



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary *LC*

DATE: August 29, 2024

SUBJECT: AOR 2024-07 (Team Graham)
Comment from the Elias Law Group
on Drafts A and B

The following is an AOR 2024-07 (Team Graham)
Comment from the Elias Law Group on Drafts A and B.
This matter will be discussed on the next Open Meeting of
August 29, 2024.

Attachment



RECEIVED

By Office of General Counsel at 9:19 am, Aug 29, 2024

RECEIVED

By Office of the Commission Secretary at 9:26 am, Aug 29, 2024

250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

August 28, 2024

BY ELECTRONIC MAIL DELIVERY

Federal Election Commission
1050 First Street NE
Washington, D.C. 20463
ao@fec.gov

Re: Comment on Drafts A and B, Advisory Opinion 2024-07 (Team Graham)

Dear Commissioners:

We submit this comment to the Federal Election Commission (the “*Commission*” or “*FEC*”) on behalf of DSCC and DCCC (the “*Committees*”) regarding the pending Advisory Opinion Request (the “*Request*”) that was submitted by Senator Lindsey Graham’s principal campaign committee (the “*Requestor*”).¹

Drafts A and B greenlight something truly extraordinary – a federal candidate and a super PAC freely coordinating on the content, timing, audience and medium for paid advertising while the super PAC remains free to simultaneously finance “independent” expenditures supporting that same candidate’s election.² The Drafts reach this conclusion by relying on a cursory assurance from Requestor that Senator Graham and his agents will not discuss any nonpublic campaign plans, projects, activities, or needs with the Super PAC. This assurance is contrary to both logic and the law.

The Federal Election Campaign Act of 1971, as amended (the “*Act*”) provides that expenditures “made by any person *in cooperation, consultation, or concert, with, or at the request or suggestion of*, a candidate, his authorized political committees, or their agents” results in a contribution to such candidate (“*coordinated expenditures*”).³ Super PACs are prohibited from making a contribution to a candidate and therefore may only make “independent” and not coordinated expenditures.⁴ A “coordinated expenditure” does not “require agreement or formal

¹ Advisory Opinion Request 2024-07.

² Advisory Opinion 2004-07 (Team Graham), Drafts A & B (“Draft A”).

³ 52 U.S.C.A. § 30116(a)(7)(B)(i).

⁴ See *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011); 52 U.S.C. § 30116(a) (prohibition on excessive contributions); *id.* § 30118(a) (prohibition on corporate contributions); Advisory Op. 2017-10 (Citizens Against Plutocracy) at 2 (quoting Advisory Op. 2016-21 (Great America PAC) at 3-4; Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

collaboration.”⁵ Rather, an expenditure is coordinated if it is made in reliance on a campaign’s nonpublic “plans, projects, activities, or needs.”⁶

The Request asks the Commission whether Senator Graham, the NRSC and a Super PAC can engage in joint fundraising while preserving the ability of the Super PAC to run independent expenditures supporting Senator Graham’s election. The Request admits that the fundraising activities proposed will include the material involvement of Senator Graham and his campaign in the creation, production, or distribution of paid fundraising communications. Yet, the Request then also somehow tries to claim that Senator Graham and his agents will not discuss nonpublic campaign plans, projects, activities, or needs with the Super PAC. This naked assertion is not a legitimate factual claim; it is a misstatement of law that the Commission must reject.

The Request itself admits that the Super PAC will be talking directly to Senator Graham and his campaign about paid advertisements distributed by the joint fundraising committee. These paid advertisements will directly benefit the Senator’s campaign. Collaboration on these advertisements would therefore of course involve a discussion of the campaign’s plans, projects, activities, or needs with the Super PAC. For example, if Senator Graham and the Super PAC discuss targeting of the joint fundraising ads, that information would be relevant to targeting of the Super PAC’s “independent expenditures” that would support Senator Graham’s campaign. The same is true of discussions regarding the most effective messaging for fundraising advertisements that feature Senator Graham. Information concerning what paid ads should say and when and where they should be run is itself non-public campaign plans, projects, activities and needs. To accept the Requestor’s position would allow for a candidate to fully coordinate with a Super PAC on one paid advertisement on a Monday, and then permit the same Super PAC to claim that a different ad made on Tuesday was fully independent. That is of course preposterous, and at a minimum, it cannot be true as a matter of law that a discussion regarding the first ad would never be relevant to the second ad. Whether or not the first ad happens to have a fundraising ask at the end does not change this reality.

Further, the proposed coordination on the joint fundraising ads will turn the Super PAC personnel involved in the fundraising activity into campaign agents. Under 11 C.F.R. § 109.3(b)(2), an individual becomes a campaign agent if they have actual authority, express or implied to, among other things: (1) request or suggest a communication be created or distributed; or (2) be materially involved in decisions regarding the timing content or audience for a communication. As explained by the Request, the Super PAC representatives will have authority to do all of the above, turning them into an agent of Senator Graham and rendering independence in future super PAC advertisements impossible.

⁵ Coordinated Communications Final Rules, 75 Fed. Reg. 55,947-49 (Sept. 15, 2010); *see* Note to 2 U.S.C. § 441a (now 52 U.S.C. 30116).

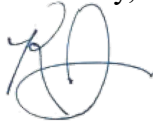
⁶ 11 C.F.R. § 109.21(d).

The Commission should make no mistake—when Requestors consult with the Super PAC about paid advertisements, the Super PAC will receive material, non-public campaign information that it will use for its own paid advertisements, as an agent of Senator Graham.

DSCC and DCCC made this point in previous comments.⁷ Yet, neither Team Graham nor the NRSC have addressed it. Instead, each has only parroted the language of the coordination regulations in an effort to distract from what should be plainly obvious—this joint effort, conducted under the guise of joint fundraising activity, would result in impermissible coordination on the Super PAC’s other paid advertisements.

Accordingly, the Commission should reject Drafts A and B.

Sincerely,



Rachel L. Jacobs
Jacquelyn Lopez
Jonathan A. Peterson
Counsel To Dsc And Dccc

⁷ See DSCC and DCCC Comment at 3, Advisory Opinion 2024-07 (Team Graham) (“To be sure, the Request does not provide *any facts* that would prevent the Super PAC from obtaining and/or using material, nonpublic candidate, campaign, or party information to create, produce, or distribute any of its other public communications.”).