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For meeting of October 10, 2024
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October 7, 2024

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Sarah Herman Peck *SHP*
Attorney

Isaac Campbell *IC*
Attorney

Subject: AO 2024-14 (DSCC and Rosen for Nevada) 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 submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00pm (Eastern Time) on October 9, 2024.

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

Attachment

1 ADVISORY OPINION 2024-14

2
3 Jacquelyn K. Lopez, Esq.

4 Jonathan A. Peterson, Esq.

5 Emma R. Anspach, Esq.

6 Elias Law Group LLP

7 250 Massachusetts Ave., NW

8 Suite 400

9 Washington, DC 20001

DRAFT C

10
11
12 Dear Counsel:

13 We are responding to the advisory opinion request you submitted on behalf of the
14 Democratic Senatorial Campaign Committee (“DSCC”) and Rosen for Nevada, regarding
15 the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the
16 “Act”), and Commission regulations to certain proposed hybrid television advertisements
17 that DSCC and Rosen for Nevada would like to disseminate for the upcoming 2024
18 general election. Requestors ask whether they may evenly split the cost of hybrid
19 television advertisements that clearly identify Senator Rosen and equally promote on a
20 time/space basis her candidacy for U.S. Senate and generic candidates of the Democratic
21 Party and, for three proposed advertisements, whether certain audio and visual
22 components of the advertisements serve as party or candidate advocacy.

23 The Commission concludes that DSCC and Rosen for Nevada may evenly split
24 the cost of hybrid television advertisements so long as the time and space devoted to
25 Senator Rosen does not exceed the time and space in the advertisement devoted to the
26 generically referenced candidates. The Commission further concludes that, regarding
27 advertisement (A), portions of the advertisement featuring Senator Rosen or narrated by
28 Senator Rosen must be treated as candidate advocacy; regarding advertisement (B), the
29 phrase “greedy politicians” and the visual of pharmaceutical executives are allocable as

party advocacy; and regarding advertisement (C), the proposed audio and visual references to Donald J. Trump, a federal candidate for U.S. President, are allocable as party advocacy.

Background

The facts presented in this advisory opinion are based on your letter received on September 18, 2024, attached exhibits, and publicly available information.

DSCC is a national party committee of the Democratic Party, dedicated to electing Democrats to the U.S. Senate.¹ Rosen for Nevada is the principal campaign committee of U.S. Senator Jacky Rosen, who currently represents Nevada and is a candidate for reelection in the 2024 general election.²

DSCC and Rosen for Nevada plan to split the costs of hybrid television advertisements disseminated in Nevada (between September 18, 2024, and November 5, 2024). They do not provide specific scripts for such advertisements but they describe them as advertisements that will clearly identify Senator Rosen and “equally promote” on a time/space basis “Senator Rosen’s candidacy for the U.S. Senate (either through advocacy for her or against her opponent) and generic candidates of the Democratic party (either through advocacy for generic Democratic candidates or against generic Republican candidates).”³ They plan to split the costs of such advertisements equally on

¹ See Advisory Opinion Request (“AOR”) at AOR003; DSCC, Statement of Organization, FEC Form 1 (June 25, 2024), <https://docquery.fec.gov/pdf/369/202406259652490369/202406259652490369.pdf>.

² See AOR003; Rosen for Nevada, Statement of Organization, FEC Form 1 (Sept. 5, 2024), <https://docquery.fec.gov/pdf/692/202409059675370692/202409059675370692.pdf>.

³ AOR004.

1 the “assum[ption] that the basic framework laid out in Advisory Opinion 2006-11

2 [(Washington Democratic State Central Committee)] applies.”⁴

3 Requestors also have provided proposed audio and visual scripts for three specific

4 advertisements. The proposed advertisements are reprinted in the tables below.

