

# Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

June 12, 2024

**VIA E-MAIL**

Federal Election Commission  
Office of General Counsel  
1050 First Street, NE  
Washington, DC 20463

**RECEIVED**

*By Office of General Counsel at 11:52 am, Jun 12, 2024*

**RECEIVED**

*By Office of the Commission Secretary at 7:32 am, Jul 05, 2024*

**Re: Advisory Opinion Request**

Dear Commissioners:

Pursuant to 52 U.S.C. § 30108, we seek an advisory opinion on behalf of Team Graham, Inc. (the “Committee”), to confirm that its proposed joint fundraising activities are consistent with the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (the “Commission”) regulations.

The Committee wishes to participate in a joint fundraising committee that would include (i) the Committee, (ii) Senator Graham’s leadership PAC, Fund for America’s Future (the “LPAC”), (iii) the NRSC, and (iv) an independent expenditure-only committee (“Super PAC”). The Committee seeks the Commission’s confirmation that this arrangement is consistent with the Act and Commission regulations.

**I. Background**

The Committee is the principal campaign committee of Senator Lindsey Graham. Fund for America’s Future is a leadership PAC sponsored by Senator Graham. The NRSC is a national committee of a political party. Graham Majority Fund is a joint fundraising representative, registered with the Commission as a separate political committee, whose current participants are the Committee, the LPAC, and the NRSC. The Committee wishes to amend the Graham Majority Fund joint fundraising agreement to include a Super PAC as a participant.

The joint fundraising committee would only solicit, receive, direct, transfer, or spend funds that are subject to the Act’s contribution limits and source prohibitions. Additionally, the joint fundraising committee would comply with all Commission regulations for joint fundraising activity. The joint fundraising representative is a separate reporting political committee.<sup>1</sup> The participants would execute an amended joint fundraising agreement to specify the allocation as described below,<sup>2</sup> and a fundraising notice with all required information would be included with each solicitation.<sup>3</sup> The joint fundraising committee would establish a separate depository account

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<sup>1</sup> 11 C.F.R. § 102.17(b)(1).

<sup>2</sup> 11 C.F.R. § 102.17(c)(1).

<sup>3</sup> 11 C.F.R. § 102.17(c)(2).

for joint fundraising proceeds,<sup>4</sup> and will comply with all recordkeeping, allocation, and reporting requirements under Commission regulations.<sup>5</sup>

The proposed joint fundraising agreement would allocate contributions as follows:

- (1) For any single individual's contribution, the first \$3,300 to the Committee's primary election account; the next \$3,300 to the Committee's general election account; the next \$5,000 to the LPAC; the next \$5,000 to the Super PAC; the next \$41,300 to the NRSC; the next \$123,900 to the NRSC Legal Proceedings Account; and any remaining funds up to \$123,900 to the NRSC Headquarters Account.
- (2) For any joint individual contribution, the first \$6,600 to the Committee's primary election account; the next \$6,600 to the Committee's general election account; the next \$10,000 to the LPAC; the next \$10,000 to the Super PAC; the next \$82,600 to the NRSC; the next \$247,800 to the NRSC Legal Proceedings Account; and any remaining funds up to \$247,800 to the NRSC Headquarters Account.
- (3) For contributions from any federal non-multicandidate PAC, the first \$3,300 to the Committee's primary election account; the next \$3,300 to the Committee's general election account; the next \$5,000 to the LPAC; the next \$5,000 to the Super PAC; the next \$41,300 to the NRSC; the next \$123,900 to the NRSC Legal Proceedings Account; and any remaining funds up to \$123,900 to the NRSC Headquarters Account.
- (4) For contributions from any federal multicandidate PAC, the first \$5,000 to the Committee's primary election account; the next \$5,000 to the Committee's general election account; the next \$5,000 to the LPAC; the next \$5,000 to the Super PAC; the next \$15,000 to the NRSC; the next \$45,000 to the NRSC Legal Proceedings Account; and any remaining funds up to \$45,000 to the NRSC Headquarters Account.

Any federal candidate or officeholder (and their agents), including Senator Graham, who solicits a contribution on behalf of the proposed joint fundraising committee will expressly limit such solicitation to comply with the source and amount limitations under the Act.<sup>6</sup> Additionally, all solicitations for the joint fundraising committee 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.<sup>7</sup>

The joint fundraising committee will distribute public communications in the form of solicitations, invitations, and similar fundraising event announcements, subject to the limitations set forth above. These materials may be distributed by or at the request or suggestion of Senator Graham or his agents and/or the Committee or its agents. In addition, Senator Graham or his agents

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<sup>4</sup> 11 C.F.R. § 102.17(c)(3).

