States or of this State.

(2) Clearly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange.

(3) For satisfaction or repayment of any debts other than loans made to the committee or to the public official or candidate on behalf of the committee or repayment of goods and services purchased by the committee under a credit agreement. Nothing in this Section authorizes the use of campaign funds to repay personal loans. The repayments shall be made by check written to the person who made the loan or credit agreement. The terms and conditions of any loan or credit agreement to a committee shall be set forth in a written agreement, including but not limited to the method and amount of repayment, that shall be executed by the chair or treasurer of the committee at the time of the loan or credit agreement. The loan or agreement shall also set forth the rate of interest for the loan, if any, which may not substantially exceed the prevailing market interest rate at the time the agreement is executed.

(4) For the satisfaction or repayment of any debts or for the payment of any expenses relating to a personal residence. Campaign funds may not be used as collateral for home mortgages.

(5) For clothing or personal laundry expenses, except clothing items rented by the public official or candidate for his or her own use exclusively for a specific campaign-related event, provided that committees may purchase costumes, novelty items, or other accessories worn primarily to advertise the candidacy.

(6) For the travel expenses of any person unless the travel is necessary for fulfillment of political, governmental, or public policy duties, activities, or purposes.

(7) For membership or club dues charged by organizations, clubs, or facilities that are primarily engaged in providing health, exercise, or recreational services; provided, however, that funds received under this Article may be used to rent the clubs or facilities for a specific campaign-related event.

(8) In payment for anything of value or for reimbursement of any expenditure for which any person has been reimbursed by the State or any person. For purposes of this item (8), a per diem allowance is not a reimbursement.

(9) For the purchase of or installment payment for a

motor vehicle unless the political committee can demonstrate that purchase of a motor vehicle is more cost-effective than leasing a motor vehicle as permitted under this item (9). A political committee may lease or purchase and insure, maintain, and repair a motor vehicle if the vehicle will be used primarily for campaign purposes or for the performance of governmental duties. A committee shall not make expenditures for use of the vehicle for non-campaign or non-governmental purposes. Persons using vehicles not purchased or leased by a political committee may be reimbursed for actual mileage for the use of the vehicle for campaign purposes or for the performance of governmental duties. The mileage reimbursements shall be made at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code.

(10) Directly for an individual's tuition or other educational expenses, except for governmental or political purposes directly related to a candidate's or public official's duties and responsibilities.

(11) For payments to a public official or candidate or his or her family member unless for compensation for services actually rendered by that person. The provisions of this item (11) do not apply to expenditures by a political committee in an aggregate amount not exceeding the amount of funds reported to and certified by the State Board or county clerk as available as of June 30, 1998, in the semi-annual report of contributions and expenditures filed by the political committee for the period concluding June 30, 1998.

(b) The Board shall have the authority to investigate, upon receipt of a verified complaint, violations of the provisions of this Section. The Board may levy a fine on any person who knowingly makes expenditures in violation of this Section and on any person who knowingly makes a malicious and false accusation of a violation of this Section. The Board may act under this subsection only upon the affirmative vote of at least 5 of its members. The fine shall not exceed $500 for each expenditure of $500 or less and shall not exceed the amount of the expenditure plus $500 for each expenditure greater than $500. The Board shall also have the authority to render rulings and issue opinions relating to compliance with this Section.

(c) Nothing in this Section prohibits the expenditure of funds of a political committee controlled by an officeholder or by a candidate to defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions.

(d) Nothing in this Section prohibits the funds of a political committee which is controlled by a person convicted of a violation of any of the offenses listed in subsection (a) of Section 10 of the Public Corruption Profit Forfeiture Act from being forfeited to the State

under Section 15 of the Public Corruption Profit Forfeiture Act.
(Source: P.A. 100-1027, eff. 1-1-19.)

STATEMENT OF FACTS

On May 21, 2019, the 25th Ward Regular Democratic Organization ("Committee") used $220,000 in campaign funds to pay "legal fees" that Daniel Solis owed the law firm of Foley & Lardner, LLP, for defending him against allegations of public corruption arising from a 2-year, criminal investigation by the FBI. (C. 26-27, 36.)

On October 17, 2019, Byron Sigcho-Lopez filed with the Board a *D-4 Complaint for Violation of the Campaign Disclosure Act* ("Complaint") alleging that the Committee's use of $220,000 violated section 9-8.10(a)(3) and the letter and spirit of the Campaign Disclosure Act because the legal fees Solis owed for his criminal defense against federal allegations of public corruption was a personal debt that was neither campaign-related nor for governmental or political purposes directly related to a candidate's or public official's duties and responsibilities. (C. 4-6, 7-11.)

On January 8, 2020, at a closed hearing conducted at the Board by Hearing Officer Andy Nauman, Sigcho-Lopez argued that the Campaign Disclosure Act has always prohibited the use of campaign funds to pay for legal fees that are of a "personal" nature in that they do not directly pertain to campaign-related activity, but that the Board over the years has erroneously had a blanket policy of allowing the use of campaign funds to pay for any activity or purpose generically disclosed in a committee's quarterly report of itemized expenditures as "legal fees." (C. 7-11, 45-46, 59.) Consequently, the Board recently allowed Solis and other politicians—such as ex-House Speaker Madigan and Alderman Burke of Chicago's 14th Ward—to use "obscene" amounts of

campaign money to pay for legal fees related to civil and criminal cases having nothing to do with their electoral campaigns. (C. 7-11, 59.)

As a threshold matter, Sigcho-Lopez argued that any use of campaign money must be an "expenditure" as defined by section 9-1.5(a) of the Campaign Disclosure Act. (C. 7-11, 59-60, 63.) Payments of campaign funds for legal fees related to the handling of a politician's criminal defense, such as the $220,000 payment the Committee made to the law firm of Foley & Lardner, LLP, are prohibited by the Campaign Disclosure Act as a matter of law because they are not directly connected "with the nomination for election, election, or retention of any person to or in public office." (C. 59-60.) Sigcho-Lopez then argued that even if the use of campaign funds to pay for a politician's criminal defense is directly related to campaign activities and, thus; an "expenditure," it nonetheless is expressly prohibited pursuant to section 9-8.10(a)(3) as an "expenditure" for repayment of a personal debt. (C. 59-60).

The Committee argued that the $220,000 payment to Foley & Lardner, LLP, was legal because section 9-8.10(a) of the Campaign Disclosure Act does not expressly prohibit the use of campaign money to pay for "legal fees." (C. 61). To the extent that the Campaign Disclosure Act prohibits "legal fees" for personal matters, the Committee argued that the payment at issue is legal because it would pass the "irrespective test" codified in the Federal Election Campaign Act of 1971. (C. 62.) According to the Committee, Solis's obligation to pay legal fees would not exist "irrespective" of Solis's responsibilities as alderman because the FBI sought Solis's cooperation as alderman. (C. 62.) The Committee, however, conceded that Illinois does not use the federal test in campaign disclosure cases. (C. 61-62.)

On January 14, 2020, Hearing Officer Andy Nauman issued an opinion in the Committee's favor. (C. 59-64.) The hearing officer found that campaign money spent on legal fees such as in this case have a "political annotation" to them and; thus, are "expenditures" as defined by the Campaign Disclosure Act because "if Mr. Solis was convicted he would no longer be able to run for certain local offices and it could impact his chances of being elected in the future." (C. 63.) Furthermore, the hearing officer opined that section 9-8.10(a)(3) does not prohibit the Committee's payment of legal fees Solis owed Foley & Lardner, LLP, because the word "debt" in the statute does not refer to all debt but only to debt from personal loans. (C. 63.) Consequently, the hearing officer recommended that the Board dismiss the Complaint for not having been filed on justifiable grounds. (C. 63.)

