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By Office of the Commission Secretary at 8:01 am, Aug 29, 2024



FEDERAL ELECTION COMMISSION
Washington, DC

AGENDA DOCUMENT NO. 24-32-C
AGENDA ITEM
For meeting of August 29, 2024
SUBMITTED LATE

August 28, 2024

MEMORANDUM

TO: The Commission

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

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Assistant General Counsel

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Attorney

Subject: AO 2024-07 (Team Graham) - Draft C

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may 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 attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2024-07

2

3 Jessica Furst Johnson, Esq.

4 Andrew D. Watkins, Esq.

DRAFT C

5 Holtzman Vogel Baran Torchinsky & Josefiak, P.L.L.C.

6 2300 N Street, N.W., Suite 643

7 Washington, D.C. 20037

8

9 Dear Ms. Johnson and Mr. Watkins:

10

11 We are responding to your advisory opinion request on behalf of Team Graham,
12 Inc. (“Team Graham”), concerning the application of the Federal Election Campaign Act,
13 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to Team Graham’s
14 proposed participation in a joint fundraising committee whose other participants would
15 include an independent expenditure-only political committee (“Super PAC”). The
16 Commission concludes that Team Graham may participate in the joint fundraising
17 committee as proposed because (1) neither Team Graham nor any other entity
18 established, financed, maintained, or controlled by Senator Graham or acting on behalf of
19 Senator Graham would solicit, receive, direct, transfer, or spend funds that do not comply
20 with the Act’s contribution limits, source prohibitions, and reporting requirements, and
21 (2) Senator Graham, Team Graham, and their agents would not engage in coordinated
22 communications with Super PAC.¹

23 ***Background***

24 The facts presented in this advisory opinion are based on your letters received on
25 June 12, 2024, and July 2, 2024.

¹ This advisory opinion addresses the permissibility of Team Graham’s participation only, because no other entity is a party to the advisory opinion request. See 11 C.F.R. § 112.1(b) (“Requests . . . regarding the activities of third parties, do not qualify as advisory opinion requests.”).

1 Team Graham is the principal campaign committee of Senator Lindsey Graham.
2 Team Graham currently participates in the Graham Majority Fund (“Joint Fundraising
3 Committee”), a joint fundraising representative registered with the Commission as a
4 separate political committee, along with Senator Lindsey Graham’s leadership PAC,
5 Fund for America’s Future (“Leadership PAC”), and the National Republican Senatorial
6 Committee (“NRSC”).

7 Team Graham proposes to amend the joint fundraising agreement to include
8 Super PAC as a participant, as well. With Super PAC as a participant, Team Graham
9 proposes that the expanded Joint Fundraising Committee will allocate contributions
10 received pursuant to the amended joint fundraising agreement as described below.

11 (1) For contributions from a single individual or a federal non-multicandidate
12 PAC: The first \$3,300 to Team Graham’s primary election account; the next
13 \$3,300 to Team Graham’s general election account; the next \$5,000 to Leadership
14 PAC; the next \$5,000 to Super PAC; the next \$41,300 to NRSC; the next
15 \$123,900 to NRSC’s Legal Proceedings Account; and any remaining funds up to
16 \$123,900 to NRSC’s Headquarters Account.

17
18 (2) For contributions from individuals jointly: The first \$6,600 to Team
19 Graham’s primary election account; the next \$6,600 to Team Graham’s general
20 election account; the next \$10,000 to Leadership PAC; the next \$10,000 to Super
21 PAC; the next \$82,600 to NRSC; the next \$247,800 to NRSC’s Legal
22 Proceedings Account; and any remaining funds up to \$247,800 to NRSC’s
23 Headquarters Account.

24
25 (3) For contributions from any federal multicandidate PAC: The first \$5,000 to
26 Team Graham’s primary election account; the next \$5,000 to Team Graham’s
27 general election account; the next \$5,000 to Leadership PAC; the next \$5,000 to
28 Super PAC; the next \$15,000 to NRSC; the next \$45,000 to NRSC’s Legal
29 Proceedings Account; and any remaining funds up to \$45,000 to NRSC’s
30 Headquarters Account.