<sup>5</sup> 11 C.F.R. § 102.17(c)(4)-(8).

<sup>6</sup> 52 U.S.C. § 30125(e)(1).

<sup>7</sup> See 11 C.F.R. § 300.64; see also Advisory Opinion 2011-12 (Majority PAC and House Majority PAC); Advisory Opinion 2015-09 (Senate Majority PAC and House Majority PAC).

and/or the Committee or its agents may be materially involved in the creation, production, or distribution of these materials. Finally, these materials may be created, produced, or distributed after one or more substantial discussions about the communication with Senator Graham or his agents and/or the Committee or its agents. Participants in the joint fundraising committee may share data and other information as required under the joint fundraising agreement and applicable FEC reporting regulations, and Senator Graham or his agents may coordinate scheduling logistics with other joint fundraising participants regarding appearances at joint fundraising committee events. Any joint fundraising committee costs associated with any of the foregoing will be paid by the participants as set forth at 11 C.F.R. § 102.17(c)(7).

Senator Graham, the Committee, or any agent of the foregoing will not request or suggest that the Super PAC make any public communication aside from the joint fundraising solicitations, invitations, and similar fundraising event announcements described above. Senator Graham, the Committee, or any agent of the foregoing will not be materially involved in the creation, production, or distribution of any Super PAC public communication aside from the joint fundraising solicitations, invitations, and similar fundraising event announcements described above. Senator Graham, the Committee, or any agent of the foregoing will not engage in substantial discussion(s) about any Super PAC public communication aside from the joint fundraising solicitations, invitations, and similar fundraising event announcements described above.

## **II. Questions Presented**

*May the Committee participate in a joint fundraising committee that includes the Committee, LPAC, NRSC, and a Super PAC?*

## **III. Legal Analysis**

There is nothing in the Act or Commission regulations, or in any Commission advisory opinion or enforcement matter, that prevents the Committee from participating in a joint fundraising committee that also includes the LPAC, the NRSC, and a Super PAC.

### ***A. The Contemplated Joint Fundraising Committee Is Consistent With The Act And Commission Regulations.***

Nothing in the Act or Commission regulations expressly or implicitly prohibits the arrangement advanced in this request. To the contrary, the Commission's regulations expressly contemplate joint fundraising committees that include as participants both political committees subject to the Act's source and amount limits and other committees that may lawfully receive contributions outside these limitations.<sup>8</sup> And, nothing in the history of the Commission's joint

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<sup>8</sup> See, e.g., 11 C.F.R. § 102.17(c)(2)(ii)(B) ("If one or more participants can lawfully accept contributions that are prohibited under the Act" the fundraising notice must include "a statement informing contributors that contributions from prohibited sources will be distributed only to those participants that can accept them."); 11 C.F.R. § 102.17(c)(3)(i) ("If one or more participants can lawfully accept contributions that are prohibited under the Act, the participants may either establish a second depository account for contributions received from prohibited sources or they may forward such contributions directly to the nonfederal participants."); 11 C.F.R. § 102.17(c)(4) ("The

fundraising regulation indicates it should be interpreted to prevent a federal candidate from being involved in joint fundraising with groups that are lawfully permitted to accept soft money, provided the joint fundraising activity is limited to funds that comply with the Act's source and amount limitations.<sup>9</sup> As outlined in this request, the proposed joint fundraising activities will comply with 11 C.F.R. part 300; therefore, nothing in the Commission's joint fundraising regulation restricts the type of entities that may be participants in the joint fundraising committee.<sup>10</sup>

***B. All Funds Solicited And Received Will Be "Subject To The Limitations, Prohibitions, And Reporting Requirements Of This Act."***

As set forth above, all solicitations made on behalf of the joint fundraising committee will include the fundraising notice required by 11 C.F.R. § 102.17(c), which will contain a solicitation of funds that is expressly limited to funds that comply with the Act's source and amount limitations and reporting requirements. The joint fundraising committee will not accept contributions in excess of the amounts listed above in this request, or from federally impermissible sources. These limitations will ensure compliance with the Act by all participants subject to 52 U.S.C. § 30125. Specifically, no federal candidate or officeholder (or agent thereof), or entity directly or indirectly established, financed, maintained, or controlled by a federal candidate or officeholder, will solicit, receive, direct, transfer, or spend funds in connection with an election for federal office unless those funds are subject to the limitations, prohibitions, and reporting requirements of the Act.<sup>11</sup>