On March 16, 2020, the members of the Board voted to adopt the recommendation of the General Counsel and legal opinion of Hearing Officer Nauman to dismiss the Complaint as not filed upon justifiable grounds. (R. 36-39.) The Board issued its final order in favor of the Committee on March 19, 2020. (C. 69-70.) Sigcho-Lopez filed a timely Petition for Administrative Review on March 25, 2020. (A-9.)

The First District Court of Appeals affirmed the Board's dismissal of the Complaint on April 9, 2021. First, the Court of Appeals agreed with the hearing officer's finding that the Committee's use of money to pay Solis's legal fees was an "expenditure" as defined by section 9-1.5(A)(1) of the Campaign Disclosure Act because "money spent on legal fees such as in this case can have a political annotation to them, because if Mr. Solis was convicted he would no longer be able

to run for certain local offices and it could impact his chances of being elected in the future." *Sigcho-Lopez v. Ill. Bd. Of Elections et al.*, No. 1-20-0561, slip op. at ¶¶ 13-14 (First Dist. April 9, 2021). Second, the Court of Appeals rejected Sigcho-Lopez's contention that because the undisputed evidence demonstrated that Solis had retired from public office before the Committee paid his legal fees, the Committee's use of money was not an "expenditure" as defined by the statute. *Sigcho-Lopez*, No. 1-20-0561 slip op. at ¶ 15. Finally, the Court of Appeals agreed with both Sigcho-Lopez and the Committee that section 9-8.10(a)(3) of the Campaign Disclosure Act does prohibit a political committee's use of campaign money to satisfy or repay "personal debts" because the purpose of the statute is "to restrict the use of [campaign] money for strictly personal use," but found in favor of the Committee that Solis's legal fees were not a "personal debt" under the statute. *Sigcho-Lopez*, No. 1-20-0561 slip op. at ¶¶ 16-28.

The Court of Appeals reasoned that section 9-8.10(a)(3) of the Campaign Disclosure Act does prohibit the use of campaign money to pay legal fees incurred by a politician to get a divorce or to defend herself against a criminal charge of driving under the influence because those legal fees are "personal debts" even if those legal proceedings have an impact on the officeholder's status. *Sigcho-Lopez*, No. 1-20-0561 slip op. at ¶ 26. It nonetheless found that similar legal fees to pay for a politician's criminal defense against charges or investigations of political corruption are not "personal" in nature. *Sigcho-Lopez*, No. 1-20-0561 slip op. at ¶ 26. The Court of Appeals reached this conclusion by adopting into law, at the Committee's urging, the "irrespective test" from section 30114(b) of the Federal Election Campaign Act of 1971, 52 U.S.C. § 30114(b) (2018), which

the Federal Election Commission ("FEC") has used to conclude that legal expenditures made by individual's running for or elected to federal office in response to charges of official misconduct are not "personal" uses of campaign money. *Sigcho-Lopez*, No. 1-20-0561 slip op. at ¶¶ 25-28.

ARGUMENT

The Court of Appeals in this case was so blinded by its conviction that "there must be a test to determine if a debt is personal," *Sigcho-Lopez v. Ill. Bd. Of Elections et al.*, No. 1-20-0561, slip op. at ¶¶ 27 (First Dist. April 9, 2021), that it ran roughshod through the cardinal rules of statutory interpretation and created a new law that will lead to absurd and unjust results. The Court of Appeal's first, and foremost, error was to deviate from the plain and unambiguous language of the Campaign Disclosure Act, which is the most reliable indication of the legislative intent. *Evanston Ins. Co. v. Risenborough*, No. 114271, 2014 IL 114271, ¶ 5, 5 N.E.3d 158, 163, 78 Ill. Dec. 778, 783 (Feb. 21, 2014). The Court of Appeal's second error was to use the Federal Election Campaign Act of 1971, which is not in *pari materia* with the Illinois Election Code, as an extrinsic aid of statutory construction. Consequently, the Court of Appeals failed to interpret legislative intent as it purported to do and; Instead, it created a new law, in violation of the separation of powers doctrine, that will not only bring discord to Illinois campaign finance law but will also create a moral hazard giving politicians in the second most corrupt state of the Union an incentive to engage in unethical and illicit behavior. Accordingly, this Court must give the word "personal" throughout the Campaign Disclosure Act its ordinary and common meaning and hold that the debt Solis owed Foley & Lardner, LLC, in

this case was as a matter of law a "personal debt" for purposes of section 9-8.10(a)(3) of the Campaign Disclosure Act of the Illinois Election Code.

THE USE OF CAMPAIGN FUNDS TO PAY FOR SOLIS'S CRIMINAL DEFENSE AGAINST FEDERAL ALLEGATIONS OF CORRUPTION VIOLATED SECTION 9-8.10(A)(3) AND THE SPIRIT AND LETTER OF THE CAMPAIGN DISCLOSURE ACT AS A MATTER OF LAW BECAUSE THE LEGAL FEES SOLIS OWED WAS A PERSONAL DEBT.

It is undisputed in this case that the purpose of section 9-8.10 of the Campaign Disclosure Act is "to restrict the use of [campaign] money for strictly personal use." *Sigcho-Lopez*, No. 1-20-0561, slip op. at ¶ 21. That is why Sigcho-Lopez, the Committee, and the Court of Appeals are all in accord that, employing the same basic principles of statutory construction applicable to statutes generally, the term "debts" as used in section 9-8.10(a)(3) of the Campaign Disclosure Act refers only to "personal debts." *Sigcho-Lopez*, No. 1-20-0561 slip op. at ¶¶ 16-22.

It is also undisputed in this case that the $220,000 in legal fees Solis owed Foley & Lardner, LLC, for defending him against criminal allegations of public corruption was a "personal debt" for purposes of section 9-8.10(a)(3) of the Campaign Disclosure Act under a statutory interpretation employing the ordinary and common meaning of the adjective "personal," which is "of, relating to, or belonging to a single person…intended for private use or use by one person."[1] The Court of Appeals implicitly conceded as much when it reasoned that legal fees incurred by a politician to get a divorce or to defend herself against a criminal charge of driving under the influence—which are no different than the legal fees

[1] *Personal Definition*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/personal (last visited on October 27, 2021).

Solis incurred in this case—are "personal debts" even if those legal proceedings have an impact on the officeholder's status. *Sigcho-Lopez*, No. 1-20-0561 slip op. at ¶ 26. Consequently, the crux of this case is whether the decision by the Court of Appeals to deviate from the statute's plain language and look to the federal "irrespective test" to determine if the debt incurred by Solis was a "personal debt" is reversible error? This Court's answer must be a resounding "Yes" for the following reasons.

