

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

MUR: 7358  
DATE COMPLAINT FILED: Mar. 30, 2018  
DATE OF NOTIFICATION: Apr. 5, 2018  
DATE OF LAST RESPONSE: May 25, 2018  
DATE ACTIVATED: Sept. 20, 2018

EARLIEST EXPIRATION OF SOL: Nov. 17, 2021  
LATEST EXPIRATION OF SOL: Unknown  
ELECTION CYCLES: 2016 & 2018

**COMPLAINANT:** Greg Bailor

**RESPONDENTS:** Rosen for Nevada and Steven Mele in his official capacity as treasurer  
Jacky Rosen  
Perkins Coie LLP  
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

<b>RELEVANT STATUTES AND REGULATIONS:</b>	52 U.S.C. § 30116(a), (a)(9)(C) 52 U.S.C. § 30116(d)(5) 52 U.S.C. § 30116(f) 52 U.S.C. § 30104(b) 11 C.F.R. § 100.52(d) 11 C.F.R. § 104.3(a)(3)(iii) 11 C.F.R. § 109.20(b)
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**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

## 1. INTRODUCTION

36 The Complaint in this matter alleges that the law firms Perkins Coie LLP (“Perkins  
37 Coie”) and Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP (“Wolf Rifkin”) made excessive  
38 and unreported in-kind contributions to then-U.S. Representative Jacky Rosen and her principal  
39 campaign committee, Rosen for Nevada and Steven Mele in his official capacity as treasurer (the  
40 “Committee”), by providing the Committee with free legal services defending Rosen and the

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1 Committee in a defamation action stemming from her 2016 congressional campaign.<sup>1</sup>

2 Respondents assert that two national party committees paid for the legal services received by the

3 Committee with funds from a segregated account designated for election recounts and contests

4 and other legal proceedings and argue that such payments are not subject to limitation under the

5 Federal Election Campaign Act of 1971, as amended (the “Act”).<sup>2</sup>

6 As discussed below, neither law firm appears to have made an in-kind contribution to

7 Rosen or her Committee. Accordingly, we recommend that the Commission find no reason to

8 believe that Perkins Coie or Wolf Rifkin violated 52 U.S.C. § 30116(a) by making excessive in-

9 kind contributions. Further, considering that the Commission has yet to provide guidance to the

10 regulated community regarding the scope of “legal proceedings” that may be paid for from such

11 a segregated account, we recommend that the Commission dismiss as a matter of prosecutorial

12 discretion<sup>3</sup> the allegation that Rosen or the Committee violated 52 U.S.C. §§ 30116(f) and

13 30104(b) by knowingly accepting and failing to report, respectively, excessive in-kind

14 contributions in the form of third-party payments for legal expenses.

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<sup>1</sup> Compl. (Mar. 30, 2018). During the 2016 election cycle, Rosen was a candidate for the U.S House of Representatives from the Third District in Nevada. *See* Jacky Rosen Statement of Candidacy (Jan. 26, 2016). Rosen was a candidate for U.S. Senate from Nevada in 2018 and the Committee remains her principal campaign committee. *See* Rosen for Nevada Amended Statement of Organization (Mar. 23, 2021).

<sup>2</sup> Rosen and Committee Resp. (“Rosen Resp.”) (May 25, 2018); Perkins Coie Resp. (May 25, 2018); Wolf Rifkin Resp. (May 25, 2018) (incorporating by reference Perkins Coie Resp.).

<sup>3</sup> This Office recently circulated a report in MUR 7390 (Donald J. Trump, *et al.*) that also addresses the application of the segregated accounts that national parties may use for “election recounts and contests and other legal proceedings” and similarly recommended that the Commission dismiss the Complaint as to the recipient candidate committee as a matter of prosecutorial discretion and apply its analysis only prospectively. *See* First Gen. Counsel’s Rpt., MUR 7390 (Donald J. Trump, *et al.*) ; 52 U.S.C. § 30116(a)(9)(C). Because of the similar circumstances, this report follows the same analysis and makes an analogous recommendation.