***C. The Joint Fundraising Committee's Public Communications Will Not Constitute Coordinated Communications.***

Finally, the joint fundraising committee's communications (e.g., solicitations, invitations, and similar fundraising even announcements) will not qualify as "coordinated communications." Commission regulations define a "coordinated communication" as a communication that is "paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee" (the payment prong); and satisfies the content prong and conduct prong set forth in 11 C.F.R. § 109.21. In applying this test to determine whether a communication is a coordinated communication, all three prongs must be met.<sup>12</sup> As set forth in this request, any joint fundraising communications will be allocated to and paid for proportionally by the participants in the joint

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fundraising representative shall also keep a record of the total amount of contributions received from prohibited sources, if any, and of all transfers of prohibited contributions to participants that can accept them."); 11 C.F.R. § 102.17(c)(6)(iii) ("If any participants can lawfully accept contributions from sources prohibited under the Act, any such contributions that are received are not required to be distributed according to the allocation formula."); 11 C.F.R. § 102.17(c)(8) ("The fundraising representative shall report the total amount of contributions received from prohibited sources during the reporting period, if any, as a memo entry.").

<sup>9</sup> See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49074 (July 29, 2002) (explaining that language was being added to the Commission's joint fundraising regulation because "[t]he ban on national party *non-Federal fundraising* affects the Commission's joint fundraising rules" (emphasis added)), <https://sers.fec.gov/fosers/showpdf.htm?docid=3328>.

<sup>10</sup> See 11 C.F.R. § 102.17(a).

<sup>11</sup> 52 U.S.C. § 30125(e); see also 11 C.F.R. § 300.61.

<sup>12</sup> See Advisory Opinion 2024-01 (Texas Majority PAC) at 4, <https://www.fec.gov/files/legal/aos/2024-01/2024-01.pdf>.

fundraising committee as required by the Commission's joint fundraising regulation.<sup>13</sup> Accordingly, any joint fundraising communication will fail to meet the payment prong and will not be a coordinated communication.<sup>14</sup>

**IV. Conclusion**

For the reasons set forth above, we ask that the Commission confirm that the Committee may participate in a joint fundraising committee that includes (i) the Committee, (ii) the LPAC, (iii) the NRSC, and (iv) a Super PAC.

We appreciate your consideration of this matter. Please feel free to contact us if you have any questions about this request.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Johnson".

Jessica Furst Johnson  
Andrew D. Watkins  
*Counsel to Team Graham, Inc.*

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<sup>13</sup> 11 C.F.R. § 102.17(c)(7).

<sup>14</sup> See Advisory Opinion 2004-37 (Waters) at 3 (determining the payment prong is not met where each committee pays for its allocable costs), <https://www.fec.gov/files/legal/aos/2004-37/2004-37.pdf>.

# Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

July 2, 2024

**VIA E-MAIL**

Federal Election Commission  
Office of General Counsel  
Attn: Joanna Waldstreicher, Amy Rothstein,  
and Luis Lipchak  
1050 First Street, NE  
Washington, DC 20463

**Re: Team Graham's Advisory Opinion Request**

Dear Joanna, Amy, and Luis:

The supplemental information below is provided in response to your questions regarding our advisory opinion request on behalf of Team Graham, Inc. Although several of these questions are addressed in the initial response, we hope this supplemental information will clarify any remaining ambiguity about the request.

**1. Regarding the proposed joint fundraising allocation formula set forth on page 2 of the request, how does the joint fundraising committee intend to handle contributions received in excess of this allocation formula?**

As stated on page 1 of the request, “the joint fundraising committee would comply with all Commission regulations for joint fundraising activity.” Pursuant to the Commission’s joint fundraising regulation, the joint fundraising representative must allocate joint fundraising proceeds according to the allocation formula stated in the joint fundraising agreement.<sup>1</sup> If this allocation results in a participant receiving a contribution in excess of applicable contribution limits, “the fundraising representative may reallocate the excess funds,” or if reallocation would still result in an excessive contribution “the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.”<sup>2</sup> Accordingly, if a contribution is received that is in excess of the allocation formula set forth on page 2 of the request, it may be reallocated to other participants. If reallocation would result in the contributor exceeding the amount that it may lawfully contribute to all participants under the Act, the excess would be refunded.

Page 1 of the request also states that “[t]he joint fundraising committee would only solicit, receive, direct, transfer, or spend funds that are subject to the Act’s contribution limits and source prohibitions.” To the extent this language has caused confusion within OGC, we wish to make clear that the “Act’s contribution limits and source prohibitions” are those set forth at 52 U.S.C. §§ 30116 – 30121. Page 4 of the request reiterates that “[t]he joint fundraising committee will not

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<sup>1</sup> 11 C.F.R. § 102.17(c)(6).