First, and foremost, there was no need to look beyond the language of the statute itself because "[i]n the absence of any differing indication, words of a statute are to be given their plain, ordinary and common meaning." *Airdo v. Westchester*, 95 Ill. App. 3d 568, 569, 420 N.E.2d 472, 473, 51 Ill. Dec. 58, 59 (1st Dist. 1981) *citing Illinois Power Co. v. Mahin*, 72 Ill. 2d 189, 194, 381 N.E.2d 222, 224, 21 Ill. Dec. 144, 146 (Ill. 1978). Furthermore, when the same word appears in different segments of the same statute, courts will ordinarily give it a consistent meaning. *Airdo*, 95 Ill. App. 3d at 569, 420 N.E.2d at 473, 51 Ill. Dec. at 59. In this case, the Campaign Disclosure Act uses the term "personal" as an adjective a total of ten times in a manner consistent with its ordinary and common meaning. Indeed, sections 9-1.4(B)(a) and 9-1.5(B)(a) both speak of "personal property" and "personal services," 10 ILCS 5/9-1.4(B)(a) and 10 ILCS 5/9-1.5(B)(a); section 9-5 speaks of "personal aggrandizement of any committee member or campaign worker," 10 ILCS 5/9-5; section 9-6(c) speaks of "personal funds," 10 ILCS 5/9-6(c); section 9-8.10(a)(4) speaks of "personal residences," 10 ILCS 5/9-8.10(a)(4); section 9-8.10(a)(5) speaks of "personal laundry expenses," 10 ILCS 5/9-8.10(a)(5), and section 9-11(13) speaks of "personal services," 10 ILCS 5/9-

11(13). In keeping with these principals, therefore, this Court must give the word "personal" throughout the Campaign Disclosure Act its ordinary and common meaning. Accordingly, the cardinal rules of statutory interpretation dictate that this Court hold that the debt Solis owed Foley & Lardner, LLC, in this case was as a matter of law a "personal debt" for purposes of section 9-8.10(a)(3) of the Campaign Disclosure Act of the Illinois Election Code.

Second, unlike legislative history, for instance, the federal statute the Court of Appeals used in this case to interpret the meaning of the word "personal" in section 9-8.10(a)(3) of the Campaign Disclosure Act was not a legitimate extrinsic aid of construction because the Federal Election Campaign Act of 1971 is not in *pari materia* with the Illinois Election Code. Although both statutes relate to the topic of campaign finance, we cannot presume that the Illinois legislature intended both statutes to be operative and harmonious, governed by one spirit and a single policy, as an entire statutory scheme, *Cf. Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 218-219, 886 N.E.2d 1011, 1022-1023, 319 Ill. Dec. 887, 898-899 (Ill. 2008)(provisions of the Illinois Municipal code may be considered in *pari materia* for purposes of statutory construction), because the very nature of the federal union contemplates that the federal government play a small role in state campaigns and elections and that the states retain authority of most aspects of its electoral process. *See Bodine v. Elkhart Cnty Election Bd.*, 788 F.2d 1270, 1272 (7th Cir. 1986) (federalism concerns caution against excessive entanglements of federal courts in state election matters.) In other words, the Campaign Disclosure Act of the Illinois Election Code cannot be in *pari materia* with the Federal Election Campaign Act of 1971 because the

federal campaign system is separate and distinct from the Illinois campaign system.

To be clear, then, the Court of Appeals did not interpret legislative intent as it purports to have done. Rather, the Court of Appeals created a new law that delegates the Illinois legislature's power to define a "personal debt" for purposes of section 9-8.10(a)(3) of the Campaign Disclosure Act to the FEC. Consequently, in adopting the federal "irrespective test" into law, the Court of Appeals violated the separation of powers doctrine which holds that "[i]n our separation of powers scheme, courts are not the law-making branch of government. [The court] determine[s] only constitutional boundaries, not what is done within those boundaries." *Commercial Nat'l Bank v. Chicago*, 89 Ill. 2d 45, 75-76, 432 N.E.2d 227, 241, 59 Ill. Dec. 643, 657 (Ill. 1982).

Third, by adopting the federal "irrespective test," the Court of Appeals will bring discord to Illinois campaign finance law because it effectively adopted all existing and, perhaps, future FEC rulings using the "irrespective test," including rulings that are arguably at odds with the practices of the Board and the text of the Campaign Disclosure Act. For instance, the FEC has used the "irrespective test" to rule that politicians can use campaign funds to pay expenses for childcare, (Ex. C), personal security, (Ex. D) and for travel for spouses and children, (Ex. E), which are all arguably personal expenditures prohibited under section 9-8.10(a) of the Campaign Disclosure Act. Indeed, because conventional wisdom long held that the Campaign Disclosure Act prohibited the use of campaign funds to pay for a politician's childcare, the Illinois legislature recently amended section 9-8.10(a)(11) of the Campaign Disclosure Act making an

exception for childcare expenditures.[2] Consequently, even if the Court of Appeal's use the Federal Election Campaign Act of 1971 as an extrinsic aid of construction was legitimate, its reading of section 9-8.10(a)(3) is impermissible because "the court presumes that the legislature did not intend absurdity, inconvenience, or injustice." *Dynak v. Bd. Of Educ.*, No. 125062 2020 IL 125062, ¶ 16, 164 N.E.3d 1226, 1231, 444 Ill. Dec. 651, 656 (April 16, 2020).

Finally, by legitimizing the use of campaign funds to pay legal fees owed for defending a politician against criminal charges or FBI scrutiny, the Court of Appeals has created a moral hazard that gives politicians in the second most corrupt state of the Union an incentive to push the boundaries of legal and ethical behavior. Indeed, more politicians will behave badly knowing that they can dip into their hefty campaign coffers instead of their own meager pockets to pay for the best legal defense money can buy if the government ever investigates them or charges them with a crime. Consequently, even if the Court of Appeal's use the Federal Election Campaign Act of 1971 as an extrinsic aid of construction was legitimate, its reading of section 9-8.10(a)(3) is impermissible because "the court presumes that the legislature did not intend absurdity, inconvenience, or injustice." *Dynak*, 2020 IL 125062 at ¶ 16, 164 N.E.3d at 1231, 444 Ill. Dec. at 656.

CONCLUSION

[2] Rachel Hinton. *Politics isn't child's play, but new campaign finance rule hopes to make it more family friendly*, CHI SUN-TIMES, June 24, 2021. https://chicago.suntimes.com/elections/2021/6/24/22547632/politics-child-care-campaign-finance-reform-moms-dads-parents-expenses.

Byron Sigcho-Lopez requests that this Court reverse the order dismissing his Complaint and remand this case back to the Board for a public hearing to levy fines on the Committee for having violated section 9-8.10(a)(3) of the Campaign Disclosure Act when it used $220,000 of campaign money to pay the personal debt Solis owed Foley & Lardner, LLC.

Respectfully submitted by,

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CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 15 pages.

APPENDIX

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SUPREME COURT CLERK

TABLE OF EXHIBITS

SUPREME COURT OF ILLINOIS

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September 29, 2021

In re: Byron Sigcho-Lopez, Appellant, v. The Illinois State Board of Elections et al., Appellees. Appeal, Appellate Court, First District. 127253

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Anne M. Burke, C.J., took no part.
Theis, J., took no part.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

EXHIBIT A

2021 IL App (1st) 200561

FIFTH DIVISION
Opinion filed:
April 9, 2021

No. 1-20-0561

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

BYRON SIGCHO-LOPEZ, Petitioner, v. THE ILLINOIS STATE BOARD OF ELECTIONS and 25TH WARD REGULAR DEMOCRATIC ORGANIZATION, Respondents.	)	Petition for Administrative Review of a Decision and Final Order of the Illinois State Board of Elections No. 19 CD 094

JUSTICE HOFFMAN delivered the judgment of the court, with opinion.
Justices Cunningham and Rochford concurred in the judgment and opinion.

OPINION

¶ 1 The petitioner, Byron Sigcho-Lopez, filed this administrative review proceeding from a final order of the Illinois State Board of Elections (Board), dismissing his complaint that alleged a violation of article 9 of the Election Code (campaign disclosure statute) (10 ILCS 5/9-1 *et seq.* (West 2018)) by the 25th Ward Regular Democratic Organization (Committee), a political committee (see 10 ILCS 5/9-1.9 (West 2018)) registered with the Board pursuant to section 9-3 of

EXHIBIT B

the campaign disclosure statute (10 ILCS 5/9-3 (West 2018)). For the reasons that follow, we affirm the decision of the Board.