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## 1 **II. FACTUAL BACKGROUND**

2       In November 2016, Rosen and the Committee were sued for defamation by her 2016  
 3 general election opponent, Danny Tarkanian.<sup>4</sup> Tarkanian alleged that ads run by the Rosen  
 4 Committee on YouTube and other social media platforms made false claims, including that  
 5 “Tarkanian set up 13 fake charities that preyed on vulnerable seniors.”<sup>5</sup> Rosen and the  
 6 Committee retained Perkins Coie and Wolf Rifkin to defend them in the lawsuit.<sup>6</sup> The  
 7 Complaint notes that the defamation suit survived a motion to dismiss and an appeal had been  
 8 filed with the Supreme Court of Nevada,<sup>7</sup> but the Committee’s reports filed with the  
 9 Commission do not disclose any disbursements to Wolf Rifkin and only one disbursement for  
 10 \$6,232 to Perkins Coie for “legal services.”<sup>8</sup> Based on this information, the Complaint alleges  
 11 that the value of the work done by these firms, over the course “of sixteen months of legal  
 12 representation,” exceeds the contribution limits.<sup>9</sup>

13       Respondents do not dispute these facts but explain that the Democratic Congressional  
 14 Campaign Committee (“DCCC”) and the Democratic Senatorial Campaign Committee  
 15 (“DSCC”) paid Perkins Coie and Wolf Rifkin for the legal services they provided to Rosen and

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<sup>4</sup> Compl. at 1.

<sup>5</sup> *Rosen v. Tarkanian*, 135 Nev. 436, 437-438 (Nev. 2019).

<sup>6</sup> *Id.*; Rosen Resp. at 2; Perkins Coie Resp. at 2.

<sup>7</sup> Since the filing of the Complaint in this matter, the Nevada Supreme Court heard the case, reversing and remanding the trial court’s denial of Rosen’s special motion to dismiss. *Rosen v. Tarkanian*, 135 Nev. 436 (Nev. 2019).

<sup>8</sup> Compl. at 1-2; Rosen for Nevada, 2017 Year-End Report (Feb. 9, 2018). Commission records show 32 additional payments from the Committee to Perkins Coie totaling \$125,460 after the Complaint was filed. *See FEC Disbursements: Filtered Results*, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00606939&recipient\\_name=PERKINS+COIE&min\\_date=03%2F31%2F2018&max\\_date=12%2F31%2F2021](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00606939&recipient_name=PERKINS+COIE&min_date=03%2F31%2F2018&max_date=12%2F31%2F2021) (Last visited July 19, 2021)(Rosen for Nevada disbursements to Perkins Coie from March 31, 2018, to present).

<sup>9</sup> Compl. at 3.

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1 the Committee from their “legal proceedings account[s].”<sup>10</sup> Reports filed with the Commission  
 2 by the DCCC and the DSCC between 2017 and 2021 reflect that these committees have made  
 3 disbursements to Perkins Coie in excess of \$45,000,000 and to Wolf Rifkin in excess of \$25,000,  
 4 many of which indicate the use of the recount or other legal proceedings fund, but which do not  
 5 indicate which legal matter is associated with each disbursement.<sup>11</sup>

6 **III. LEGAL ANALYSIS**

7 Under the Act, a “contribution” is “anything of value made by any person for the purpose  
 8 of influencing an election for Federal office.”<sup>12</sup> “Anything of value” includes all in-kind  
 9 contributions, such as “the provision of any goods or services without charge” or at a charge less  
 10 than the usual and normal charge.<sup>13</sup> All principal campaign committees are required to file  
 11 reports disclosing all of their receipts and disbursements, including in-kind contributions.<sup>14</sup> The  
 12 Act further provides that no person shall make contributions to any candidate and his or her  
 13 authorized political committees with respect to any election for federal office which, in the

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<sup>10</sup> Rosen Resp. at 1; Perkins Coie Resp. at 1. Respondents state that DCCC made these disbursements from its recount and legal services account and that once Rosen announced her 2018 candidacy for the Senate, DSCC also began making such disbursements. Rosen Resp. at 3; Perkins Coie Resp. at 3; *see* Jacky Rosen Statement of Candidacy for U.S. Senate (July 7, 2017).

