

March 31, 2022

BY ELECTRONIC MAIL DELIVERY

Office of General Counsel
Attn: Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: Advisory Opinion Request

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, we seek an advisory opinion on behalf of DSCC to confirm that the value of a research book purchased by DSCC and provided to multiple Senate candidates by DSCC can be split between the recipient committees.

I. FACTUAL DISCUSSION

DSCC is a national political party committee dedicated to electing Democrats to the U.S. Senate. DSCC plans to hire a consultant to write a research book regarding a sitting Republican United States Senator.¹ The research consultant will charge DSCC a flat fee of \$30,000 to write the research book. Under the proposed contract terms, in return for the \$30,000 fee, DSCC will own the copyright to the research book, allowing DSCC to give the book to third parties in its sole discretion. To put it another way, under the terms of the agreement, DSCC can do whatever it wants with the research book without paying any additional charge on top of the \$30,000 payment. DSCC plans to use the information contained within the book to inform its own political strategy in the sitting Republican Senator's state ("**State A**") for the 2022 U.S. Senate election. After receiving the book, DSCC plans to review the content and then provide the research book in full to two candidates for the Democratic nomination for U.S. Senate in State A this year.

Each candidate will receive the book on the same day and will use the book in whole or in part for their own political purposes, at their discretion and without restriction. DSCC plans to offer each campaign the choice of: (i) paying DSCC for the value of the research book; (ii) treating the

¹ For purposes of this request, and to protect the confidentiality of DSCC's political plans, we will refer to the state in which the incumbent Senator is running as "State A".

value of the research book as an in-kind contribution from DSCC to the campaign, subject to the contribution limit; or (iii) treating the value of the research book as a coordinated party expenditure, subject to the limit for U.S. Senate in State A. With respect to the third option, the Democratic National Committee has assigned to DSCC its full coordinated party spending authority for the 2022 U.S. Senate election in State A. This assignment was made in writing, prior to the date of this request and expressly notes that the assignment includes the full amount of the coordinated party spending authority.

II. QUESTION POSED

DSCC asks the Commission to confirm that the value of the research book that will be purchased by DSCC for \$30,000 and used by DSCC for its own purposes, and then provided to two Democratic primary campaigns for U.S. Senate is \$10,000 per campaign.

III. LEGAL ANALYSIS

A “contribution” under the Federal Election Campaign Act of 1971, as amended (the “*Act*”) includes, in relevant part, “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”² DSCC may lawfully contribute up to \$52,100 to a candidate for U.S. Senate in 2022.³ In addition, the Act provides that the national committee of a political party is afforded a separate limit for coordinated party expenditures in each U.S. Senate race.⁴ This limit is calculated as the greater of \$20,000 or two cents times the voting age population of the state.⁵ Although DSCC is not afforded a coordinated party spending limit in a U.S. Senate race by operation of law, the Democratic National Committee may permissibly assign some or all of its authority in a given state to DSCC.⁶ Such an assignment must be “made in writing, must state the amount of the authority assigned, and must be received by the assignee committee before any coordinated party expenditure is made pursuant to the assignment.”⁷

An expenditure by a national political party committee generally does not need to be attributed to an individual candidate unless the expenditure is “made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.”⁸ When an expenditure is made on behalf of more than one clearly identified candidate, the value of the expenditure to any one candidate is “attributed to each such candidate according to the benefit reasonably

² 52 U.S.C. § 30101(8)(A)(i).

³ *Id.* § 30116(h); 11 C.F.R. § 110.2(e). This limit is shared with the Democratic National Committee.

⁴ 52 U.S.C. § 30116(d)(1).

⁵ *Id.* § 30116(d)(3).

⁶ *See* 11 C.F.R. § 109.33(a).

⁷ *Id.*

⁸ *Id.* § 106.1(c)(1).

expected to be derived.”⁹ Accordingly, the value of a research book purchased by DSCC for its own use and also provided to two candidates for U.S. Senate is calculated based on the benefit derived by each of the recipients.

In the context of polling, the Commission’s regulations expressly provide that the benefit received from a poll by a single recipient is properly calculated by dividing the cost of the poll by the total number of recipients. Thus, the value to a campaign of a poll purchased by DSCC and shared with multiple campaigns is calculated by “dividing the overall cost of the poll equally among candidates (including State and local candidates) or political committees receiving the results.”¹⁰ This formula in the regulation is logical. If the poll was valued by multiplying the cost by the number of recipients, then the poll’s value would be wildly inflated.

So, for example, if DSCC paid \$100,000 for a poll it wants to also share with three candidates who would be interested in the poll results and it could not divide the per-candidate value by the total number of recipients, then either: (i) DSCC would report \$300,000 in in-kind contributions or coordinated party expenditures (\$100,000 per candidate) to the FEC on its monthly FEC reports, despite only actually spending \$100,000 to the polling vendor; or (ii) DSCC would collect \$300,000 (\$100,000 per candidate) and make a substantial profit to provide the resource to campaigns. Either option inflates the value of the shared resource. In fact, no committee would spend \$300,000 on the open market for the poll, so a report that discloses a value that is more than the \$100,000 that DSCC originally paid its vendor would be inaccurate and misleading to the public.