¶ 2 The following factual scenario necessary to our resolution of this matter is taken from the exhibits and pleadings introduced and filed during the proceedings before the Board and its hearing officer, the report of the hearing officer, and the admissions contained in the parties' briefs before this court. The facts related herein are essentially uncontradicted.

¶ 3 The Committee was formed with the filing of its statement of organization as required by section 9-3 of the campaign disclosure statute (10 ILCS 5/9-3 (West 1998)). The Committee's stated purpose is supporting the candidacy of Daniel Solis to elected office. As of February 19, 2020, the date of a hearing before the Board, the Committee remained active.

¶ 4 Solis served as the alderman and Democratic committeeman of Chicago's 25th ward. Beginning in June 2016, while serving as alderman and committeeman, Solis began cooperating with the Federal Bureau of Investigation (FBI) and the United States Department of Justice (DOJ) in their investigation of alleged political corruption. Acting at the direction of the FBI and DOJ, he recorded conversations with other public officials.

¶ 5 On November 24, 2018, Solis announced his intention to retire as alderman of the 25th ward, and he did not run for reelection as alderman in 2019 or for Democratic committeeman in 2020. Sigcho-Lopez succeeded Solis as alderman of the 25th ward and was sworn in to that office on May 20, 2019.

¶ 6 On May 21, 2019, the Committee paid $220,000 for legal fees incurred by Solis. On October 17, 2019, Sigcho-Lopez filed a verified complaint with the Board alleging that the Committee violated section 9-8.10(a)(3) of the campaign disclosure statute (10 ILCS 5/9-1.9 (West 2018)) by paying Solis's legal fees. The complaint asserted that "[t]he expenditure of May 21,

2019, in the amount of $220,000, to the law firm of Foley & Lardner LLP for the criminal defense of Solis against federal allegations of corruption violates Sec. 9-8.10(a)(3)." Sigcho-Lopez alleges in his brief filed in the instant action that the Committee's payment was for "legal fees owed for defending Daniel Solis *** against allegations of public corruption." According to the complaint, the $220,000 payment by the Committee was "for a personal debt that is neither campaign-related nor for governmental or political purposes directly related to a candidate's or public official's duties and responsibilities."

¶ 7 A closed hearing was held on the complaint before a hearing officer appointed by the Board. Following that hearing, the hearing officer issued a written report on January 14, 2020, containing his suggested findings of fact and recommendations. In that report, the hearing officer found, *inter alia*, the following: "money spent on legal fees such as in this case can have a political annotation to them" and "money spent on defenses as presented in this case can be an acceptable use of campaign funds." As a consequence, the hearing officer recommended that Sigcho-Lopez's complaint "be found not to have been filed on justifiable grounds and [the] ***complaint be dismissed." On February 18, 2020, the Board's general counsel sent a memorandum to the Board in which he stated that he had read the hearing officer's report and concurred with the recommendations contained therein.

¶ 8 On February 19, 2020, the Board, in closed session, heard arguments from the attorneys representing Sigcho-Lopez and the Committee. Following those arguments, the eight members of the Board unanimously voted to dismiss Sigcho-Lopez's complaint. On March 19, 2020, in open session, the Board issued its written "Final Order on Complaint," adopting the recommendations of its general counsel and the hearing officer and dismissing Sigcho-Lopez's complaint, finding

that the complaint was not filed on justifiable grounds. Sigcho-Lopez timely filed the instant petition for administrative review of the Board's final order.

¶ 9 The Board is an administrative agency (*Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 209 (2008)), and the review of its decisions is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2018)). 10 ILCS 5/9-22 (West 2018). The scope of our review extends to all questions of law and fact presented by the record. 735 ILCS 5/3-110 (West 2018).

¶ 10 Decisions of an administrative agency such as the Board must contain sufficient findings to allow for a judicial review. *Cook County Republican Party v. Illinois State Board of Elections*, 232 Ill. 2d 231, 242 (2009). The Board's final order in this case contains no specific findings. However, when, as in this case, the Board's final order states that the Board read the hearing officer's report, which contains a detailed explanation for finding that Sigcho-Lopez's complaint was not filed on justifiable grounds, and that the Board adopted the recommendations of the hearing officer and its general counsel, we are able to meaningfully conduct our review by reviewing the reasons for dismissing the complaint stated in the hearing officer's report. See *id.* at 243.

¶ 11 Before addressing the merits of Sigcho-Lopez's arguments, we must first determine our standards of review. We consider the Board's findings and conclusions of fact to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2018). Its findings on questions of fact will be reversed only if they are against the manifest weight of the evidence. *Cinkus*, 228 Ill. 2d at 210. We interpret the campaign disclosure statute *de novo*, employing the same basic principles of statutory construction applicable to statutes generally. *Jackson-Hicks v. East St. Louis Board of Election Commissioners*, 2015 IL 118929, ¶¶ 20-21; *Cinkus*, 228 Ill. 2d at 211. The Board's application of

a rule of law to established or admitted facts is a mixed question of fact and law that will not be disturbed on review unless it is clearly erroneous. *Cinkus*, 228 Ill. 2d at 210-11. A decision of an administrative agency such as the Board is clearly erroneous when the reviewing court is left with the definite and firm conviction that an error has been committed. *Id.* at 211.

¶ 12 In urging reversal, Sigcho-Lopez argues first that "[t]he Committee's use of $220,000 in campaign funds to pay for Solis's criminal defense is prohibited as a matter of law by section 9-8.10(a) of the Campaign Disclosure Act because the use of campaign funds is not an 'expenditure' as defined by section 9-1.5(a) of the Campaign Disclosure Act." We find the argument somewhat circular. Section 9-8.10(a) of the campaign disclosure statute sets forth 11 categories of "expenditures" that a political committee "shall not make." 10 ILCS 5/9-8.10(a) (West 2018)). Section 9-1.5(A)(1) of the campaign disclosure statute defines "expenditure." 10 ILCS 5/9-1.5(A)(1) (West 2018)). Sigcho-Lopez appears to be arguing that the Committee's $220,000 "expenditure" violates section 9-8.10(a) of the campaign disclosure statute because it is not an "expenditure." Aside from our difficulty with the framing of the issue, we will, nevertheless, address the two components of the argument.

¶ 13 In relevant part, section 9-1.5(A)(1) of the campaign disclosure statute defines an "expenditure" as "a payment, distribution, purchase, loan, advance, deposit, gift of money, or anything of value, in connection with the nomination for election, election, or retention of any person to or in public office or in connection with any question of public policy." 10 ILCS 5/9-1.5(A)(1) (West 2018). The hearing officer found that "money spent on legal fees such as in this case can have a political annotation to them, because if Mr. Solis was convicted he would no longer be able to run for certain local offices and it could impact his chances of being elected in the future." We agree.

¶ 14 Section 3.1-10-5(c) of the Illinois Municipal Code provides, in relevant part, that "[a] person is not eligible to take the oath of office for a municipal office if that person ***, at the time required for taking the oath of office *** has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony." 65 ILCS 5/3.1-10-5(b) (West 2018); see also *Delgado v. Board of Election Commissioners*, 224 Ill. 2d 481 (2007). If, as Sigcho-Lopez has alleged, the legal fees paid by the Committee were incurred by Solis in defense of allegations of criminal conduct, then, if convicted, Solis might no longer be able to run for public office such as alderman. We conclude, therefore, that the Committee's payment of Solis's legal fees can fall within section 9-1.5(A)(1)'s definition of an "expenditure."

