



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary ^{VFV}

DATE: November 29, 2022

SUBJECT: Comment Regarding AOR 2022-24 (Allen Blue) from
Elias Law Group

Attached is a comment received from Elias Law Group. This matter is on the December 1, 2022 Open Meeting Agenda.

Attachment

RECEIVED

By Office of the Commission Secretary at 11:33 am, Nov 29, 2022



10 G Street NE, Suite 600 | Washington, DC 20002

November 29, 2022

BY ELECTRONIC MAIL DELIVERY

Federal Election Commission
1050 First Street NE
Washington, DC 20463

Re: Comment Regarding Advisory Opinion Request 2022-24

Dear Commissioners:

On behalf of Allen Blue (the “requestor”) we submit this comment in response to the two drafts regarding Advisory Opinion 2022-24 (“AO 2022-24”). The requestor encourages the Federal Election Commission (the “Commission”) to adopt Draft B because it proposes a straightforward approach, which is in accordance with prior Commission opinions, to attributing contributions from the requestor’s proposed trust.

Both drafts rightly conclude that the proposed trust may contribute to federal candidates, political party committees, and other federally registered committees under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”) and Commission regulations because the trust would be a “person” under the Act and is not a prohibited source. Both drafts also correctly conclude that the indexed contribution limits in effect at the time that the proposed trust contributes to a candidate or political committee would apply to contributions from the proposed trust’s funds.

The drafts differ on how to properly attribute contributions from the proposed trust. Only Draft B applies the precedent set by the Commission in Advisory Opinion 1996-03 (“Breedon-Schmidt Foundation”) and Advisory Opinion 1999-19 (“Ellis”). In Breedon-Schmidt Foundation, the Commission determined that contributions made by a foundation established by a testamentary trust would be attributed the successor in interest of the testator and the foundation, not the foundation’s trustees. There, the foundation’s trustees had broad discretion to make contributions that would advance the cause of a specific political philosophy. In contrast, in Ellis, the Commission determined that a contribution from a living trust for which an individual served as

Office of the General Counsel
November 29, 2022
Page 2

the sole beneficiary, trustee, and trustor, would be attributed to the individual since the individual was the beneficial owner and retained complete control of the contribution.

As Draft B notes, the requestor's proposed trust is virtually identical to the circumstances in Breeden-Schmidt Foundation and Ellis. As such, Draft B correctly concludes that contributions from the requestor's proposed trust should only be attributed to the trust when the contributions are made at the discretion of the trustees. Contributions should be attributed to both the trustee and Mr. Blue when they are made to "designated recipients" from the "objective criteria set forth in the trust instrument." To decide otherwise – and require that contributions be attributed to Mr. Blue even when the recipients of contributions are chosen by trustees' discretion – would be misleading the public regarding the nature of those contributions.

We respectfully ask the Commission to approve Draft B.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Ezra W. Reese', with a long, sweeping underline.

Ezra W. Reese
Emma R. Anspach
Counsel to Allen Blue