Likewise, if the value of the \$30,000 research book at issue here is not divided by the number of recipients, the value of the research book is inflated above the actual value of the research book on the open market. If, instead of dividing the cost of the research book by the number of recipients, DSCC multiplies the cost by the number of recipients of the research book, DSCC would (i) report \$60,000 in in-kind contributions or coordinated party expenditures (\$30,000 per candidate) to the FEC on its monthly FEC reports despite only actually spending \$30,000 on the book; or (ii) DSCC would collect \$60,000 (\$30,000 per candidate) and make a substantial profit to provide the research book to the two campaigns. Again, because DSCC only spent \$30,000 on the research book, a report that discloses the value as more than the \$30,000 that DSCC originally paid its vendor would be inaccurate.

⁹ *Id.* § 106.1(a)(1).

¹⁰ *Id.* § 106.4(e)(2). *See, e.g.*, Factual & Legal Analysis at 4, MUR 7391 (Jason Crow for Congress, *et. al.*) (“the purchase of opinion poll results by an unauthorized political committee and the subsequent acceptance of such results (absent payment) by the candidate or candidate’s authorized committee is an in-kind contribution[] from the unauthorized committee to the candidate or the authorized committee. The value of such a contribution is determined using one of the allocation formulas outlined in 11 C.F.R. § 106.4(e). One such method includes dividing the overall cost of the poll equally among candidates or political committees receiving the results.”).

As with polling cost allocation, in other contexts, the Commission has held that the calculation of the “benefit reasonably expected to be derived” from a resource by a federal candidate equals only a proportion of the total expense, even when multiple committees may have access to, and use for, the entire resource. In Advisory Opinion 1980-38, the costs of a computer rental and voter data were split evenly between a federal candidate committee and a state candidate committee.¹¹ As explained in the opinion “in that part of the legislative and congressional districts [that] overlapped, the committees determined that the expenses for the entering of the data along with that portion of the computer rent allocable to this overlapping area, would be split evenly between the campaigns.”¹² The Commission did not question this arrangement when asked if any portion of the federal candidate committee’s payments made were allocable to the state candidate committee and how to report outstanding obligations to the state candidate committee. In Advisory Opinion 1986-30, the Commission approved of an arrangement whereby multiple federal candidates would jointly pay for a promotional tour on a houseboat, provided that the cost to each federal candidate reflected the benefit derived.¹³ And in Advisory Opinion 2007-24, the Commission concluded that two federal candidate committees could each be responsible for half of a staffer’s salary when the staffer was doing campaign activity work that benefited both committees and was conducted “on behalf of the two political committees jointly.”¹⁴ In all of these examples, the Commission permitted the cost of a shared resource to be divided between the benefiting committees, never requiring that each committee separately pay the full cost.

Further, the FEC regulations allow allocation of travel costs for U.S. Senators based on a similar formula. Specifically, in the case of non-commercial private travel involving multiple U.S. Senators, the cost of the travel per candidate committee (or the amount of the in-kind contribution from the service provider) equals the pro rata share of the normal and usual charter fare or rental charge *divided by* the number of campaign travelers on the flight that are traveling on behalf of the Senators or their authorized committees.¹⁵ Despite each campaign receiving the full benefit of the travel, the cost of the trip is allocable per campaign, and thus the value of any in-kind contribution is divided among the authorized candidate committees.

Here, as in all of the examples above, the Commission should permit DSCC to divide the cost of the shared research book between the recipients. Whether the cost of the research book is considered a coordinated party expenditure, in-kind contribution, or the recipient candidate committee intends to pay DSCC for the research book, the value of the book is most accurately calculated by dividing the costs among the recipient committees. This approach will prevent

¹¹ Fed. Election Comm’n., Adv. Op 1980-38 (Allen).

¹² *Id.* at 1.

¹³ *Id.*, Adv. Op. 1986-30 (Martin) at 2.

¹⁴ *Id.*, Adv. Op 2007-24 (Burkee / Walz) at 6.

¹⁵ 11 C.F.R. § 100.93(c)(1).

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DSCC from unfairly profiting and will ensure that the public reporting of the research book accurately reflects the amount of money actually spent.

For these reasons, we ask the Commission to confirm that if DSCC purchases a research book for \$30,000 for its own use and then subsequently provides the book to two recipient campaigns, the value of the book to each campaign is \$10,000.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jacquelyn Lopez", written in a cursive style.

Jacquelyn K. Lopez
Zachary P. Morrison

Counsel to DSCC