5 Table 1: Advertisement (A)⁵

Audio	Visual
Democrats passed Medicare 60 years ago and are still protecting it today. Giving our seniors a safety net if they get sick and need care. <i>(spoken by Senator Rosen)</i>	Senior citizens in doctor’s office; pharmacy
Republicans like Sam Brown? They will prioritize big pharma and gut Medicare. Profits over care. No more safety net if you get sick. <i>(spoken by Senator Rosen)</i>	Senator Rosen to camera Images of big pharma execs, profit charts
I will always put our Seniors first and protect Medicare. <i>(spoken by Senator Rosen)</i>	Senator Rosen to camera

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⁴ *Id.*

⁵ *See* AOR008.

1 Table 2: Advertisement (B)⁶

Audio	Visual
Pharmaceutical costs are through the roof, making it hard to afford basic care. <i>(spoken by generic non-candidate voiceover)</i>	Doctor and patient in hospital setting
Greedy politicians don't care. They will prioritize big pharma's profits and won't fight to lower your costs. <i>(spoken by generic non-candidate voiceover)</i>	Pharmaceutical executives in suits; graphs of profit margins
Senator Rosen will always fight for you, voting to cap insulin prices and fighting against big pharma to protect your care. <i>(spoken by generic non-candidate voiceover)</i>	B-roll of Senator Rosen with seniors

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⁶ AOR009.

1 Table 3: Advertisement (C)⁷

Audio	Visual
Republicans pushed for the overturn of Roe v. Wade. Now, women’s reproductive rights are under attack. <i>(spoken by generic non-candidate voiceover)</i>	Video of anti-abortion protests; newspaper headlines on abortion bans
Sam Brown? He’s just another vote for a nationwide abortion ban. <i>(spoken by generic non-candidate voiceover)</i>	Newspaper headlines on proposed national abortion ban; image of Sam Brown
Don’t let Sam Brown and Donald Trump take away your rights. <i>(spoken by generic non-candidate voiceover)</i>	Photos of Sam Brown and Donald Trump

2
3 ***Questions Presented***

4
5 1. *May Requestors evenly split the cost of hybrid television advertisements that*
6 *clearly identify Senator Rosen and equally promote on a time/space basis Senator*
7 *Rosen’s candidacy for the U.S. Senate (either through advocacy for her or against her*
8 *opponent) and generic candidates of the Democratic party (either through advocacy for*
9 *generic Democratic candidates or against generic Republican candidates)?*

10 2. *With respect to proposed Advertisement (A), do portions of the hybrid*
11 *advertisement that feature the clearly identified candidate direct to camera*

⁷ AOR010.

1 *and/or are narrated by the candidate need to be allocated as candidate advocacy?*

2 3. *With respect to Advertisement (B), is the phrase “greedy politicians” and the*
3 *visual of pharmaceutical executives in suits sufficient to serve as the audio and visual*
4 *references to generic candidates of the Republican Party, and thus, allocable as party*
5 *advocacy?*

6 4. *With respect to Advertisement (C), can audio or visual references to Donald*
7 *Trump qualify as a reference to generic candidates of the Republican Party, allocable as*
8 *party advocacy?*

9 ***Legal Analysis***

10 1. *May Requestors evenly split the cost of hybrid television advertisements that*
11 *clearly identify Senator Rosen and equally promote on a time/space basis Senator*
12 *Rosen’s candidacy for the U.S. Senate (either through advocacy for her or against her*
13 *opponent) and generic candidates of the Democratic party (either through advocacy for*
14 *generic Democratic candidates or against generic Republican candidates)?*

15 Yes, Requestors may evenly split the cost of a hybrid television advertisement
16 that clearly identifies Senator Rosen and equally promotes on a time/space basis Senator
17 Rosen’s candidacy for the U.S. Senate (either through advocacy for her or against her
18 opponent) and generic candidates of the Democratic party (either through advocacy for
19 generic Democratic candidates or against generic Republican candidates) provided that
20 the time and space devoted to Senator Rosen will actually be equal to the time and space
21 devoted to the generically referenced congressional candidates.⁸

⁸ AOR004.