31
32 Team Graham states that the expanded Joint Fundraising Committee “will not
33 accept contributions in excess of the amounts listed” in the allocation formula. If the

1 allocation formula would result in a participant receiving a contribution in excess of
2 applicable contribution limits, Team Graham states that the contribution will be
3 reallocated to other participants and any amount that would result in the contributor
4 exceeding the amount that it may lawfully contribute under the Act to all participants will
5 be refunded.

6 Further, under Team Graham’s proposal, the expanded Joint Fundraising
7 Committee will “only solicit, receive, direct, transfer, or spend funds that are subject to
8 the Act’s contribution limits and source prohibitions” as “set forth at 52 U.S.C. §§ 30116-
9 30121”² and will refund any contributions received from prohibited sources.³ Indeed,
10 Senator Graham and his agents will expressly limit their solicitations of contributions for
11 the expanded Joint Fundraising Committee to the amount limitations and source
12 prohibitions of the Act.

13 Team Graham states that it intends to comply with all Commission regulations for
14 joint fundraising activity, including recordkeeping, allocation, and reporting
15 requirements. The expanded Joint Fundraising Committee will establish a separate
16 depository account for joint fundraising proceeds.

17 Under Team Graham’s proposal, the expanded Joint Fundraising Committee will
18 distribute public communications in the form of solicitations, invitations, and similar
19 fundraising event announcements. Senator Graham, Team Graham, and their agents

² Advisory Opinion Request (“AOR”) at 001, 6; *see also* AOR002 (stating that expanded Joint Fundraising Committee solicitations “will comply with the Commission’s regulations and advisory opinions regarding a federal candidate’s or officeholder’s involvement in solicitations for a Super PAC.”).

³ AOR007, 4.

1 might request or suggest the distribution of these communications; be materially involved
2 in their creation, production, or distribution; or engage in substantial discussions about
3 the communications before they are created, produced, or distributed.⁴ Senator Graham
4 and his agents might also coordinate scheduling logistics with other participants in the
5 expanded Joint Fundraising Committee regarding appearances at Joint Fundraising
6 Committee events but will not discuss the nonpublic campaign plans, projects, activities,
7 or needs of Senator Graham or his campaign with Super PAC.

8 In addition, participants in the expanded Joint Fundraising Committee will share
9 data and other information as required under the joint fundraising agreement and
10 Commission regulations to ensure contributions comply with the Act's source and
11 amount limitations, and to comply with reporting requirements. The expanded Joint
12 Fundraising Committee will also forward contributor information to participants to allow
13 them to screen contributions and to comply with their reporting obligations under the Act.

14 Team Graham states that the joint fundraising costs will be allocated to and paid
15 proportionally by the expanded Joint Fundraising Committee's participants as required by
16 11 C.F.R. § 102.17(c)(7).

⁴ Team Graham asserts that neither it, Senator Graham, nor their agents, will (1) request or suggest that Super PAC make any public communication other than the joint fundraising solicitations, invitations, and similar fundraising event announcements described above; (2) assent to any request or suggestion by Super PAC regarding any other public communications; (3) be materially involved in the creation, production, or distribution of any other public communication by Super PAC; (4) engage in substantial discussions about any other public communications by Super PAC; or (5) discuss the nonpublic campaign plans, projects, activities, or needs of Senator Graham or his campaign with Super PAC. AOR003, 8.

1 ***Question Presented***

2 *May Team Graham participate in a Joint Fundraising Committee that includes*
3 *Team Graham, Leadership PAC, NRSC, and Super PAC?*

4 ***Legal Analysis***

5 Yes, Team Graham may participate in a Joint Fundraising Committee that
6 includes Team Graham, Leadership PAC, NRSC, and Super PAC as proposed, because
7 (1) neither Team Graham nor any other entity established, financed, maintained, or
8 controlled by Senator Graham or acting on behalf of Senator Graham would solicit,
9 receive, direct, transfer, or spend funds that do not comply with the Act’s contribution
10 limits, source prohibitions, and reporting requirements, and (2) Senator Graham, Team
11 Graham, and their agents would not engage in coordinated communications with Super
12 PAC.