¶ 15 In a related argument, Sigcho-Lopez contends that the Committee's payment of Solis's legal fees was not an "expenditure" within the meaning of that term as defined in section 9-1.5 (A)(1) of the campaign disclosure statute because the undisputed evidence demonstrated that Solis had retired from public office before the Committee paid his legal fees. We reject the argument for two reasons. First, Sigcho-Lopez cited no authority in support of the argument, resulting in its forfeiture. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018); *TTC Illinois, Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 355 (2009). Second, the proper date for determining whether a payment by a political committee was made in connection with the nomination for election, election, or retention of any person to or in public office is the date upon which the services were rendered, not the date that payment for the services is made. If Sigcho-Lopez's argument were correct, a political committee could not pay for legitimate expenses incurred by a candidate for public office after the candidate lost his or her election.

¶ 16 Sigcho-Lopez has also argued that the Committee's payment of Solis's legal fees constituted a prohibited expenditure under section 9-8.10(a)(3) of the campaign disclosure statute.

As noted earlier, section 9-8.10(a) lists 11 categories of expenditures that political committees registered with the Board are prohibited from making. Legal fees are not specifically included within any of the categories. As the Committee correctly argues, the enumeration of exceptions in a statute is considered to be an exclusion of all other exceptions. *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 17. It follows, therefore, that the payment of legal fees by a political committee is not a *per se* prohibited expenditure. The question remains, however, whether the Committee's payment of Solis's legal fees as alleged by Sigcho-Lopez was a prohibited expenditure under any of the enumerated categories set forth in section 9-8.10(a) of the campaign disclosure statute.

¶ 17 The only enumerated category of prohibited expenditures that Sigcho-Lopez has alleged was violated by the Committee's payment of Solis's legal fees is the category of expenditures set forth in section 9-8.10(a)(3) of the campaign disclosure statute, which provides, in relevant part, as follows:

> "§ 9-8.10. Use of political committee and other reporting organization funds.
>
> (a) A political committee shall not make expenditures:
>
> * * *
>
> (3) For satisfaction or repayment of any debts other than loans made to the committee or to the public official or candidate on behalf of the committee under a credit agreement. Nothing in this Section authorizes the use of campaign funds to repay personal loans." 10 ILCS 5/9-8.10(a)(3) (West 2018).

¶ 18 Construed literally, section 9-8.10(a)(3) appears to prohibit the satisfaction or repayment of all debts of every name and nature except those specifically exempted. The hearing officer, however, found that the term "debts" as used in the statute does not refer to all debts "but only

debt[s] from personal loans." Sigcho-Lopez contends that, "[u]nder a reasonable reading of subsection 9-8.10(a)(3), the word 'debts' does not refer to 'all debts' but only 'personal debts.' " The Committee agrees.

¶ 19 Whether the term "debts" as used in section 9-8.10(a)(3) of the campaign disclosure statute refers only to personal loans as found by the hearing officer, or personal debts as the parties assert, is a matter of statutory construction. In interpreting a statute, our primary objective is to ascertain and give effect to the intent of the legislature. *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 503-04 (2000). The best indication of the legislative intent is the language of the statute itself. *Nottage v. Jeka*, 172 Ill. 2d 386, 392 (1996). "Where the language of a statute is clear and unambiguous, a court must give it effect as written without 'reading into it exceptions, limitations or conditions that the legislature did not express.' " *Garza v. Navistar International Transportation Corp.*, 172 Ill. 2d 373, 378 (1996) (quoting *Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc.*, 158 Ill. 2d 76, 83 (1994)). If the statute is ambiguous, we give substantial weight and deference to its interpretation by the agency charged with its administration if the interpretation is defensible. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL App (1st) 150425, ¶ 19; *Quality Saw & Seal, Inc. v. Illinois Commerce Comm'n*, 374 Ill. App. 3d 776, 781 (2007).

¶ 20 The language of section 9-8.10(a)(3) of the campaign disclosure statute does not limit its proscription to the payment of personal loans as the hearing officer found or personal debts as the parties contend; rather, it speaks in terms of "any debts." In interpreting the statute, we are guided by the principle that "statutes should be construed, if possible, so that effect may be given to all of their provisions; so that no part will be inoperative or superfluous, void or insignificant; and so that one section will not destroy another." *In re Estate of Wilson*, 238 Ill. 2d 519, 561 (2010).

¶ 21 Section 9-8.10(c) of the campaign disclosure statute provides that "[n]othing in this Section prohibits the expenditure of funds of a political committee controlled by an officeholder or by a candidate to defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions." 10 ILCS 5/9-8.10(c) (West 2018). Giving effect to both section 9-8.10(a)(3) and section 9-8.10(c) leads us to conclude that the word "debts" in section 9-8.10(a)(3) does not refer to all debts but only debts of a personal nature that do not defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions. Our conclusion in this regard is supported by the legislative history underlying the statute. As the Committee has pointed out, in response to questions from fellow legislators, Representative Jack Kubik, the floor manager of House Bill 672 (later Pub. Act 90-737 (eff. Jan. 1, 1999)), which created section 9-8.10 of the campaign disclosure statute, stated, "Representative, what we we're trying to accomplish here is to restrict the use of money for strictly personal use." 90th Ill. Gen. Assem., House Proceedings, May 22, 1998, at 179 (statements of Representative Kubik).

¶ 22 We agree with the parties' assertions that the term "debts" as used in section 9-8.10(a)(3) is reasonably interpreted to refer only to personal debts and reject the hearing officer's interpretation that the term refers only to debts for personal loans. The second sentence of subsection (3) of section 9-8.10(a) refers specifically to the use of campaign funds to repay "personal loans." If, as the hearing officer found, the prohibition contained in the first sentence of subsection (3) against a political committee's expenditure of funds in satisfaction or repayment of any debts refers only to the satisfaction or repayment of personal loans, the second sentence in that subsection is superfluous.

¶ 23 Having found that section 9-8.10(a)(3) of the campaign disclosure statute prohibits only a political committee's expenditures for satisfaction or repayment of personal debts and not the payment of debts incurred by an officeholder in connection with the performance of governmental and public service functions, we turn next to the question of whether the debt incurred by Solis for legal fees, and paid by the Committee, was a personal debt.

¶ 24 Sigcho-Lopez contends that the legal fees paid by the Committee on behalf of Solis were a personal debt incurred in the defense of allegations of criminal conduct that he has characterized as public corruption. He argues that the Committee's payment of those fees was in satisfaction of that personal debt in violation of section 9-8.10(a)(3) of the campaign disclosure statute. The Committee argues that Solis's legal fees did not constitute a personal debt, as those fees were incurred "solely because of Solis' official position as an alderman and [Chicago City Council] committee chairman, and would never have been incurred if Solis was a private citizen."

¶ 25 In resolving the question of whether or not the legal fees that it paid on behalf of Solis constituted an expenditure for satisfaction of a personal debt, the Committee urges this court to adopt the federal "irrespective test" set forth in section 30114(b) of the Federal Election Campaign Act of 1971 (Federal Act) (52 U.S.C. § 30114(b) (2018)). The Federal Act prohibits the conversion of political campaign contributions to "personal use." 52 U.S.C. § 30114(b)(1) (2018). Section 30114(b)(2) of the Federal Act provides, in relevant part, that "a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used 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." 52 U.S.C. § 30114(b)(1) (2018).