Commission regulations do not definitively address the appropriate allocation of payments for the type of communication (hybrid television advertisements) proposed in this request. Commission regulations at 11 C.F.R. part 106 include both general allocation rules and rules for allocating specific types of expenses in particular circumstances. Section 106.1(a) provides the general rule that expenditures made on behalf of *more than one* clearly identified candidate “shall be attributed to each such candidate according to the benefit reasonably expected to be derived.”⁹ For a broadcast communication, the “attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates.”¹⁰ A candidate is clearly identified if his or her name or likeness appears or if his or her identity is apparent by unambiguous reference.¹¹ However, the expenditures for the advertisements at issue here are being made on behalf of only one clearly identified candidate, Senator Rosen, and the references to “Democrats” and “Republicans” do not clearly identify any other specific candidates.¹² Thus, section 106.1 does not apply.

Commission regulations at 11 C.F.R. § 106.8 (which apply only to phone banks conducted by a party committee) do address the attribution required for a communication

⁹ 11 C.F.R. § 106.1(a).

¹⁰ *Id.*

¹¹ *See* 52 U.S.C. § 30101(18); 11 C.F.R. §§ 106.1(d), 100.17.

¹² *See also* Advisory Opinion 2004-33 (Ripon Society) at 4 (determining, for purposes of electioneering communication regulation under 11 C.F.R. § 100.29(b)(2), that reference to “Republicans in Congress” in advertisement did “not constitute an unambiguous reference to any specific Federal candidate”).

1 that possesses the same attributes as some of the broadcast advertisements described in
2 the request (*i.e.*, reference to only one clearly identified federal candidate along with a
3 generic reference to other party candidates; and no solicitation of funds).¹³ Under this
4 regulation, a flat 50 percent of the costs of a phone bank communication must be
5 attributed to the clearly identified candidate, and the other 50 percent must be attributed
6 to the party committee, regardless of the amount of time devoted to each.¹⁴ However, the
7 Commission’s Explanation and Justification (“E & J”) of this regulation specifically
8 noted that the Commission had considered whether to include other forms of
9 communications, such as broadcast media, within the regulation’s coverage but “decided
10 to limit the scope of new section 106.8 to phone banks . . . because each type of
11 communication presents different issues that need to be considered in further detail
12 before establishing new rules.”¹⁵

13 Although neither section 106.1 nor section 106.8 definitively addresses the
14 appropriate allocation of payments for the type of hybrid broadcast advertisements
15 described in this request, the Commission previously addressed a similar issue in
16 Advisory Opinion 2006-11 (Washington Democratic State Central Committee). There,
17 the Commission considered hybrid mass mailings that expressly advocated for the
18 election of only one clearly identified federal candidate, as well as the election of
19 generically referenced candidates of the same party, but no other clearly identified

¹³ See 11 C.F.R. § 106.8(a).

¹⁴ See *id.* § 106.8(b).

¹⁵ Party Committee Telephone Banks, 68 Fed. Reg. 64517, 64518 (Nov. 14, 2003).

1 candidates.¹⁶ The Commission concluded that the mailings largely served the purpose of
2 influencing the election of the clearly identified federal candidate, no matter how much of
3 the space in the mailing was devoted to that candidate.¹⁷ The Commission further
4 concluded that “[a]dvocacy related to the election of the clearly identified candidate is the
5 most salient feature of such a communication, as compared to the generic reference to the
6 party’s candidates, which does not single out any particular candidate to the reader.”¹⁸
7 Accordingly, because the benefit reasonably expected to be derived favored the clearly
8 identified candidate, the Commission concluded that no less than 50 percent of the costs
9 of the mailings needed to be attributed to the candidate.¹⁹ Additionally, where the space
10 in the mailing devoted to the clearly identified candidate exceeded 50 percent, the
11 Commission concluded that the costs attributed to the candidate should reflect the relative
12 proportion of space devoted to the candidate.²⁰ Consequently, the Commission
13 concluded that the state party committee and the principal campaign committee of the
14 clearly identified federal candidate could each pay 50 percent of the costs of the mailing
15 “so long as the space devoted to the candidate in the mailing [did] not exceed the space in
16 the mailing devoted to the generically referenced candidates.”²¹

¹⁶ See Advisory Opinion 2006-11 (Washington Democratic State Central Committee) at 4.