<sup>11</sup> *See, e.g.*, FEC Disbursements: Filtered Results, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00000935&recipient\\_name=perkins+coie&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2021](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00000935&recipient_name=perkins+coie&min_date=01%2F01%2F2017&max_date=12%2F31%2F2021) (last visited July 19, 2021) (DCCC disbursements to Perkins Coie from 2017, to present); FEC Disbursements: Filtered Results, FEC.GOV, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00042366&recipient\\_name=perkins+coie&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2021](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00042366&recipient_name=perkins+coie&min_date=01%2F01%2F2017&max_date=12%2F31%2F2021); (last visited July 19, 2021) (DSCC disbursements to Perkins Coie from 2017 to present); DSCC, February Monthly Report at 1636 (Feb. 20, 2018), *available at* <http://docquery.fec.gov/pdf/719/201802200200162719/201802200200162719.pdf>; *see also* Rosen Resp. at 5 (stating that the amounts paid during this period to Perkins Coie by DCCC include not only payments relating to Rosen’s defamation defense, but also “other legal expenses incurred by DCCC in connection with election recounts, contests and other legal proceedings”).

<sup>12</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>13</sup> 11 C.F.R. § 100.52(d).

<sup>14</sup> 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

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1 aggregate, exceed \$2,700 for the 2016 or 2018 election cycles.<sup>15</sup> National political party  
 2 committees may support their candidates with coordinated party expenditures, subject to  
 3 limitation.<sup>16</sup>

4 In the present matter, both law firms were paid for their services by the DCCC and the  
 5 DSCC, via their respective segregated accounts. Thus, neither law firm “provi[ded] any goods  
 6 or services without charge” and thereby did not make in-kind contributions to the Committee as  
 7 the Complaint alleges. Likewise, the Committee did not receive, and thus was not required to  
 8 report, any such in-kind contributions *from the law firms*. However, these expenses being paid  
 9 for by other third parties, the DCCC and the DSCC, from their respective segregated accounts,  
 10 raises the question of whether those payments constitute in-kind contributions.

11 The Consolidated and Further Continuing Appropriations Act of 2015 amended the Act  
 12 to allow national party committees to create separate segregated accounts “to defray expenses  
 13 incurred with respect to the preparation for and the conduct of election recounts and contests and  
 14 other legal proceedings.”<sup>17</sup> Such accounts are in addition to any other federal accounts  
 15 maintained by a national party committee and are subject to contribution limits equal to 300% of  
 16 the otherwise-applicable contribution limit to national party committees.<sup>18</sup>

17 These segregated accounts are rooted in the history of the Commission’s interpretations  
 18 of the Act, which Congress codified through the 2015 amendments to section 30116. Since the

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<sup>15</sup> 52 U.S.C. § 30116(a)(1)(A); *see* 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold (2018 election cycle), 82 Fed. Reg. 10904, 10906 (Feb. 16, 2017); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold (2016 election cycle), 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

<sup>16</sup> 52 U.S.C. § 30116(d)(1)-(3); 11 C.F.R. § 109.32.

<sup>17</sup> Pub. L. No. 113-235, 101, 128 Stat. 2130, 2772-73 (2014) (codified at 52 U.S.C. § 30116(a)(9)(C)). In addition, disbursements from such accounts are not subject to coordinated party expenditure limits. 52 U.S.C. § 30116(d)(5); *see also* 11 C.F.R. §§ 109.30, 109.32(a)(1).

<sup>18</sup> 52 U.S.C. § 30116(a)(1)(B), (2)(B).

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1 1970s, the Commission has recognized that recounts are not themselves elections and funds  
 2 received for them are not “contributions.”<sup>19</sup> In promulgating these exemptions, the Commission  
 3 explained that recounts and election contests “though they are related to elections, are not  
 4 Federal elections as defined by the Act.”<sup>20</sup> After the enactment of the Bipartisan Campaign  
 5 Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002) (“BCRA”), the Commission  
 6 concluded that the prohibition on the use of non-federal funds by national parties, federal  
 7 candidates, and officeholders “in connection with” an election for federal office “applies to funds  
 8 raised or spent on recounts of Federal elections.”<sup>21</sup> However, the Commission explained,  
 9 because BCRA “does not convert the donations into ‘contributions’ . . . , donations to a Federal  
 10 candidate’s recount fund will not be aggregated with contributions from those persons to the  
 11 Federal candidate for the general election.”<sup>22</sup> In a series of advisory opinions, the Commission  
 12 further explained that a national party committee “may establish a recount fund, separate from its  
 13 other accounts and subject to a separate limit on amounts received, and use that fund to pay  
 14 expenses incurred in connection with recounts and election contests of Federal elections.”<sup>23</sup> The  
 15 Commission made clear that funds in such recount accounts cannot “be used for campaign

