

solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses.”⁵

By contrast, the relevant account here is a legal proceedings account, which is a “separate, segregated account...used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.”⁶

When Congress created these three categories of separate, segregated accounts, it sharply delimited the purposes for which convention and party headquarters accounts could be used by restricting those accounts “solely” to specific purposes. But at the same time, Congress chose to drop that term from its language creating the legal proceedings accounts at issue here,⁷ and we have a responsibility to give effect to Congress’s choice of language. “[T]he people are entitled to rely on the law as written,” because “it is ultimately the provisions of those legislative commands...by which we are governed.”⁸

Here, OGC recommended that we fault the NRSC for “using funds from its legal proceedings account to pay for campaign activities in the form of ‘media placement,’ ‘media production,’ ‘media,’ and ‘research.’”⁹ At the threshold, “generic campaign activity” is a defined term under our regulations,¹⁰ but OGC appears to be

⁵ 52 U.S.C. § 30116(a)(9)(B) (emphasis supplied).

⁶ 52 U.S.C. § 30116(a)(9)(C).

⁷ *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 768 (2018) (“‘Solely’ means ‘alone’”) (quoting from Webster’s Third Int’l Dictionary 2168 (2002)); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 91-92, 107 (1983) (“And § 4(b)(3) of ERISA...exempts from ERISA coverage employee benefit plans that are ‘maintained solely for the purpose of complying with applicable workmen’s compensation laws or unemployment compensation or disability insurance laws’...§ 4(b)(3)’s use of the word ‘solely’ demonstrates that the purpose of the entire plan must be to comply with an applicable disability insurance law”) (internal citation omitted); see also *Bell Canyon Ass’n, Inc. v. Ironshore Specialty Ins. Co.*, 2023 WL 6784356 at *1 (9th Cir. Oct. 13, 2023) (“The word ‘solely’ ‘is defined as ‘to the exclusion of all else’ and ‘singly.’ Synonyms include ‘exclusively’ and ‘only’”) (quoting *Rallo v. O’Brian*, 52 Calif. App.5th 997, 1011 n.12 (Cal. Ct. App. 2020)).

⁸ *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 674 (2020) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998)).

⁹ FGCR at 2.

¹⁰ 11 C.F.R. § 100.25.

using the term “campaign activity” in a colloquial sense; many of the communications OGC discusses simply do not fall under the regulatory definition. Ultimately, however, the fact NRSC used its account for communicative purposes, or even advocacy, is not determinative.¹¹ The strict test proposed by OGC is foreclosed by Congress’s express decision to permit at least some spending beyond the categories enumerated in § 30116(a)(9)(C), a fatal flaw in OGC’s analysis even if the NRSC’s activity were not anticipated by the statute’s enumerated categories.¹²

Against this backdrop, there is no real dispute as to the facts given the NRSC’s response. The Committee provided the text of the communications involved together with an un rebutted affidavit by the organization’s general counsel.¹³ That affidavit, sworn to under oath, explains that each of the categories of spending forming the basis for the Complaint were directly related to the NRSC’s post-election efforts and litigation, or to fundraising to support those activities.¹⁴ Given the statute before us, that direct connection is enough; we decline OGC’s invitation to impose government scrutiny of every second of the NRSC’s communications in order to fulfill an alleged “allocation requirement for solicitation costs that are attributable to a purpose other than defraying expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.”¹⁵ That approach might be appropriate where Congress has instructed us to ensure funds are “solely” spent on particular activities. Not here.¹⁶

On this record, the payments for “media placement,” “media production,” “media,” and “research”¹⁷ are not prohibited uses of the funds in the legal proceedings

¹¹ *Id.* at 13-33 (describing various activities paid for with the NRSC legal proceedings account).

¹² FGCR at 13-29.

¹³ *See generally* NRSC Resp.

¹⁴ *See generally* Dollar Aff.

¹⁵ FGCR at 19.

¹⁶ This bedrock principle — that individuals are at liberty where the law is silent — predates the founding of the American Republic. *See* Thomas Hobbes, *Leviathan*, Chapter XXI (“In cases where the Sovereign has prescribed no rule, there the Subject hath the Liberty to do, or forbear, according to his own discretion”).

¹⁷ We have separately joined with Commissioner Lindenbaum to issue a Statement of Reasons discussing the specific allegations concerning Respondent’s research expenses. Statement of Reasons of Comm’rs Dickerson, Lindenbaum, and Trainor, MUR 8071 (NRSC), Apr. 9, 2024.

account. Media production and placement are part and parcel of the fundraising activities these accounts may engage in.¹⁸ In sum, the NRSC's spending was lawful.¹⁹

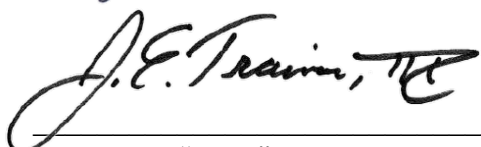
Accordingly, we voted to dismiss the complaint because there was no reason to believe that it credibly gave rise to a violation of the Act.²⁰



Allen J. Dickerson
Commissioner

April 10, 2024

Date



James E. "Trey" Trainor, III
Commissioner

April 10, 2024

Date

¹⁸ Advisory Op. 2022-21 (DSCC, *et al.*), Oct. 20, 2022. OGC believes this AO supports a finding of reason to believe. We disagree. First, "[a]dvisory opinions are shields, not swords." Statement of Reasons of Vice Chairman Cooksey and Comm'rs Dickerson and Trainor at 4, MUR 7491 (Am. Ethane), Oct. 27, 2022. Second, it does not follow that because the Commission has *permitted* allocation of expenses among accounts such allocation is *required*. Because such a rule is found nowhere in the Act, any enforcement on that basis would require a regulatory foundation that the Commission has thus far declined to adopt.

¹⁹ Dollar Aff. at 1-2 (describing conduct paid for with the NRSC legal proceedings account). Where "no ambiguity exists about how [the statute's] terms apply to the facts before us," it is irrelevant whether "the statute's application in these cases reaches beyond the principal evil legislators may have intended or expected to address." *Bostock*, 590 U.S. at 674 (internal citation and quotation marks omitted); *contra* FGCR at 24-25 (proposing reliance on legislative history contradicted by the plain text of the statute).

²⁰ Cert. at 1, MUR 8017 (NRSC), Feb. 8, 2023.