



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Office of the Commission Secretary *LC*

**DATE:** October 1, 2024

**SUBJECT:** AOR 2024-13 (DSCC, Montanans for Tester, and  
Gallego for Arizona) Comment from NRCC

Attached is AOR 2024-13 (DSCC, Montanans for Tester,  
and Gallego for Arizona) Comment from NRCC.

**Attachment**

**RECEIVED**

By Office of the Commission Secretary at 8:03 am, Oct 01, 2024

**RECEIVED**

By Office of General Counsel at 5:19 pm, Sep 30, 2024

# Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

September 30, 2024

**VIA E-MAIL**

Federal Election Commission  
Office of General Counsel  
1050 First Street, NE  
Washington, DC 20463

**Re: Advisory Opinion Request 2024-13**

Dear Commissioners:

We submit this comment to the Federal Election Commission (the “Commission”) on behalf of the NRCC in response to Advisory Opinion Request 2024-13 (the “Request”) submitted by the DSCC, Montanans for Tester, and Gallego for Arizona (collectively, the “Requestors”). The Commission should answer Requestors’ Question 1 in the affirmative and Questions 2 and 3 in the negative.

As explained below, the Federal Election Campaign Act of 1971, as amended (the “Act”), Commission regulations, and Commission precedent all support the proposition that a Joint Fundraising Committee (“JFC”) must finance the entire cost of any joint fundraising solicitation—including the proposed television advertising—and allocate the costs for such solicitation according to the percentage of total receipts each participant is allocated pursuant to the joint fundraising allocation formula. Moreover, nothing in the Commission’s regulations requires that the entire JFC fundraising notice be displayed on-screen during a television advertisement financed by the JFC.

## **I. Background**

Requestors ask a basic question: “May each Joint Fundraising Committee finance the entire costs of the proposed television advertising, allocating the costs according to the Allocation Formula?” (We presume the Requestors are referring to the “funds received” method of allocating expenses described in 11 C.F.R. § 102.17(c)(7).) The obvious answer is yes. Commission regulations and advisory opinions specifically address this scenario. Nevertheless, Requestors attempt to depict the proposed activity as something unusual. It is not.

Requestors—the DSCC and the principal campaign committees for Democrat U.S. Senate candidates in Montana and Arizona—purportedly seek to establish two joint fundraising committees under 11 C.F.R. § 102.17 and make JFC fundraising solicitations in the form of television advertisements. The Request, which includes a sample script for a proposed JFC solicitation, asks whether these JFC fundraising solicitations may be paid for by the JFC with expenses allocated according to the “funds received” method. Commission regulations and

precedent establish that a JFC solicitation shall be paid for by the JFC, with fundraising costs allocated to each participating committee according to each participant's percentage of the total receipts. This is the only conclusion supported by Commission regulations.

## II. Legal Analysis

### A. The Commission Should Reject The Requestors Attempt To Depict A Routine JFC Fundraising Solicitation As Something Unusual.

The Act unquestionably permits joint fundraising activities between political committees, including candidates for federal office and national party committees.<sup>1</sup> And, the Commission has adopted a joint fundraising regulation which sets forth a permissible way that joint fundraising activities may be conducted.<sup>2</sup> Specifically, political committees seeking to engage in joint fundraising activities with other political committees may do so as follows:

- The participating political committees may establish a separate joint fundraising committee to act as a fundraising representative.<sup>3</sup>
- The joint fundraising committee may conduct more than one fundraising effort for the joint fundraising participants.<sup>4</sup>
- Participants in joint fundraising activities may include political party committees and candidate committees, among others.<sup>5</sup>
- The joint fundraising committee collects contributions, pays fundraising costs from gross proceeds, and disburses net proceeds to each participating committee.<sup>6</sup>

Joint fundraising procedures are set forth at 11 C.F.R. § 102.17(c) of the Commission's joint fundraising regulation. Under this subsection, once gross contributions are allocated among the participating committees using the joint fundraising allocation formula, "the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant ha[s] been allocated."<sup>7</sup> Net proceeds for each participating committee are then calculated by subtracting the participant's share of expenses from the participant's allocated gross proceeds.

Thus, the Commission's joint fundraising regulation clearly authorizes the payment of joint fundraising costs by the JFC, and the allocation of those costs to each participating committee

---

<sup>1</sup> 52 U.S.C. § 30102(e)(3)(ii) ("[C]andidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee"); *see also* 52 U.S.C. 30116(a)(5) ("nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts").

<sup>2</sup> *See* 11 C.F.R. § 102.17. While other forms of joint fundraising may be permitted, for practical purposes, political committees routinely adhere to the Commission's joint fundraising regulation when conducting joint fundraising activities, and the Requestors have stated they will comply with the joint fundraising regulation for conducting their proposed joint fundraising activities.