¹⁷ *Id.*; see also 52 U.S.C. §§ 30101(8)(A)(i), (9)(A)(i); 11 C.F.R. § 100.52(a); 11 C.F.R. § 100.111(a).

¹⁸ Advisory Opinion 2006-11 (Washington Democratic State Central Committee) at 4.

¹⁹ *Id.* at 2-3, 4.

²⁰ *Id.* at 3, 4.

²¹ *Id.* at 2.

1 While Commission regulations and past Advisory Opinions do not directly
2 address hybrid television advertisements, the Commission has long understood that no in-
3 kind contribution results where two or more committees properly attribute the costs of a
4 given communication. Section 106.1 is a specific recognition of this general rule, which
5 flows from the Commission’s determination that in-kind contributions must be provided
6 “without charge or at a charge that is less than the usual and normal charge for such
7 goods or services.”²² Where, by contrast, each party bears its own costs and
8 appropriately allocates the expenses associated with a given communication, neither
9 party receives “anything of value”²³ from the other and no in-kind contribution results.

10 The Commission recently applied this rule in the context of public
11 communications. In Advisory Opinion 2024-07, Team Graham sought to participate in
12 the creation and distribution of fundraising solicitations for a Joint Fundraising
13 Committee (“JFC”). Although Team Graham conceded that these solicitations would
14 qualify as “public communications” and that it would be “materially involved” in their
15 production and distribution, the Commission determined that the solicitations would not
16 be “coordinated communications.”²⁴ This was because a public communication is not “a
17 ‘coordinated communication’ under Commission regulations” unless it is “paid for by a
18 person other than the federal candidate, authorized committee, or political committee.”²⁵
19 Because Team Graham would “pay the full cost of the public communications

²² 11 C.F.R. § 100.52(d)(1).

²³ 52 U.S.C. 30101(8)(A)(i).

²⁴ Advisory Opinion 2024-07 (Team Graham) at 7.

²⁵ *Id.* (citing 11 C.F.R. § 109.21(a)(1)).

1 attributable to Team Graham,” the proposed communications did “not meet the payment
2 part of the coordinated communication test.”²⁶

3 Similarly, in Advisory Opinion 2004-37, the Commission considered whether a
4 brochure expressly advocating the election of several clearly identified candidates would
5 be a “coordinate communication.” The Commission concluded that the brochure would
6 not be a coordinated communication because it would not satisfy the payment part of the
7 coordinated communication test where each of the candidates identified in the brochure
8 reimbursed the full production and distribution costs attributed to that candidate.

9 Here, Requestors seek to evenly split the cost of broadcast advertisements that
10 will “equally promote” on a time/space basis “Senator Rosen’s candidacy for the U.S.
11 Senate (either through advocacy for her or against her opponent) and generic candidates
12 of the Democratic party (either through advocacy for generic Democratic candidates or
13 against generic Republican candidates).”²⁷ The Commission concludes that the
14 framework utilized in Advisory Opinion 2006-11 (Washington Democratic State Central
15 Committee) provides an appropriate way to allocate the costs as proposed, given
16 Requestors’ assurance that the time/space balance in their proposed television
17 advertisements will be equally divided between the clearly identified federal candidate
18 (Senator Rosen) and the generically referenced candidates.

19 2. *With respect to proposed Advertisement (A), do portions of the hybrid*

²⁶ *Id.*

²⁷ AOR004.

1 *advertisement that feature the clearly identified candidate direct to camera and/or are*
2 *narrated by the candidate need to be allocated as candidacy advocacy?*

3 Yes, the portions of the hybrid advertisement that feature Senator Rosen speaking
4 directly to the camera, and portions narrated by Senator Rosen wherein she is clearly
5 identified as a candidate for Federal office, should be allocated as candidacy advocacy.