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<sup>19</sup> See 11 C.F.R. § 100.91 (“A gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not a contribution except that the prohibitions of 11 CFR 110.20 and part 114 apply.”); *see also* Advisory Op. 1978-92 (Miller) at 2 (explaining that Commission regulations provide that “gifts, or loans or payments of money or anything of value that are made solely for the purpose of defraying the expenses of a Federal election recount are not contributions or expenditures under the Act and Commission regulations” and are therefore not subject to the contribution limits).

<sup>20</sup> Explanation and Justification of 1976 Amendments to Federal Election Campaign Act of 1971, H.R. Doc. No. 95-44, at 40 (Jan. 12, 1977). As a result, “the Act’s [then-existent] prohibitions on corporations, labor organizations, national banks, and foreign nationals making contributions or donations ‘in connection with’ Federal elections” still applied. Advisory Op. 2006-24 (Republican and Democratic Senatorial Committees) at 5 (“AO 2006-24”).

<sup>21</sup> AO 2006-24 at 5-6.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> Advisory Op. 2009-04 (Franken/DSCC) at 2-3 (“AO 2009-04”) (citing AO 2006-24).

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1 activities" and that "recount activities paid for by the recount fund must have no relation to  
2 campaign activities."<sup>24</sup>

3 Statements by House and Senate leaders indicate that, in revising section 30116 in 2015,  
4 Congress intended to codify these advisory opinions concerning the financing of recounts and  
5 that the amendment is "not intended to modify Federal Election Commission precedent  
6 permitting the raising and spending of funds by campaign or state or national party  
7 committees."<sup>25</sup> Congressional leaders further explained that payments made from the "recount  
8 and legal proceeding expenses [accounts] are not for the purpose of influencing Federal  
9 elections."<sup>26</sup> Subsequent to the 2015 amendment, the Commission reaffirmed that funds raised  
10 by a candidate to pay for recounts and "lawsuits directly related to the counting and recounting  
11 of ballots" are subject to the Act's limitations, prohibitions, and reporting requirements but are  
12 not aggregated with contributions for the general election and "must have no relation to  
13 campaign activities" and "may not be used in any manner that would constitute a contribution or  
14 expenditure under the Act or regulations."<sup>27</sup>

15 Thus, if the payments from the DCCC and the DSCC to the law firms at issue in this  
16 matter were properly made from these segregated accounts, they would not be considered  
17 contributions under the Act and therefore the Committee would not have received or failed to

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<sup>24</sup> Advisory Op. 2010-14 (DSCC) at 3, 5 (citing AO 1978-92) ("[I]n view of the special treatment and exemption accorded funds received and spent for recount purposes, any resulting surplus of funds may not be used in any manner that would constitute a contribution or expenditure under the Act or regulations."). Thereafter, in one instance, the Commission further permitted national party committees to use funds in their recount accounts to pay for litigation seeking the disgorgement of primarily soft-money contributions that had been made prior to the enactment of BCRA. Advisory Op. 2011-03 (DSCC, RNC, NRCC, DCCC, and NRSC) at 3-4.

<sup>25</sup> See 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Rep. Boehner) (citing AO 2006-24 and AO 2009-04); 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Sen. Reid) (same).

<sup>26</sup> 160 Cong. Rec. H9286; 160 Cong. Rec. S6814.

<sup>27</sup> Advisory Op. 2019-02 (Nelson) at 2-3.

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1 report excessive in-kind contributions. This raises the question whether the DCCC and the  
 2 DSCC's use of their segregated accounts to pay for Rosen's defense in a defamation suit filed  
 3 by her 2016 campaign opponent was a proper use of funds designated for "recounts and contests  
 4 and other legal proceedings."