13 **A. Joint Fundraising Committees and Federally Permissible Funds**

14 The Act and Commission regulations permit federal candidates and political
15 committees to establish a separate political committee to serve as their joint fundraising
16 representative.⁵ In raising funds for the participants, the joint fundraising representative
17 “shall collect contributions, pay fundraising costs from gross proceeds and from funds
18 advanced by the participants, and disburse net proceeds to each participant.”⁶ The
19 participants in a joint fundraising committee must enter into a written agreement that
20 “shall state a formula for the allocation of fundraising proceeds,” and the allocation

⁵ 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a).

⁶ 11 C.F.R. § 102.17(b)(1).

1 formula must be included in a joint fundraising notice with every solicitation for
2 contributions.⁷ A contributor may make a contribution to the joint fundraising
3 representative that “represents the total amount that the contributor could contribute to all
4 of the participants under the applicable limits of 11 C.F.R. 110.1 and 110.2.”⁸

5 The joint fundraising representative is an authorized committee of each federal
6 candidate participating in the joint fundraising activity.⁹ The joint fundraising
7 representative must establish a separate account to be used solely for the receipt and
8 disbursement of joint fundraising proceeds, and each participating political committee
9 must amend its Statement of Organization to reflect the account as an additional
10 committee account.¹⁰ The joint fundraising representative must deposit all joint
11 fundraising proceeds in its separate account within ten days of receipt; all contributions
12 deposited in the separate account must be permissible under the Act.¹¹

13 In addition, the Act and Commission regulations prohibit federal candidates,
14 federal officeholders, and their agents from soliciting, receiving, directing, transferring,
15 or spending funds in connection with a federal election “unless the funds are subject to

⁷ *Id.* § 102.17(c)(1)-(2).

⁸ *Id.* § 102.17(c)(5).

⁹ *Id.* § 102.17(a)(1)(i).

¹⁰ *Id.* § 102.17(c)(3)(i).

¹¹ *Id.* § 102.17(c)(3)(i)-(ii). If one or more participants can lawfully accept funds that are prohibited under the Act, the participants may either establish a second depository account for funds received from prohibited sources or they may forward such funds directly to the nonfederal participants. *Id.* § 102.17(c)(3)(i).

1 the limitations, prohibitions, and reporting requirements of the Act.”¹² This prohibition
2 also applies to “an entity directly or indirectly established, financed, maintained or
3 controlled by or acting on behalf of 1 or more” federal candidates or officeholders.¹³

4 Accordingly, a joint fundraising representative, as an authorized committee of
5 each federal candidate participating in the joint fundraising activity, may not solicit,
6 receive, direct, transfer, or spend funds in connection with a federal election “unless the
7 funds are subject to the limitations, prohibitions, and reporting requirements of this
8 Act.”¹⁴ Although super PACs may generally solicit and receive unlimited contributions
9 from individuals, corporations, and labor organizations,¹⁵ federal candidates and
10 officeholders (and entities established, funded, maintained or controlled by them or
11 acting on their behalf) may not solicit contributions to Super PACs exceeding \$5,000

¹² 52 U.S.C. § 30125(e)(1)(A).

¹³ 52 U.S.C. § 30125(e)(1).

¹⁴ *Id.* § 30125(e)(1)(A). The joint fundraising regulations permit federal candidates to enter joint fundraising agreements with entities that are not subject to the amount limitations and source prohibitions of the Act and provide safeguards to prevent imputing any entities’ non-federal activities to the joint fundraising representatives or to federal candidates. *See* 11 C.F.R. § 102.17(a)(1)(i) (“Political committees may engage in joint fundraising with other political committees or with unregistered committees or organizations”).

¹⁵ *See, e.g.*, Advisory Opinion 2010-11 (Commonsense Ten) at 3 (concluding that independent expenditure-only committee may receive unlimited funds from individuals, corporations, and labor organizations); Advisory Opinion 2011-11 (Colbert) at 4 (clarifying that independent expenditure-only committee may not solicit or accept contributions from foreign nationals, federal contractors, national banks, or corporations organized by authority of any law of Congress); *SpeechNow.org v. FEC*, 599 F.3d 686,696 (D.C. Cir. 2010) (*en banc*) (concluding that independent expenditure-only committee may receive unlimited contributions from individuals); *Carey v. FEC*, 791 F. Supp. 2d 121, 131 (D.D.C. 2011) (allowing nonconnected committee making direct contributions to candidates to receive unlimited funds from individuals, corporations, and labor organizations into separate bank account to finance its independent expenditures).