¶ 26 Application of the federal "irrespective test" is done on a case-by-case basis. See *Federal Election Comm'n v. Craig for U.S. Senate*, 816 F.3d 829, 841-42 (D.C. Cir. 2016). The payment of legal fees incurred irrespective of an individual's duties as an officeholder, such as fees associated with a divorce or a charge of driving under the influence of alcohol, is considered a personal use, irrespective of the fact that the underlying proceeding might have some impact on the officeholder's status. *Id.* at 837-39. Whereas, the payment of legal fees for an individual's defense of allegations relating directly to his or her duties as an officeholder are not considered a personal use. *Id.* Allegations that are related to an individual's duties as an officeholder would not exist if the individual had no official status. *Id.* at 839. Under that analysis, the payment of legal fees in defense of allegations of official misconduct is not a personal use. *Id.* at 842.

¶ 27 If, as the parties contend and we have found, the prohibition against the payment by a political committee in satisfaction or repayment of debts set forth in section 9-8.10(a)(3) of the campaign disclosure statute refers only to personal debts, then there must be a test to determine if a debt is personal. We conclude, as the Committee argues, that the federal "irrespective test" is the appropriate test to resolve the issue. Allegations of misconduct in the discharge of an officeholder's official duties would not exist independent of the individual's status as an elected official. The payment of legal fees incurred in defense of such allegations by a political committee can, therefore, qualify as an expenditure to defray a reasonable expense of an officeholder in connection with the performance of a governmental function as permitted pursuant to section 9-8.10(c) of the campaign disclosure statute.

¶ 28 In this case, Sigcho-Lopez has repeatedly asserted that the legal fees that the Committee paid on behalf of Solis were incurred in defense of "allegations of public corruption." Acts of public corruption do not exist irrespective of the accused's status as a public official. Solis was an

elected alderman of the City of Chicago and the chairman of a city council committee. Allegations of public corruption on his part relate directly to his duties as an officeholder. Applying the "irrespective test," the legal fees that he incurred in defense of those allegations were not a personal debt, and the Committee's payment of those fees was not an expenditure prohibited by section 9-8.10(a)(3) of the campaign disclosure statute.

¶ 29 The essential inquiry in this case is whether Sigcho-Lopez's complaint is facially and legally justified. The Board was required to apply the campaign disclosure statute to the facts presented at the closed hearing before the hearing officer to determine whether the complaint was filed on justifiable grounds. *Cook County Republican Party*, 232 Ill. 2d at 245. The inquiry presents a mixed question of fact and law that we review for clear error. *Id.*; *Cinkus*, 228 Ill. 2d at 211.

¶ 30 In his report, the hearing officer found that "money spent on defenses as presented in this case can be an acceptable use of campaign funds[,] *** [and] these types of expenditures can be made." He recommended that Sigcho-Lopez's complaint "be found not to have been filed on justifiable grounds and [that the] ***complaint be dismissed." On February 18, 2020, the Board's general counsel concurred with the hearing officer's recommendations, and on March 19, 2020, the Board issued its final order, adopting the recommendations of its general counsel and the hearing officer and dismissing Sigcho-Lopez's complaint, finding that the complaint was not filed on justifiable grounds.

¶ 31 Based upon the foregoing analysis, we conclude that the dismissal of Sigcho-Lopez's complaint and the findings of the hearing officer supporting that dismissal, which were unanimously adopted by the Board, are not clearly erroneous, and as a consequence, we affirm the Board's final order, dismissing Sigcho-Lopez's complaint.

¶ 32 Affirmed.

FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 25, 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2019-13

Ezra W. Reese, Esq.
Elizabeth P. Poston, Esq.
Perkins Coie LLP
700 13th Street, NW, Suite 600
Washington, D.C. 20005-3960

Dear Mr. Reese and Ms. Poston:

We are responding to your request on behalf of Mary Jennings ("MJ") Hegar and her principal campaign committee, MJ for Texas (the "Committee"), regarding whether the Federal Election Campaign Act of 52 U.S.C. §§ 30101-45 ("the Act") and Commission regulations permit the Committee to use campaign funds to pay for childcare expenses incurred during Ms. Hegar's candidacy. The Commission concludes that the Committee may use campaign funds to pay for the childcare expenses proposed in the request that are the direct result of campaign activity and thus would not exist irrespective of Ms. Hegar's campaign.

Background

The facts presented in this advisory opinion are based on your letter received on June 5, 2019.

Ms. Hegar is a candidate in the 2020 election for U.S. Senate in Texas, and MJ for Texas is her authorized campaign committee.[1] Advisory Opinion Request at AOR001.

[1] Commission records indicate that Ms. Hegar filed her current Statement of Candidacy on April 24, 2019, and that MJ for Texas filed its current Statement of Organization on April 23, 2019. *See* Mary Jennings "MJ" Hegar, Statement of Candidacy, FEC Form 2 (Apr. 24, 2019), https://docquery.fec.gov/pdf/625/201904249149584625/201904249149584625.pdf; MJ for Texas,

EXHIBIT C

Before becoming a candidate for federal office, Ms. Hegar had a career in military service and as an author and public speaker. *Id.* Ms. Hegar and her husband both worked full time immediately prior to Ms. Hegar's Senate campaign. *Id.* Their two children, who are ages 2 and 4, were enrolled in full-time daycare. *Id.*

After Ms. Hegar launched her candidacy, she left her job to work full time on her campaign. *Id.* As a result, Ms. Hegar is unable to provide full-time care for her children. *Id.* Ms. Hegar's husband also cannot provide full-time care for their children while his wife works full-time on the campaign due to his full-time job.[2] *Id.* Accordingly, the Committee proposes to use campaign funds to pay for full-time daycare for the children while Ms. Hegar works full-time on her campaign. AOR002. Ms. Hegar proposes to reimburse the Committee for the costs associated with any time she may spend on matters unrelated to the campaign while the children are in full-time daycare. *Id.*

Question Presented

May the Committee use campaign funds to pay for the childcare expenses proposed in the request?

Legal Analysis and Conclusion

Yes, the Committee may use campaign funds to pay for the childcare expenses described in the request during the pendency of Ms. Hegar's campaign.

Under the Act, a candidate's authorized committee may use its funds for several specific purposes, including "otherwise authorized expenditures in connection with the campaign for Federal office of the candidate." 52 U.S.C. § 30114(a)(1). However, an authorized committee may not convert campaign funds to "personal use." *See* 52 U.S.C. § 30114(b); 11 C.F.R. § 113.1(g)(1)(ii). "Conversion to personal use" is defined as the use of campaign funds "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign." 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

The Act and Commission regulations provide a non-exhaustive list of expenses that, when paid using campaign funds, constitute *per se* conversion to personal use. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For expenses not listed, the Commission determines on a case-by-case basis whether the expense would exist irrespective of the candidate's campaign. 11 C.F.R. § 113.1(g)(1)(ii). If the expense would exist irrespective of the candidate's campaign, then the use of campaign funds to

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Statement of Organization, FEC Form 1 (Apr. 23, 2019), https://docquery.fec.gov/pdf/362/201904239149583362/201904239149583362.pdf.