5 As revised by Congress in 2015, section 30116 allows national party committees to create  
 6 a segregated account to defray expenses incurred with respect to "the preparation for and the  
 7 conduct of election recounts and contests and other legal proceedings."<sup>28</sup> Because the payments  
 8 for legal fees at issue were not for the conduct of election recounts or contests, they could be  
 9 permissible only if they were for "other legal proceedings." Although the Commission has not  
 10 adopted implementing regulations for this provision, canons of statutory construction, the  
 11 legislative history, and the Commission's longstanding interpretation of the scope of similar  
 12 funds and accounts indicate that the legal fees at issue in this matter were not for "other legal  
 13 proceedings" as that phrase is used in section 30116.

14 Applying bedrock canons of statutory construction, by its plain meaning, the phrase  
 15 "other legal proceedings" is limited by the more specific terms that precede it, namely "election  
 16 recounts and contests." Under the canon of *ejusdem generis*, where, as here, "a general term  
 17 follows a specific one, the general term should be understood as a reference to subjects akin to  
 18 the one with specific enumeration."<sup>29</sup> This statutory interpretation principle ensures that "a  
 19 general word will not render specific words meaningless."<sup>30</sup> Applying the principle here, the

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<sup>28</sup> 52 U.S.C. § 30116(a)(9)(C).

<sup>29</sup> *Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991); *accord Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-16 (2001) (applying *ejusdem generis* to determine scope of an exemption clause in the Federal Arbitration Act); *see also Deal v. United States*, 508 U.S. 129, 132 (1993) (opining that "the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used").

<sup>30</sup> *United States v. Mackay*, 757 F.3d 195, 197 (5th Cir. 2014) (quoting *CSX Transp. Inc. v. Ala. Dep't of Revenue*, 562 U.S. 277, 295 (2011)).

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1 phrase “other legal proceedings” in section 30116, in the context of the words it follows, means  
 2 legal proceedings that, like the specifically enumerated “election recounts and contests,” are not  
 3 related to campaign activities.<sup>31</sup> Moreover, if “other legal proceedings,” were interpreted to  
 4 include the full breadth of all possible legal proceedings, it would render the inclusion of  
 5 “election . . . contests” superfluous because election contests are a type of legal proceeding.<sup>32</sup>

6 Legislative history regarding the establishment of these segregated accounts, discussed  
 7 above, further supports this understanding of “other legal proceedings.”<sup>33</sup> The inclusion of that  
 8 phrase in the statute dovetails with the language in AO 2006-24, specifically cited in the  
 9 legislative history, which describes the acceptable use of recount funds as including expenses  
 10 relating to recounts and election contests, as well as for expenses relating to “*post-election*  
 11 *litigation*” and “*administrative-proceeding expenses* concerning the casting and counting of  
 12 ballots during the Federal election,” among other things.<sup>34</sup> And the same legislative history

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<sup>31</sup> *Id.* at 197 (“The words ‘other’ or ‘any other’ following an enumeration of particular classes ought to be read as ‘other such like’ and to include only those of like kind or character.”) (quoting *In re Bush Terminal Co.*, 93 F.2d 659, 660 (2d Cir. 1938)) (internal quotation marks removed). The Supreme Court addressed similar statutory language in *Washington Department of Social & Health Services. v. Guardianship Estate of Keffeler*, 537 U.S. 371 (2003). There, the Court evaluated a provision of the Social Security Act that protects social security payments from “execution, levy, attachment, garnishment, or other legal process.” *Id.* at 382. Applying the statutory interpretation canon of *eiusdem generis* — as well as the related canon of *noscitur a sociis*, meaning that words are known “by their companions” — the Court unanimously held that the term “other legal process” did not mean any legal process but only a “process much like the processes of execution, levy, attachment, and garnishment.” *Id.* at 384-85.

<sup>32</sup> See 26 Am. Jur. 2d Elections § 381 (2d. Ed. 2019) (defining “election contest” as a “suit in which the validity of an election . . . is made the subject matter of litigation” or “a special proceeding . . . to provide a remedy for elections tainted by fraud, illegality, or other irregularity”); *see also, e.g.*, *Colautti v. Franklin*, 439 U.S. 379, 392 (1979) (statutes should be read to avoid rendering portions superfluous) (overruled in part on other grounds).

<sup>33</sup> 160 Cong. Rec. H9286; 160 Cong. Rec. S6814.