<sup>3</sup> *Id.* at § 102.17(a)(1)(i).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at (a)(2).

<sup>6</sup> *Id.* at (b)(1).

<sup>7</sup> *Id.* at (c)(7)(i)(A).

based on the percentage of total receipts allocated under the joint fundraising allocation formula. Importantly, the Commission’s joint fundraising regulation applies to joint fundraising activity broadly and permits a JFC to engage in multiple joint fundraising efforts using the same JFC. There are no restrictions on the ways in which a JFC may engage in joint fundraising as long as it is conducted in accordance with the general guidance set forth in the joint fundraising regulation.

Consistent with this understanding, participating political committees routinely fundraise for JFCs using a wide variety of fundraising strategies and tactics, including, but not limited to: (i) digital and email solicitations promoting candidate participants in the JFC;<sup>8</sup> (ii) online advertisements supporting candidate participants in the JFC and attacking the opponents of participating candidates;<sup>9</sup> and (iii) selling apparel with messaging supporting candidate participants in the JFC.<sup>10</sup> And, the Commission has explicitly blessed a variety of joint fundraising activities through its advisory opinion process.<sup>11</sup> In fact, as recently as last month, the Commission acknowledged, without qualification, that a JFC may “distribute public communications in the form of solicitations.”<sup>12</sup>

The Requestors attempt to distinguish their proposed television advertisement solicitations from these other forms of routine JFC solicitations by claiming their ads will have “the dual purpose of soliciting for the committee and advocating for a candidate.” This is a plainly inapplicable distinction for the Request to propose, apparently for the purpose of complicating the Request. Indeed, all JFC solicitations serve this same “dual purpose,” which is to raise funds for the participating committees through joint fundraising activity, while including messages advocating support for the JFC participants. How else would the Requestors propose to raise funds through a JFC if not by using a message that tells would-be donors why they should be financial supporters of the JFC participants?

As the Requestors presumably know, far from being unique or novel, this type of “dual purpose” messaging is common in JFC fundraising communications and, in fact, all political solicitations. Requestors’ counsel is likely familiar with the similar “dual purpose” advertisements that the Hillary Victory Fund—a JFC between Hillary Clinton’s campaign committee, the DNC, and several state Democratic parties—ran in 2016. Each of the Hillary Victory Fund fundraising advertisements contained different versions of a pro-Clinton or anti-Trump message, some even

---

<sup>8</sup> See, e.g., Meta Ad Library, Harris Victory Fund (accessed Sep. 27, 2024), [https://www.facebook.com/ads/library/?active\\_status=active&ad\\_type=political\\_and\\_issue\\_ads&country=US&disclaimer\\_texts\[0\]=HARRIS%20VICTORY%20FUND&media\\_type=all&q=%22Harris%20Victory%20Fund%22&search\\_type=keyword\\_exact\\_phrase](https://www.facebook.com/ads/library/?active_status=active&ad_type=political_and_issue_ads&country=US&disclaimer_texts[0]=HARRIS%20VICTORY%20FUND&media_type=all&q=%22Harris%20Victory%20Fund%22&search_type=keyword_exact_phrase).

<sup>9</sup> See, e.g., @HillaryClinton, X (Oct. 30, 2016), <https://x.com/HillaryClinton/status/792766036772872192>; @HillaryClinton, X (Oct. 31, 2016), <https://x.com/HillaryClinton/status/793091287293407233>; @HillaryClinton, X (Nov. 3, 2016), <https://x.com/HillaryClinton/status/794261519638921218>.

<sup>10</sup> See, e.g., Store, JohnTester.com (accessed Sep. 27, 2024), <https://store.jontester.com/products> (noting that “each purchase is a contribution to Tester Victory Fund,” a JFC that includes the principal campaign committee for U.S. Senate candidate John Tester and the DSCC, among others).

<sup>11</sup> In 2007, for instance, the Commission explicitly authorized a JFC to engage in fundraising through “joint advertising efforts, such as *television*, radio, and newspaper advertisements, bumper stickers, campaign banners, and yard signs.” Advisory Opinion 2007-24 at 5 (Burkee/Walz) (emphasis added).

<sup>12</sup> Advisory Opinion 2024-07 at 7 (Team Graham).

included express statements to “Vote for Hillary Clinton.” However, as one observer noted: “One thing all of the Hillary Victory Fund videos have in common? The final seconds of the ads show a fundraising message, asking viewers to text the campaign to make a donation to the Hillary Victory Fund.”<sup>13</sup> A Clinton campaign spokesman explained the supposed “dual purpose” of these ads succinctly: the “online videos help ‘give people a reason to donate’ to the Hillary Victory Fund.”<sup>14</sup> To be clear, the 2016 Hillary Victory Fund ads were ordinary JFC fundraising communications that, like all fundraising communications, contained a solicitation coupled with a message designed to “give people a reason to donate.”