[2] The request noted that Ms. Hegar may choose to draw a campaign salary at a later date, under 11 C.F.R. § 113.1(g)(1)(i)(I). However, because the Committee is not currently paying a salary to Ms. Hegar, the Commission does not address whether a future decision by the Committee to pay the candidate a salary would alter the Commission's conclusion in this advisory opinion.

pay the expense constitutes conversion to personal use. *Id.* If the expense would not exist irrespective of the candidate's campaign, then the use of campaign funds to pay the expense does not constitute conversion to personal use and is permissible. *Id.*

The Act and Commission regulations do not explicitly reference childcare expenses. Therefore, the Commission must evaluate whether such expenses would exist irrespective of the candidate's campaign to determine whether the use of campaign funds to pay them constitutes conversion to personal use. *Id.*

In previous advisory opinions, the Commission has considered whether campaign funds may be used to pay for certain childcare expenses. In Advisory Opinion 2018-06 (Liuba for Congress), a federal candidate gave up her in-home consulting work and hired a caregiver for her children in order to fulfill her campaign responsibilities. Advisory Opinion 2018-06 (Liuba for Congress) at 1-2. The Commission concluded that, under 11 C.F.R. § 113.1(g), the candidate could use campaign funds to pay for such care to the extent that the expenses were a "direct result of campaign activity," because such expenses would not have existed irrespective of the campaign. Advisory Opinion 2018-06 (Liuba for Congress) at 3. Similarly, in Advisory Opinion 1995-42 (McCrery), the Commission concluded it was permissible for a candidate to use campaign funds to pay for occasional childcare costs because such expenses would have resulted only from campaign activity and would not otherwise exist. Advisory Opinion 1995-42 (McCrery) at 2.

The Commission's reasoning and conclusions in Advisory Opinion 2018-06 (Liuba for Congress) and Advisory Opinion 1995-42 (McCrery) are equally relevant here. The request states that the vast majority of Ms. Hegar's time away from her family will relate to campaign activity and, accordingly, she will incur expenses for childcare during that time. AOR001. As in Advisory Opinion 2018-06 (Liuba for Congress) and Advisory Opinion 1995-42 (McCrery), the Commission concludes that the expenses in Ms. Hegar's request, to the extent they are a direct result of campaign activity, would not exist irrespective of her campaign and, therefore, can be paid with campaign funds. *See* 52 U.S.C. § 30114(a)(1), (b); 11 C.F.R. § 113.1(g). The Commission also concludes that Ms. Hegar's proposal to reimburse the campaign for childcare costs incurred at times she is not campaigning is an appropriate way to ensure that campaign funds are used only for activities that directly result from campaigning.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the

law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

Ellen L. Weintraub
Chair

FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 25, 2021

ADVISORY OPINION 2021-03

Jessica Furst Johnson, Esq.
Chris Winkelman, Esq.
Holtzman Vogel Josefiak Torchinsky PLLC
2300 N Street, Northwest, Suite 643A
Washington, DC 20037

Dear Ms. Johnson and Mr. Winkelman:

We are responding to your advisory opinion request on behalf of the National Republican Senatorial Committee (the "NRSC") and the National Republican Congressional Committee (the "NRCC") regarding the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the "Act"), and Commission regulations to the proposed use of the campaign funds of the members of Congress who comprise the NRSC and NRCC to pay for personal security to protect themselves and their families. The Commission concludes that the proposed 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.

Background

The facts presented in this advisory opinion are based on your letter received on January 27, 2021, on public disclosure reports filed with the Commission, and on statements made by you and/or your client at the Commission's March 25, 2021 public meeting.

The NRSC and NRCC are national party committees. Advisory Opinion Request at AOR002.[1] The NRSC is comprised of all sitting Republican members of the United States Senate, and the NRCC is comprised of all sitting Republican members of the United States House of Representatives. *Id.* The NRSC's and NRCC's primary functions are to aid in the election of Republican candidates for office, and in that role the NRSC and NRCC provide

[1] *See also* NRSC, FEC Form 1 (Statement of Organization) (filed Oct. 3, 2020), https://docquery.fec.gov/pdf/753/202010039285004753/202010039285004753.pdf; NRCC, FEC Form 1 (Statement of Organization) (filed Feb. 5, 2021), https://docquery.fec.gov/pdf/441/202102059427031441/202102059427031441.pdf.

EXHIBIT D

guidance to Republican candidates for federal office and officeholders. *Id.* The NRSC and NRCC seek this advisory opinion "on behalf of their Members currently serving in federal office."

The request lists numerous instances of "concrete threats of physical violence against Members and their families" and responses by law enforcement agencies, going back several years and continuing to the present, and the "worsened" threat environment as assessed by the Capitol Police. *Id.* AOR003-007. In response to the recent and ongoing threats of physical violence against senators and representatives and their families due to their status as officeholders, some officeholders have considered increasing security measures, including hiring personal security personnel. AOR002. Senators' and representatives' "vulnerability to potential threats is significantly heightened when they are away from home," while the responsibilities of their offices require them and their families to appear frequently in public settings. AOR005. Thus "the most practical and effective solution for protecting the safety of Members and their families is the employment of personal security personnel." *Id.* "The request would only apply in those instances where federal agents are not protecting the Member or Member's family, and in no way would any private personnel retained pursuant to this request interfere with the operations of federal law enforcement agencies." AOR002.

Question Presented

May the Members of the United States Senate and United States House of Representatives that comprise the NRSC and NRCC permissibly use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect both the Member and the Member's immediate family due to threats arising from his or her officeholder status?

Legal Analysis and Conclusion

Yes, Members of the United State Senate and United States House of Representatives that comprise the NRSC and the NRCC may use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect themselves and their immediate families due to threats arising from their status as officeholders when they are not otherwise being protected by federal law enforcement agents or the United States Capitol Police.[2]

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

The Commission has issued a number of advisory opinions authorizing the use of campaign funds to protect against threats to officeholders' physical safety, on the grounds that the need for such security expenses would not exist if not for the officeholders' activities or

[2] As indicated in the request, "immediate family" means members of the officeholder's household, including a spouse, minor children, or other relatives who normally reside with the officeholder. AOR001 n.3.

duties. In Advisory Opinion 2020-06 (Escobar), Advisory Opinion 2011-17 (Giffords), Advisory Opinion 2011-05 (Terry), and Advisory Opinion 2009-08 (Gallegly), members of Congress faced specific and ongoing threats to the safety of themselves and their families. The facts presented in those advisory opinions suggested that the threats were motivated by the requestors' public roles as federal officeholders, candidates, or both.

The Commission concluded in each instance that the expenses for the proposed security upgrades would not have existed irrespective of the requestors' duties as federal officeholders or candidates. Therefore, the Commission concluded that the use of campaign funds to pay for the security upgrades was permissible under the Act or Commission regulations. *See* 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.

The Commission has also previously considered the implications of the heightened threat environment faced by Members of Congress collectively, necessitating increased residential security measures even if an individual Member has not received direct threats. In Advisory Opinion 2017-07 (Sergeant at Arms), the Commission considered information from the House Sergeant at Arms about the threats faced by Members of Congress due to their status as federal officeholders, and the recommendation of the Capitol Police that Members of Congress install or upgrade residential security systems to protect themselves and their families. In light of that information, the Commission concluded that certain costs of installing or upgrading home security systems would constitute ordinary and necessary expenses incurred in connection with Members' duties as federal officeholders, and that therefore Members of Congress may use campaign funds to pay for reasonable costs associated with home security systems. *See* Advisory Opinion 2017-07 (Sergeant at Arms) at 3.

Here, the Commission considers the need for officeholders to take proactive measures to protect themselves and their immediate families due to threats arising from their status as officeholders. Similar to the need for increased residential security, the need for personal security for officeholders and their immediate family members in the context requested arises due to officeholders' roles as elected officials. Under these circumstances, the reasonable costs of bona fide, legitimate, professional personal security personnel for officeholders and their immediate family members constitute ordinary and necessary expenses incurred in connection with officeholders' duties and are a permissible use of campaign funds under the Act and Commission regulations.

Accordingly, the Members that comprise the NRSC and NRCC may use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect themselves and their immediate families due to threats arising from their status as officeholders, when federal agents are not protecting the Members or the Members' families. The Commission emphasizes this conclusion is based on the information provided about security threats that exist due to the Members' duties as federal officeholders. *See* Advisory Opinion 2017-07 (Sergeant at Arms); Advisory Opinion 2011-17 (Giffords) at 3.