6 As Requestors acknowledge in their request,²⁸ these portions meet the conduct
7 prong of the Commission’s coordinated communications regulation.²⁹ Moreover, under
8 the Commission’s analysis in Advisory Opinion 2006-11 (Washington Democratic State
9 Central Committee), discussed in greater detail above, the “[a]dvocacy related to the
10 election of the clearly identified candidate is the most salient feature” of that portion of
11 the advertising.³⁰ In Respondents’ proposed Advertisement (A), virtually the entire
12 advertisement is either narrated by or directly features the clearly identified candidate,
13 Senator Rosen.³¹

14 In the context of hybrid mass mailings, the Commission found that “[w]here the
15 space in the mailing devoted to the clearly identified Federal candidate exceeds the space
16 devoted to the generically referenced party candidates . . . it is appropriate to apply

²⁸ AOR005 (“Both portions of the advertisement meet the content prong.”).

²⁹ 11 C.F.R. § 109.21(c)(4) (Content prong includes public communications “refer[ing] to a clearly identified House or Senate candidate and... publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the clearly identified candidate's general, special, or runoff election, or primary or preference election, or nominating convention or caucus.”).

³⁰ See Advisory Opinion 2006-11 (Washington Democratic State Central Committee) at 4.

³¹ In *Hispanic Leadership Fund, Inc. v. FEC*, 897 F.Supp.2d 407, 430 (E.D. Va. 2012), a federal court found that a recording of President Obama’s voice, without further identification, was not a “contextually unambiguous reference to President Obama.” Here, by contrast, Senator Rosen’s narration precedes her appearance on camera. Accordingly, the Commission determines that Senator Rosen is a clearly identified candidate throughout the advertisement.

1 analogous ‘space or time’ principles set out in 11 CFR § 106.1(a).”³² Similarly, the
2 Commission finds this method appropriate to apply in the instant matter. Thus, those
3 portions of the hybrid advertising featuring Senator Rosen should be allocable as
4 candidate advocacy. Moreover, because Rosen for Nevada will “pay the full cost of the
5 public communications attributable to [Senator Rosen],” the proposed communication
6 will “not meet the payment part of the coordinated communication test and, therefore,
7 will not be [an] in-kind contribution[.]”³³

8 3. *With respect to proposed Advertisement (B), is the phrase “greedy*
9 *politicians” and the visual of pharmaceutical executives in suits sufficient to serve as the*
10 *audio and visual references to generic candidates of the Republican Party, and, thus,*
11 *allocable as party advocacy?*

12 No, the phrase “greedy politicians” and the visual of pharmaceutical executives in
13 suits are not sufficient to serve as audio and visual references to generic candidates of a
14 political party. Nevertheless, these portions of the proposed advertisements may be
15 allocated as party advocacy.

16 Neither the Act nor Commission regulations define a “generic candidate” of a
17 political party. As mentioned above, one relevant Commission regulation to address
18 hybrid communications explicitly is the phone bank regulation at 11 C.F.R. § 106.8,
19 which allows an allocation when there is a reference to a clearly identified candidate
20 along with “another reference that generically refers to other candidates of the Federal
21 candidate’s party without clearly identifying them,” the so-called “generic party

³² *Id.*

³³ Advisory Opinion 2024-07 (Team Graham) at 7; 11 C.F.R. § 109.21(a)(1).

1 reference.”³⁴ The rule “reflect[s] that such communications benefit both the candidate
2 and the party.”³⁵

3 The regulation does not define generic party reference, but the rulemaking’s E & J
4 states that “[g]eneric references to ‘our great Republican team’ or ‘our great Democratic
5 ticket’ would satisfy the [generic reference] requirement.”³⁶ But, as noted above the
6 E & J cabined the regulation’s scope to phone banks “because each type of
7 communication presents different issues that need to be considered in further detail
8 before establishing new rules.”³⁷

9 Then, as discussed previously, in Advisory Opinion 2006-11 (Washington
10 Democratic State Central Committee), the Commission extended the hybrid-
11 communication allocation rules to mass mailings. There, the Commission noted, via
12 example, that “[v]ote for John Doe and our great Democratic team” — a reference similar
13 to the examples given in the phone bank E & J — would qualify as a communication that
14 advocates the election of a clearly identified Federal candidate and other candidates of
15 the Democratic Party who are referred to only generically.³⁸ At the same time, the
16 Commission has never stated that the generic party reference must use the specific or

³⁴ This regulation provides that a flat 50% allocation is appropriate regardless of the space or time devoted to the clearly identified Federal candidate. 11 C.F.R. § 106.8.