What the Request really seeks from the Commission is a determination of *how much* messaging in support of JFC participants can be included in a JFC solicitation before it transforms into something other than a JFC fundraising communication. The Commission should reject this invitation to create a new content rule for joint fundraising communications based on the Requestors’ false construct. Commission regulations support only one conclusion: a JFC may pay for its fundraising costs, and those costs may include JFC fundraising solicitations in the form of public communications and other advertisements. Any further attempt to parse the specifics of a JFC fundraising communication should be rejected as both impractical and counter to Commission precedent.<sup>15</sup>

**B. JFC Fundraising Solicitations Must Be Financed By The JFC And Allocated To Each Participant According To 11 C.F.R. § 102.17(c)(7).**

The Commission’s joint fundraising regulation is clear: JFC costs must be paid for by the joint fundraising representative.<sup>16</sup> Because the Request’s proposed JFC solicitation is a joint fundraising expense, it must be financed by the JFC with the costs allocated to each participating committee in proportion to the total receipts allocated to each participant under the joint fundraising allocation formula. The Commission has previously stated this conclusion with absolute clarity. In Advisory Opinion 2007-24 (Burkee/Walz), the Commission considered a request for a JFC to engage in several different joint advertising efforts. As the Commission explained, “some or all of” the proposed JFC activities “may solicit contributions to the” JFC.<sup>17</sup> The Commission established a bright-line rule, concluding that any “[e]xpenses for joint advertising efforts *that include solicitations* must be allocated to the [participating committees] under the joint fundraising

---

<sup>13</sup> Michael Beckel, *Clinton’s Super-Sized Fundraising Machine Pushes Legal Boundaries*, The Center for Public Integrity (Nov. 7, 2016), <https://publicintegrity.org/politics/clintons-super-sized-fundraising-machine-pushes-legal-boundaries>.

<sup>14</sup> *Id.*

<sup>15</sup> When considering Advisory Opinion 2024-07 (Team Graham), the Commission was presented with a description of JFC fundraising communications not unlike those proposed by the Request here. *See* Comment from Campaign Legal Center at 3, [https://www.fec.gov/files/legal/aos/2024-07/202407C\\_6.pdf](https://www.fec.gov/files/legal/aos/2024-07/202407C_6.pdf). However, the Commission made no attempt to limit the form of JFC fundraising communications, instead only noting that the advisory opinion makes no determinations regarding any “public communication *other* than the joint fundraising communications.” Advisory Opinion 2024-07 at 8, n. 26 (Team Graham) (emphasis in original).

<sup>16</sup> 11 C.F.R. § 102.17(b)(1) and (2) (providing that the fundraising representative can be a separate committee or a participating committee, but in either case, the fundraising representative “*shall* … pay fundraising costs” (emphasis added); *see also id.* at (c)(7)(i)(A) (“To calculate each participant’s net proceeds, the fundraising representative shall subtract the participant’s share of expenses from the amount that participant has been allocated from gross proceeds.”)).

<sup>17</sup> Advisory Opinion 2007-24 at 5 (Burkee/Walz).

agreement based on each candidate’s allocation of receipts from the joint advertising efforts.”<sup>18</sup> Only “advertising activities that *do not include solicitations*” can be attributed to participating committees using the Commission’s general time/space allocation method.<sup>19</sup>

This is the only logical conclusion with respect to financing JFC fundraising communications. Allocation according to each participant’s share of allocated receipts under the joint fundraising allocation formula avoids any participant making an in-kind contribution to another participant.<sup>20</sup> Additionally, as the Commission recently affirmed, when JFC fundraising expenses are paid for using the “funds received” method set forth in the Commission’s joint fundraising regulation, no coordinated expenditure will result between participants because each participant “will pay the full cost of the public communications attributable to” it and, therefore, “the communications will not meet the payment part of the coordinated communication test.”<sup>21</sup>

Requestors desperately attempt to confuse this bright-line rule by suggesting that some additional portion of the JFC fundraising communication must be attributed to the participating candidate under the Commission’s general time/space allocation method at 11 C.F.R. § 106.1(a). This suggestion makes no sense. First, the Commission has already flatly rejected this approach in Advisory Opinion 2007-24. Second, the Commission’s regulations provide a cost allocation method specific to joint fundraising activities. The canon of textual construction *generalia specialibus non derogant* explains that where “there is a conflict between a general provision and a specific provision, the specific provision prevails.”<sup>22</sup> The general allocation rule of 11 C.F.R. § 106.1(a) does not apply because the Commission has provided a specific allocation method for joint fundraising expenses with 11 C.F.R. § 102.17(c).

