



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
NRSC, *et al.*) MUR 8071
)

**STATEMENT OF REASONS OF VICE CHAIR ELLEN L. WEINTRAUB
AND COMMISSIONER SHANA M. BROUSSARD**

This matter involved allegations that the NRSC disbursed more than \$3.6 million from its legal proceedings account for various campaign-related activities, notably including \$3,359,363 on television advertisements.¹ In 2015, Congress amended the Federal Election Campaign Act (the “Act”) to permit national party committees — such as the NRSC — to establish and maintain legal proceedings accounts “to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.”² These special purpose accounts have a contribution limit that is 300% of the otherwise applicable contribution limit for national party committees, or \$109,500 in 2022.³ However, both Congress, through the Act’s plain language, and the Commission, through unambiguous precedent, have confirmed that the legal proceedings account can only be used for the enumerated purposes. In other words, national party committees, like the NRSC, cannot use the legal proceedings account to fund campaign-related activity. Campaign-related activity must be funded through the committees’ operating account.

Interpreting this statute, the Commission unanimously applied its pre-2015 precedent on recount funds to legal proceedings accounts, stating that any funds spent from such an account “must have no relation to campaign activities,” and that “any resulting surplus of funds may not be used in any manner that would constitute a contribution or expenditure under the Act or regulations.”⁴ This is consistent with statements made by House and Senate leaders during the passage of the 2015 Appropriations Act.⁵

¹ First Gen. Counsel’s Rpt. (“FGCR”) at 1-2, MUR 8071 (NRSC, *et al.*).

² Pub. L. No. 113-235, 101, 128 Stat. 2130, 2772-73 (2014) (codified at 52 U.S.C. § 30116(a)(9)(C)).

³ The Act allows for seven distinct special purpose accounts: one account for presidential nominating conventions, as well as separate accounts for party headquarters and recounts and other legal proceedings for its national party committee, national senatorial committee, and national congressional committee — each of which may accept up to 300% of FECA’s otherwise-applicable contribution limit. *See* 52 U.S.C. §§ 30116(a)(1)(B), (a)(9). A single contributor could provide as much as \$1,734,600 to these accounts over the two-year election cycle.

⁴ *See* Advisory Opinion 2019-02 at 3 (Bill Nelson for Senate) (citing Advisory Opinion 2010-14 at 5 (DSCC)).

⁵ 160 CONG. REC. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner); 160 CONG. REC. S6814(daily ed. Dec. 13, 2014) (statement of Sen. Reid).

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Recently, the Commission reaffirmed this position, in Advisory Opinion 2022-21 (DSCC, *et al.*), in which the Commission advised that the DSCC must pay for television advertisements that feature federal candidates and solicit donations to its legal proceedings account subject to a reasonable cost allocation among the committee's accounts.⁶ That Congress provided for a separate and increased contribution limit for legal proceedings accounts underscores why those funds cannot be used for campaign activities. Rather, these accounts were created for specific purposes, and funding campaign ads is unambiguously not one of those specific purposes.⁷

In this matter, the NRSC's TV ads did not mention recounts or any legal proceedings and appear to have been conventional attack ads.⁸ Each ad included a solicitation for contributions via a short code text number. The contributions received from that number were directed towards the legal proceedings fund — but there is no way for anyone to have known that.⁹ A brief, covert solicitation to a legal proceedings fund does not transform a campaign ad into a legal expense. At most, the respondent might have been able to allocate a very small portion of the costs of the advertisements to its legal proceedings fund, based on the small portion of the advertisements devoted to the solicitation. As the Commission has opined, “to the extent that [a] Solicitation . . . is attributable to more than one purpose, the [party committee] must use a reasonable method to allocate the costs for its solicitation of donations to its Legal Proceedings Account and allocate the costs for other purposes to other accounts from which such disbursements are permissible.”¹⁰ No such allocation took place here.

The NRSC told the Commission in 2017 that “[t]he Appropriations Act did not introduce any new concepts to the law, and the national party committees have extensive experience with convention funding, building and legal funds.”¹¹ Since the Commission has applied long-standing precedent from recount funds to legal proceedings accounts, the NRSC was correct that the rule has always been clear on the spending limitations of these accounts.¹²

⁶ Advisory Opinion 2022-21 at 5, 8 (DSCC, *et al.*).

⁷ The argument has been made that the absence of the word “solely” renders meaningless the words Congress actually used in the statute — “to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.” We disagree. That interpretation contradicts both the statutory language and congressional intent. Nor do MURs 7358 (Rosen) or 7390 (RNC) support dismissal here as, unlike this matter, both of those matters indisputably involved payments to lawyers for representation in legal proceedings.

⁸ FGCR at 28.

⁹ *Id.*

¹⁰ Advisory Opinion 2022-21 at 8 (DSCC, *et al.*). While this Advisory Opinion also involved questions about coordination, nothing in the Opinion limits its rationale on allocation to matters involving coordination. Moreover, respondents here could not have been relying on Advisory Opinion 2022-21, as it was adopted after the events at issue in this matter. *See also* Stmt. of Reasons of Comm’r Shana M. Broussard at 2 n.5, Advisory Opinion 2022-01 (DSCC, *et al.*) (citing Advisory Opinion 2010-14 (DSCC) (stating the Commission’s allocation regulations “stand generally for the proposition that allocation is an appropriate way to fund activities with multiple purposes.”)).

¹¹ FGCR at 27 (citing Comment of NRCC and NRSC) (Jan. 30, 2017); Notice 2016-10 (Rulemaking Petition: Implementing the Consolidated and Further Continuing Appropriations Act, 2015).

¹² The NRSC’s own words demonstrate that not pursuing these violations out of any concern for ambiguity due to pending rulemakings is misplaced.

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Simply put, campaign attack ads are not legal services. It is disheartening that the Commission could not reach a four-vote consensus to proceed on such a straightforward violation of the Act.¹³ Failure to enforce the law breeds contempt for the law. The sad consequence of the Commission's failure to enforce the law in this matter is that more political actors will feel emboldened to disregard the explicit restrictions on the use of legal proceedings accounts that Congress expressly enacted.

April 11, 2024

Date

Ellen L. Weintraub

Vice Chair

April 11, 2024

Date

Shana M. Broussard

Commissioner

¹³ Cert. ¶¶ 1.a, 6.a. (Feb. 8, 2024).