³⁵ Party Committee Telephone Banks, 68 Fed. Reg. at 64517.

³⁶ *Id.* at 64518. In a later, now-dormant rulemaking, the Commission proposed amending 11 C.F.R. § 106.8 to apply to all public communications as defined in 11 C.F.R. § 100.26, and, among other things, define “generic party reference” in a public communication. *See* Hybrid Communications, 72 Fed. Reg. 26569, 26571 (May 10, 2007).

³⁷ Party Committee Telephone Banks, 68 Fed. Reg. at 64518.

³⁸ *See* Advisory Opinion 2006-11 (Washington Democratic State Central Committee) at 1 & n.1.

1 official names of the political party being advocated for or against in the advertisement.

2 A hybrid advertisement may make a generic party reference through other words, images,
3 or means, such as referring generally to candidates that share the political party's
4 ideology, displaying an array of party leaders who are not on the ballot in the relevant
5 jurisdiction, or using a party's historical nickname.

6 Here, however, the audio phrase "greedy politicians" and visual of pharmaceutical
7 executives do not amount to generic references to any political party. The phrase "greedy
8 politicians" refers to all politicians and, therefore, is not a placeholder for candidates of
9 any particular political party. Nor does the added visual of pharmaceutical executives
10 convey a message that is associated with or a reference to one political party or its
11 candidates generally.

12 The Commission, however, has not applied the "generic party reference" rule
13 generally. As previously discussed, that concept is limited by regulation to phone
14 banks³⁹ and was expanded to mass mailings by Advisory Opinion 2006-11 (Washington
15 Democratic State Central Committee). In both cases, allocation between a candidate and
16 their party has been permitted because the communication's message is reasonably
17 expected to bestow a benefit to the party as a whole in addition to the candidate.⁴⁰ That
18 rationale applies regardless of medium and does not depend upon any explicit reference
19 to generic party candidates. The proposed references to "greedy politicians" and images

³⁹ 11 C.F.R. § 106.8.

⁴⁰ See Party Committee Telephone Banks, 68 Fed. Reg. at 64517 (explaining that the allocation rule for hybrid telephone banks "reflect[s] that such communications benefit both the candidate and the party"); see also 11 C.F.R. § 106.1(a)(1) (allowing allocation of expenditures between candidates "according to the benefit reasonably expected to be derived").

1 of pharmaceutical executives reflect the “themes that,” in the party committee’s view,
2 “define [its] core platform” and convey the message the party committee has selected “to
3 garner support... [i]n the current environment.”⁴¹

4 Accordingly, Requesters may allocate the cost of this advertisement to each
5 committee “according to the benefit reasonably expected to be derived,”⁴² including by
6 treating the identified portions as allocable party advocacy. Moreover, because the party
7 committee will “pay the full cost of the public communications attributable to [the
8 DSCC],” the proposed communication will “not meet the payment part of the coordinated
9 communication test and, therefore, will not be [an] in-kind contribution[.]”⁴³

10 4. *With respect to Advertisement (C), can audio or visual references to Donald*
11 *Trump qualify as a reference to generic candidates of the Republican Party, allocable as*
12 *party advocacy.*

13 No, neither the audio nor visual references to Donald Trump as presented in
14 Advertisement (C) qualify as references to generic candidates of the Republican Party.
15 Nevertheless, these portions of the proposed advertisements may be allocated as party
16 advocacy.

17 The Commission previously considered a similar question in a series of related
18 Matters Under Review (“MUR”) from the 2016 election cycle. In those MURs, the

⁴¹ AOR006; *see Buckley v. Valeo*, 424 U.S. 1, 42 (1976) (“[T]he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions.”). The same is true of political parties.

⁴² 11 C.F.R. § 106.1(a)(1).

⁴³ Advisory Opinion 2024-07 (Team Graham) at 7; 11 C.F.R. § 109.21(a)(1).