This response constitutes an advisory opinion concerning the application of the Act and

Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See id.* § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

Shana M. Broussard
Chair

FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 19, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2005-09

Marc E. Elias, Esq.
Perkins Coie LLP
607 14th Street, N.W.
Washington, D.C. 20005-2011

Dear Mr. Elias:

We are responding to your advisory opinion request on behalf of Friends of Chris Dodd 2004 ("the Committee") regarding whether, under the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations, the Committee may use campaign funds to pay for certain travel expenses of Senator Dodd's minor children.

The Commission concludes that the Committee may use campaign funds to defray the costs of travel by Senator Dodd's minor children to accompany their parents between their home in Connecticut and Washington, D.C., provided that the parents are traveling to participate in a function directly connected to the Senator's *bona fide* official responsibilities.

Background

The facts of this request are presented in your letter received on June 27, 2005 and in your e-mail communication received on July 15, 2005.

Senator Dodd is a United States Senator from Connecticut. His principal campaign committee is Friends of Chris Dodd 2004.

Senator Dodd travels regularly between his home in Connecticut and Washington, D.C. in connection with his official duties, and his travel expenses are paid for in accordance with Senate rules and Commission regulations. Senator Dodd's wife travels from their home in

EXHIBIT E

Connecticut to participate in events taking place in Washington, D.C. relating to Senator Dodd's official duties, "such as fact-finding events, speaking engagements, and constituent meetings."

Senator Dodd and his wife have two daughters: one is three years old, and the other is an infant. Due to the daughters' young ages, they accompany Senator Dodd and his wife when both parents travel between Connecticut and Washington, D.C.

Question Presented

May Friends of Chris Dodd 2004 use campaign funds to pay for the travel expenses of Senator Dodd's minor children when the purpose of the travel is to attend officially connected events?

Legal Analysis and Conclusion

Yes, the Committee may use campaign funds to pay for the travel expenses of Senator Dodd's minor children to accompany the Senator and his wife when the purpose of the travel is to attend or participate in events officially connected to Senator Dodd's status as a Federal officeholder.

The Act identifies six categories of permissible uses of contributions accepted by a Federal candidate. They are (1) otherwise 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 2 U.S.C. 439a(b). *See* 2 U.S.C. 439a(a); *see also* 11 CFR 113.2(a)-(c).

Contributions accepted by a candidate may not, however, be converted to "personal use" by any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.2. Commission regulations define "personal use" as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g); *see also* 2 U.S.C. 439a(b)(2).

The Act and Commission regulations list a number of expense categories that would constitute personal use, such as household food items or supplies, clothing, tuition payments, home mortgage, rent, and utility payments. *See* 2 U.S.C. 439a(b)(2); 11 CFR 113.1(g)(1)(i). The list does not include travel expenses. The Commission considers on a case-by-case basis whether specific, unlisted uses constitute "personal use." *See* 11 CFR 113.1(g)(1)(ii). Accordingly, the Commission analyzes the payment of travel expenses, including subsistence expenses incurred during travel, on a case-by-case basis under 11 CFR 113.1(g)(1)(ii)(C).

Commission regulations further specify that certain travel costs qualify as "ordinary and necessary expenses incurred in connection with" one's duties as a Federal officeholder.

11 CFR 113.2(a), (a)(1). These expenses specifically include the costs of travel for a Federal officeholder and an accompanying spouse to participate in a function directly connected to *bona fide* official responsibilities, such as a fact-finding meeting or an event at which the officeholder's services are provided through a speech or appearance in an official capacity. 11 CFR 113.2(a)(1). In explaining the application of the travel cost provision, the Commission recognized "that an officeholder's spouse is often expected to attend these functions with the officeholder." Explanation and Justification, Final Rules on Personal Use of Campaign Funds, 60 FR 7862, 7872 (1995). The Commission noted that the spouse's attendance alone constitutes a form of participation in the function. *Id*.

Section 113.2(a) of the Commission's regulations does not specifically include the costs of travel for accompanying children. The facts in this case, however, are similar to those in Advisory Opinion 1995-20. In Advisory Opinion 1995-20, a Federal candidate and his wife, who served as the candidate's senior campaign advisor, traveled to their home district for campaign events. Because of their ages, the candidate's minor children accompanied the candidate and his wife on their travels, even though the children themselves participated only occasionally in campaign events. The Commission specifically approved the use of campaign funds to pay for the travel expenses of the Federal candidate's minor children, finding that the expenditure was required only because of the candidate's campaign. The Commission concluded that the expenditure was for travel in connection with a campaign for Federal office, in that it was to the Congressman's home district in order for him and his wife to participate in campaign events.

Similarly, here, Senator Dodd and his wife travel between their home in Connecticut and Washington, D.C. to participate in functions directly related to Senator Dodd's *bona fide* official responsibilities as a holder of Federal office. When Senator Dodd's minor children accompany him and his wife on these trips, the costs of the children's travel arise from Senator Dodd's duties as a Federal officeholder. Such travel is to be contrasted, for example, with family travel to vacation locales, or other examples of personal uses of campaign funds.

For these reasons, the Commission concludes that the Committee may use campaign funds to defray the costs of travel by Senator Dodd's minor children to accompany their parents between their home in Connecticut and Washington, D.C., provided that the parents are traveling to participate in a function directly connected to the Senator's *bona fide* official responsibilities.

Because the proposed disbursements by the Committee do not constitute expenditures in connection with a campaign for Federal office, they should be reported as "other disbursements" with the purpose of the disbursements noted. *See* 11 CFR 104.3(b)(2)(vi), (4)(vi).

The Commission expresses no opinion regarding the application of any rules of the United States Senate to, or any tax ramifications of, the proposed activity, because these issues are not within its jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Scott E. Thomas
Chairman

Enclosure (AO 1995-20)

TABLE OF CONTENTS OF RECORD ON APPEAL

Common Law Record

Report of Proceedings

EXHIBIT F

Exhibits

No. 127253

IN THE

SUPREME COURT OF ILLINOIS

BYRON SIGCHO-LOPEZ, Plaintiff-Appellant, v. STATE OF ILLINOIS BOARD OF ELECTIONS and 25TH WARD REGULAR DEMOCRATIC ORGANIZATION, a political party committee, Defendant-Appellees.	)	Appeal from the Appellate Court of Illinois, First District, No. 1-20-0561. There heard on Appeal from the Petition for Administrative Review of Decision and Final Order of Illinois State Board Of Elections State Board of Elections Case No. 19 CD 094

NOTICE OF FILING

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PLEASE TAKE NOTICE that on November 2, 2021, Plaintiff-Appellant, Byron Sigcho-Lopez, served and filed by electronic means using Legal Document Management Inc., an approved and certified Electronic Filing Service Provider (EFSP), on the Clerk of the Illinois Supreme Court, *Appellant's Brief for Byron Sigcho-Lopez*, a copy of which is hereby served upon you.

/s/ Adolfo Mondragón, Esq.
Plaintiff-Appellant's Attorney

E-FILED
11/2/2021 5:45 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

CERTIFICATE OF SERVICE

I, Adolfo Mondragón, state that on November 2, 2021, I served the foregoing *Appellant's Brief for Byron Sigcho-Lopez* and *Notice of Filing* upon counsel listed above electronically by email and by Legal Document Management Inc., an approved and certified Electronic Filing Service Provider (EFSP).

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matter therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Adolfo Mondragón
Plaintiff-Appellant's Attorney

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