<sup>2</sup> *Id.*

accept contributions in excess of the amounts listed above in this request, or from federally impermissible sources.” The amounts referenced in the request are consistent with the Act’s contribution limits and source prohibitions.

Even if one or more participants in the joint fundraising committee (e.g., any Super PAC) may lawfully accept contributions that exceed the Act’s amount limitations, the request makes clear, and we reiterate here, that the joint fundraising committee will comply with the Act’s contribution limits and source prohibitions. Therefore, for purposes of this advisory opinion request, no contribution will be allocated to any Super PAC participating in the joint fundraising committee that exceeds the amount which may be lawfully contributed to a political committee under the Act (i.e., \$5,000 per year from an individual or other federal PAC).<sup>3</sup>

**2. Does the joint fundraising committee intend to accept contributions from sources other than individuals and federal political committees?**

As stated above and in the request, the joint fundraising committee will not accept contributions from sources that are prohibited under the Act. Accordingly, the allocation formula on page 2 of the request sets forth allocations for contributions from currently permissible sources under the Act—individuals and federal political committees. Contributions from sources that are prohibited under the Act (*i.e.*, contributions from corporations, labor unions, federal contractors, and foreign nationals) will be refunded.

**3. Regarding the request’s statement that joint fundraising participants “may share data and other information as required under the joint fundraising agreement and applicable FEC reporting regulations,” what data and other information does the requestor contemplate being shared between joint fundraising participants?**

The Commission’s joint fundraising regulation requires the fundraising representative and all participants in the joint fundraising committee to screen contributions to ensure compliance with the Act’s source and amount limitations.<sup>4</sup> The regulation further instructs that all participants must “make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.”<sup>5</sup> The fundraising representative is also required to forward contributor information to participating political committees to allow them to screen contributions and comply with their independent reporting obligations under the Act.<sup>6</sup> Accordingly, participants in the joint fundraising committee will share contributor data as required in order to comply with these requirements.

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<sup>3</sup> See 52 U.S.C. § 30116(a)(1)(C) and (2)(C).

<sup>4</sup> 11 C.F.R. § 102.17(c)(4)(i).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at (c)(4)(ii); see also 11 C.F.R. § 102.17(c)(8).

**4. Will Senator Graham, his campaign committee, or any agent of the foregoing assent to a public communication from any participating Super PAC other than the joint fundraising solicitations, invitations, and similar fundraising event announcements described in the request?**

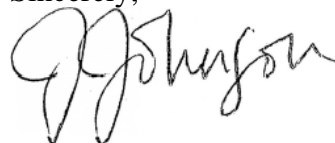
No. Senator Graham, his campaign, or any agent of the foregoing will not assent to any public communication from a participating Super PAC aside from the joint fundraising solicitations, invitations, and similar fundraising event announcements described in the request. Page 3 of the request states that “Senator Graham, the Committee, or any agent of the foregoing will not request or suggest that the Super PAC make any public communication aside from the joint fundraising solicitations, invitations, and similar fundraising event announcements described” in the preceding paragraph.<sup>7</sup> The request intended to encompass the full “request or suggest” standard, and it was not our intention to leave open the possibility that Senator Graham, his campaign, or any agent of Senator Graham or his campaign might “assent” to any such a communication.

**5. Will Senator Graham, his campaign committee, or any agent of the foregoing discuss the campaign plans, projects, activities, or needs of Senator Graham or his campaign with any Super PAC participating in the joint fundraising committee?**

No. Senator Graham, his campaign, or any agent of the foregoing will not discuss the nonpublic campaign plans, projects, activities, or needs of Senator Graham or his campaign with any Super PAC participating in the joint fundraising committee. As stated on page 3 of the request, “Senator Graham, the Committee, or any agent of the foregoing will not engage in substantial discussion(s) about any Super PAC public communication aside from the joint fundraising solicitations, invitations, and similar fundraising event announcements described” in the preceding paragraph.<sup>8</sup>

We look forward to the Commission’s consideration of this advisory opinion request.

Sincerely,



Jessica Furst Johnson  
Andrew D. Watkins  
*Counsel to Team Graham, Inc.*

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<sup>7</sup> See 11 C.F.R. § 109.21(d)(1) (a communication is made at the request or suggestion of the candidate or his campaign if it “is created, produced, or distributed at the request or suggestion of” the candidate or his campaign, or if it “is created, produced, or distributed at the suggestion of a person paying for the communication” and the candidate or his campaign “assents to the suggestion”).

<sup>8</sup> See 11 C.F.R. § 109.21(d)(3) (a “discussion is substantial” if it conveys nonpublic information about the “plans, projects, activities, or needs” of the campaign).