1 Foundation for Accountability and Civic Trust had filed complaints against, as relevant
2 here, the Democratic Congressional Campaign Committee (“DCCC”) and the campaigns
3 committees of 14 Democrat congressional candidates.⁴⁴ The MURs involved 15
4 television advertisements that referenced one of the 14 Democrat candidates, the
5 Democrat candidate’s Republican opponent, and then-Republican-presidential candidate
6 Donald Trump.⁴⁵ The complaints alleged that the respondents violated the Act by
7 improperly treating the advertisements as hybrid television advertisements and allocating
8 costs between DCCC and the relevant Democrat congressional candidate.⁴⁶ In finding no
9 reason to believe that the respondents violated the Act, the Commission explained that,
10 although the advertisements did not qualify as hybrid television advertisements because
11 “there [we]re no generic references, such as ‘Democrats’ or ‘Republicans,’ in any of the
12 15 ads at issue,” the respondents nevertheless could allocate the expenses under 11
13 C.F.R. § 106.1(a),⁴⁷ which allows allocation for expenditures made on behalf of more
14 than one clearly identified federal candidate.

15 In keeping with the Commission’s conclusion in these MURs, the Commission
16 concludes that Advertisement (C)’s reference to Donald Trump does not constitute a

⁴⁴ See, e.g., Factual & Legal Analysis Cover Letter, MUR 7169 (Santasiero for Congress) (Nov. 22, 2017), <https://www.fec.gov/files/legal/murs/7169/17044432788.pdf>.

⁴⁵ See, e.g., Factual & Legal Analysis at 2, MUR 7169 (Santasiero for Congress) (Nov. 22, 2017), <https://www.fec.gov/files/legal/murs/7169/17044432804.pdf>.

⁴⁶ See, e.g., Complaint at 1-4, MUR 7169 (Santasiero for Congress) (Oct. 24, 2016), <https://www.fec.gov/files/legal/murs/7169/17044432655.pdf>; Factual & Legal Analysis, MUR 7169 at 4 n.8 (Nov. 22, 2017), <https://www.fec.gov/files/legal/murs/7169/17044432804.pdf>.

⁴⁷ See, e.g., Factual & Legal Analysis at 4 n.8, 9-10, MUR 7169 (Santasiero for Congress) (Nov. 22, 2017), <https://www.fec.gov/files/legal/murs/7169/17044432804.pdf>.

generic party reference. Like in the relevant MURs, Donald Trump is a current candidate for federal office in the 2024 cycle and will be on the ballot in the jurisdiction where the advertisements are run. The reference is specific, not generic.

As discussed above, however, this finding is not determinative. Allocation between a candidate and their party has been permitted because the communication's message is reasonably expected to bestow a benefit to the party as a whole in addition to the candidate.⁴⁸ Here, the references to Donald Trump reflect his status as "the head of the Republican Party" who "defines the issues that many Republican candidates support."⁴⁹ Accordingly, the references to "his name or likeness" are intended as a "contrast tool to encourage support for generic candidates of the Democratic Party."⁵⁰ Accordingly, Requesters may allocate the cost of this advertisement to each committee "according to the benefit reasonably expected to be derived,"⁵¹ including by treating these references as allocable party advocacy. Moreover, because the party committee will "pay the full cost of the public communications attributable to [the DSCC]," the proposed communication will "not meet the payment part of the coordinated communication test and, therefore, will not be [an] in-kind contribution[]." ⁵²

⁴⁸ See Party Committee Telephone Banks, 68 Fed. Reg. at 64517 (explaining that the allocation rule for hybrid telephone banks "reflect[s] that such communications benefit both the candidate and the party"); see also 11 C.F.R. § 106.1(a)(1) (allowing allocation of expenditures between candidates "according to the benefit reasonably expected to be derived").

⁴⁹ AOR0007.

⁵⁰ *Id.*

⁵¹ 11 C.F.R. § 106.1(a)(1).

⁵² Advisory Opinion 2024-07 (Team Graham) at 7; 11 C.F.R. § 109.21(a)(1).