<sup>34</sup> AO 2006-24 at 2-3 (emphasis added); *see also* AO 2009-04 at 2-3 (permitting a committee to “establish a recount fund, separate from its other accounts and subject to a separate limit on amounts received, and use that fund to pay expenses incurred in connection with recounts and election contests of Federal elections”).

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1 affirmed that funds from these segregated accounts were not to be used “for the purpose of  
 2 influencing Federal elections.”<sup>35</sup>

3 In the present matter, the legal expense paid for with these segregated accounts are  
 4 indeed related to campaign activities, as the defamation allegations by Rosen’s former electoral  
 5 opponent stem from the contents of ads run by the Rosen Committee during the campaign.

6 Moreover, the defamation suit has no relationship to “election recounts or contests.” Therefore,  
 7 these payments do not appear to fall within the “other legal proceedings” described by the Act.

8 In such a case, the payments would be considered coordinated expenditures, and thus in-kind  
 9 contributions, or a coordinated party expenditure.<sup>36</sup> Nonetheless, the above analysis is complex,  
 10 and the Commission has yet to provide guidance to the regulated community regarding the scope  
 11 of “legal proceedings” that may be paid for from such a segregated account. We therefore  
 12 recommend that the Commission dismiss the allegations here as a matter of prosecutorial

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<sup>35</sup> 160 Cong. Rec. H9286; 160 Cong. Rec. S6814.

<sup>36</sup> See 11 C.F.R. § 109.20(b) (“Any expenditure that is coordinated within the meaning of paragraph (a) of this section, but that is not made for a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37, is either an in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee, unless otherwise exempted under 11 CFR part 100, subparts C or E.”). At the times relevant to this matter, contributions from national party committees to a candidate for the House of Representatives were limited to \$5,000 and contributions to a candidate for the Senate were limited to \$47,400. 52 U.S.C. § 30116(a)(2)(A), (h); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10904, 10906 (Feb. 16, 2017). Coordinated party expenditures are also limited; the relevant coordinated expenditure limits for a candidate in Nevada at the time were \$48,000 for a house candidate and \$208,900 for a senate candidate. 52 U.S.C. § 30116(d); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5750-51 (Feb. 3, 2015).

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1 discretion<sup>37</sup> and enforce the limited scope of permissible legal proceedings discussed above only  
 2 prospectively.<sup>38</sup>

3 Accordingly, we recommend that the Commission find no reason to believe that Perkins  
 4 Coie or Wolf Rifkin violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions  
 5 and dismiss the allegations that Rosen and the Committee violated 52 U.S.C. §§ 30116(f) and  
 6 30104(b) by knowingly accepting and failing to report, respectively, excessive in-kind  
 7 contributions in the form of third-party payments for legal expenses.

8 **IV. RECOMMENDATIONS**

9 1. Find no reason to believe that Perkins Coie LLP or Wolf, Rifkin, Shapiro,  
 10 Schulman & Rabkin, LLP violated 52 U.S.C. § 30116(a) by making excessive in-  
 11 kind contributions;

12 2. Dismiss the allegations that Jacky Rosen and Rosen for Nevada and Steven Mele  
 13 in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30104(b)  
 14 by knowingly accepting and failing to report excessive in-kind contributions in  
 15 the form of third-party payments for legal expenses;

16 3. Approve the attached Factual and Legal Analysis;

17 4. Approve the appropriate letters; and

18 5. Close the file.

19 Lisa J. Stevenson  
 20 Acting General Counsel  
 21

22 7/20/2021  
 23 \_\_\_\_\_  
 24 Date

*Charles Kitcher*  
 25 \_\_\_\_\_  
 26 Charles Kitcher  
 27 Associate General Counsel for  
 Enforcement

<sup>37</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

<sup>38</sup> Considering that the DSCC and the DCCC were not named as respondents in this matter, that no allegation regarding the misuse of these segregated accounts was made, and that the Commission has yet to provide guidance to the regulated community regarding the scope of “legal proceedings” that may be paid for from such a segregated account or whether such payments constitute contributions, we do not make any recommendations as to the use of the segregated accounts by DCCC or DSCC in this matter.

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*Mark Allen*

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