1 from individuals and multicandidate political committees, consistent with the Act and
2 Commission regulations.¹⁶

3 Here, Team Graham proposes to participate in an expanded Joint Fundraising
4 Committee with Super PAC and stipulates that Team Graham and Joint Fundraising
5 Committee would raise only funds consistent with the contribution limits and source
6 prohibitions that the Commission has previously approved when federal candidates raise
7 funds for independent expenditure-only committees. Further, Team Graham asserts that
8 it will fully comply with 11 C.F.R. § 102.17, including that Super PAC will not “advance
9 any funds to pay joint fundraising costs.”¹⁷ Accordingly, Team Graham’s proposal
10 would be permissible under 52 U.S.C. § 30125(e).

11 **B. Coordinated Communications**

12 Under the Act, expenditures that are coordinated with a candidate or political
13 party committee are treated as contributions to that candidate or political party
14 committee.¹⁸ Specifically, Commission regulations provide that if a communication is
15 “coordinated with a candidate, an authorized committee, a political party committee, or

¹⁶ See, e.g., Advisory Opinion 2011-12 (Majority PAC and House Majority PAC) at 4 (concluding that federal officeholders, candidates, and their agents may solicit up to \$5,000 from individuals on behalf of independent expenditure-only committee); Advisory Opinion 2011-21 (Constitutional Conservatives Fund PAC) at 4 (concluding that because leadership PAC is “directly or indirectly established, financed, maintained, or controlled” by federal candidate or officeholder, “it may not receive unlimited funds from individuals or any funds from corporations or labor organizations, because such funds would not be subject to the limitations and prohibitions of the Act”).

¹⁷ Supp. AOR at 2 (July 30, 2024).

¹⁸ 52 U.S.C. § 30116(a)(7)(B).

1 an agent of any of the foregoing,” the payment for the communication is an in-kind
2 contribution to that candidate or the political party committee from the payor.¹⁹

3 Commission regulations set forth a three-part test to determine whether a
4 communication is a coordinated communication: (1) The communication must be paid
5 for by a person other than the federal candidate, authorized committee, or political
6 committee in question; (2) one or more of the content standards set forth in 11 C.F.R.
7 § 109.21(c) must be satisfied; and (3) one or more of the conduct standards set forth in 11
8 C.F.R. § 109.21(d) must be satisfied.²⁰ If all three parts of this test are met, a
9 communication will be deemed a “coordinated communication” and, thus, an in-kind
10 contribution from the payor.

11 In determining whether Team Graham will receive an in-kind contribution from
12 Super PAC in the form of a coordinated communication, the Commission must consider
13 communications made by the expanded Joint Fundraising Committee and funded by
14 Super PAC, as well as Super PAC’s own communications. Each is addressed below.

15 Super PAC-Funded Joint Fundraising Committee Communications

16 Under Team Graham’s proposal, the expanded Joint Fundraising Committee will
17 distribute public communications in the form of solicitations, invitations, and similar
18 fundraising event announcements. Senator Graham, Team Graham, and their agents
19 might request or suggest the distribution of these communications; be materially involved
20 in their creation, production, or distribution; or engage in substantial discussions about

¹⁹ 11 C.F.R. § 109.21(a), (b)(1).

²⁰ *Id.*

1 the communications before they are created, produced, or distributed. Team Graham
2 proposes that all costs associated with the expanded Joint Fundraising Committee will be
3 allocated to and paid proportionally by the expanded Joint Fundraising Committee’s
4 participants as set forth at 11 C.F.R. § 102.17(c)(7).

5 Section 102.17(c)(7) generally requires each participant’s share of joint
6 fundraising expenses to be calculated based on the percentage of receipts the participant
7 has been allocated under the joint fundraising agreement.²¹ The payment by one
8 participant of another participant’s expenses is treated as a contribution subject to
9 contribution limits.²² As a result, each participant must pay its proportionate share of
10 joint fundraising expenses, and no participant may subsidize or make a contribution to
11 any other participant in excess of the contribution limits.