Finally, if the Commission required a portion of a JFC fundraising communication to be allocated in a manner that is inconsistent with the allocation of receipts according to the joint fundraising allocation formula, it would negate the clarity of 11 C.F.R. § 102.17(c)(7) and potentially yield prohibited in-kind contributions from participants whenever they engaged in joint fundraising activities. For example, candidate committees may only contribute up to \$5,000 per calendar year to a political committee. If a participating candidate was forced to finance the overwhelming majority of a JFC fundraising solicitation (as the Requestors suggest might be appropriate), the Commission would be requiring the candidate to make an excessive in-kind contribution to the joint fundraising committee, which is itself a political committee, by paying for JFC costs inconsistent with the allocation of receipts under the joint fundraising allocation formula.

---

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> *Id.* (citing 11 C.F.R. § 106.1(a)) (emphasis added).

<sup>20</sup> See 11 C.F.R. § 102.17(c)(7); *see also* Explanation and Justification on Joint Fundraising 48 Fed. Reg. 26296, 26300 (June 7, 1983) (“[T]he fundraising representative must subtract a participant’s share of expenses from the amount it was allocated from gross proceeds to determine the amount of net proceeds each participant will receive. If each participant pays its own share of expenses calculated pursuant to this section, no contribution in-kind from one or more of the participants occurs.”).

<sup>21</sup> Advisory Opinion 2024-07 at 7 (Team Graham).

<sup>22</sup> Congressional Research Service, *Statutory Interpretation: Theories, Tools, and Trends*, at 52, n. 527 (Mar. 10, 2023) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* at 183 (2012)), <https://crsreports.congress.gov/product/pdf/R/R45153>.

Additionally, many JFCs include a Leadership PAC sponsored by a participating candidate.<sup>23</sup> If the candidate is required to pay for the JFC fundraising solicitation in excess of its allocated share of JFC receipts, it will be making an in-kind contribution to the other participating committees.<sup>24</sup> In the case of a participating Leadership PAC, that in-kind contribution would exceed the applicable contribution limits.

**C. The Entire JFC Fundraising Notice Is Not Required To Be Displayed On-Screen During A Television Advertisement Soliciting Funds For The JFC.**

The Requestors provide no analysis in support of their apparent conclusion that the entire JFC fundraising notice must be displayed on-screen during a television advertisement that includes a solicitation for the JFC. The Request simply asserts that this is the case. Once again, the Commission should view the Requestors' incorrect conclusion as an intentional complication of the matter and not as an accurate statement of the law.

The Commission's joint fundraising regulation requires that "a joint fundraising notice shall be included with every solicitation for contributions."<sup>25</sup> The regulation prescribes certain required information that must be included in the joint fundraising notice. However, nothing in the Commission's regulation requires that all elements of the fundraising notice be included in each part of a multi-part solicitation, such as the proposed JFC television advertisement solicitations. As the Request explains, each television ad will include a QR code that links to an online fundraising page for the JFC. Although the Request does not specifically note that this fundraising page will include the full joint fundraising notice, if it does, then the requirements of the Commission's joint fundraising regulation are met. In other words, there are other options for placement of the full JFC Fundraising Notice that meet the requirements of 11 C.F.R. § 102.17, and placement in the television advertisement itself is not necessarily required if another placement option is chosen.

**III. Conclusion**

Requestors make a mockery of the Commission's advisory opinion process by presenting their "proposed" activity in such a way as to suggest that they do not, in fact, want to engage in the types of advertisements outlined in the Request. The almost complete lack of any defense of Requestors' proposed activity suggests that other motivations are behind this Request. Nevertheless, the Commission should not reward Requestors for their bad-faith Request. There is ample support in the Act, Commission regulations, and advisory opinions to conclude that Requestors' proposed advertisement is nothing more than a routine joint fundraising

---

<sup>23</sup> Current JFCs for both Senator Tester and Representative Gallego include their leadership PACs, Treasure State PAC and LEGO-PAC, respectively. *See* Tester Victory Fund (C00547679), About This Committee, <https://www.fec.gov/data/committee/C00547679/?tab=about-committee>; Gallego Victory Fund (C00848317), About This Committee, <https://www.fec.gov/data/committee/C00848317/?tab=about-committee>.

<sup>24</sup> 11 C.F.R. § 102.17(c)(7)(i)(B); *see also id.* at (b)(3)(ii).

<sup>25</sup> 11 C.F.R. § 102.17(c)(2).

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

communication, which must be financed by the JFC and allocated to the participants according to their allocated share of total receipts under the joint fundraising allocation formula.

Sincerely,



Jessica F. Johnson



Andrew D. Watkins



Michael Bayes



Matthew S. Petersen

*Counsel to NRCC*