12 For a communication to be a “coordinated communication” under Commission
13 regulations, it must be paid for by a person other than the federal candidate, authorized
14 committee, or political committee.²³ Here, Team Graham represents that it will pay its
15 allocable share of the costs of the expanded Joint Fundraising Committee’s public
16 communications;²⁴ because Team Graham will pay the full cost of the public
17 communications attributable to Team Graham, the communications will not meet the

21 *Id.* § 102.17(c)(7)(A).

22 *Id.* § 102.17(c)(7)(B).

23 *Id.* § 109.21(a)(1).

24 AOR004, 5

1 payment part of the coordinated communication test and, therefore, will not be in-kind
2 contributions to Senator or Team Graham.

3 This conclusion is consistent with the Commission’s decision in Advisory
4 Opinion 2004-37 (Waters). In that opinion, the Commission considered whether a
5 brochure expressly advocating the election of certain clearly identified candidates would
6 be a “coordinated communication.” The Commission concluded that the brochure would
7 not be a coordinated communication because it would not satisfy the payment part of the
8 coordinated communication test where each of the candidates identified in the brochure
9 reimbursed the full production and distribution costs attributed to that candidate within a
10 reasonable period of time.²⁵

11 Super PAC’s Other Public Communications

12 Team Graham states that Senator Graham, Team Graham, and their agents will
13 not request or suggest that Super PAC make any public communications aside from the
14 joint fundraising solicitations, invitations, and similar fundraising event announcements
15 described above, or assent to any request or suggestion by Super PAC concerning any
16 such public communication. Team Graham further states that Senator Graham, Team
17 Graham, and their agents will not be materially involved in the creation, production, or
18 distribution of, and will not engage in substantial discussion about, any Super PAC public
19 communication aside from the joint fundraising communications described above.

20 Finally, Team Graham states that Senator Graham, Team Graham, and their agents will

²⁵ See Advisory Opinion 2004-37 (Waters) at 2, 3-4.

1 not discuss the nonpublic campaign plans, projects, activities, or needs of Senator

2 Graham or his campaign with Super PAC.²⁶

3 Based upon these representations, the Commission concludes that Team Graham

4 will not receive an in-kind contribution from Super PAC in the form of coordinated

5 communications because neither Senator Graham, Team Graham, nor their agents will

6 engage in activity meeting the conduct part of the coordinated communication test at 11

7 C.F.R. § 109.21 with respect to the joint fundraising communications described above.²⁷

8 This response constitutes an advisory opinion concerning the application of the

9 Act and Commission regulations to the specific transaction or activity set forth in your

10 request.²⁸ The Commission emphasizes that, if there is a change in any of the facts or

11 assumptions presented, and such facts or assumptions are material to a conclusion

12 presented in this advisory opinion, then the requestor may not rely on that conclusion as

13 support for its proposed activity. Any person involved in any specific transaction or

14 activity which is indistinguishable in all its material aspects from the transaction or

²⁶ While not a requestor, and thus this Advisory Opinion offers no opinion as to the permissibility of its activity, NRSC submitted a comment which represents that it will similarly not coordinate communications with Super PAC other than the joint fundraising solicitations. *See* NRSC Comment at 1 (July 29, 2024). Because it is not raised by this request, the Commission makes no determinations regarding whether information conveyed by Team Graham for the purpose of the joint fundraising solicitations could satisfy the conduct standard and, thus, result in a coordinated communication if used by the NRSC or Super PAC for a public communication *other* than the joint fundraising communications.

²⁷ For the same reason, the Commission concludes that Team Graham's proposed coordination of scheduling logistics regarding appearances at expanded Joint Fundraising Committee events and sharing of data and other information as required under the joint fundraising agreement and Commission regulations and to comply with reporting requirements will not result in Team Graham's receipt of an in-kind contribution from Super PAC.

²⁸ *See* 52 U.S.C. § 30108.

1 activity with respect to which this advisory opinion is rendered may rely on this advisory
2 opinion.²⁹ Please note that the analysis or conclusions in this advisory opinion may be
3 affected by subsequent developments in the law including, but not limited to, statutes,
4 regulations, advisory opinions, and case law. Any advisory opinions cited herein are
5 available on the Commission's website.

6 On behalf of the Commission,

7

8 Sean J. Cooksey,

9 Chairman

²⁹ See *id.* § 30108(c)(1)(B).