



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Commissioners
Staff Director

FROM: Commission Secretary's Office *VJA*

DATE: August 30, 2024

SUBJECT: Statement Regarding Advisory Opinion 2024-07 (Team Graham, Inc.) – Vice Chair Ellen L. Weintraub

Attached is a statement from Vice Chair Ellen L. Weintraub. This matter was on the August 29, 2024 Open Meeting Agenda.

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**STATEMENT OF VICE CHAIR ELLEN L. WEINTRAUB
REGARDING ADVISORY OPINION 2024-07 (TEAM GRAHAM, INC.)**

In this matter, Team Graham, Inc. (“Team Graham”), Senator Lindsey Graham’s authorized committee, requested an advisory opinion asking whether the Federal Election Campaign Act (the “Act”) and Commission regulations would allow Team Graham to participate in a joint fundraising committee consisting of the following members: Team Graham, Fund for American’s Future (Senator Graham’s leadership PAC), the National Republican Senatorial Committee (“NRSC”), and Security is Strength PAC (a super PAC principally dedicated to supporting Senator Graham).¹ I could not support this advisory opinion because I do not believe it comports with the spirit or the letter of the Act.

The Act provides that expenditures made “in cooperation, consultation, or concert” with a candidate “*shall be* considered to be a contribution to such a candidate.”² The distinction between coordinated and independent expenditures was central to the Supreme Court’s reasoning in *Citizens United*.³ The D.C. Circuit has repeatedly held that the Act’s “plain text [and] purpose” restrict explicit coordination between candidates and outside groups on outside groups’ expenditures, including their public communications.⁴

There is a unique and inherent risk of unlawful coordination that could result from a super PAC’s participation in a joint fundraising committee with a candidate’s authorized committee. This question is a matter of first impression for the Commission. Under the proposed arrangement, Team Graham would have regular communication with Security is Strength PAC about the candidate and campaign’s solicitations and their campaign strategy as it relates to solicitations for the joint fundraising committee. The super PAC would be privy to the campaign’s views on messaging and donor outreach. This presupposes an ongoing relationship between two entities that are supposed to be completely independent of each other. It is hard to fathom how that necessary independence will be maintained when the super PAC is integrated into the campaign’s fundraising operations. This advisory opinion is a classic example of not seeing the forest for the trees.

¹ See AOR001; Team Graham, Inc., Comment at 1 (July 30, 2024); Security is Strength PAC, <https://securityisstrengthpac.com/> (last visited Aug. 28, 2024).

² 52 U.S.C. § 30116(a)(7)(B)(i) (emphasis added).

³ See, e.g., *Citizens United v. Federal Election Com’n*, 558 U.S. 310, 360 (2010) (“By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.”) (internal citations omitted).

⁴ See, e.g., *Campaign Legal Center v. Federal Election Com’n*, 106 F.4th 1175, 1192 (D.C. Cir. 2024); *Shays v. Federal Election Com’n*, 414 F.3d 76, 99 (D.C. Cir. 2005).

Security is Strength PAC was not a party to this request, and the request contains no information about what safeguards or firewalls Security is Strength PAC could or would impose to prevent any unlawful coordination with Team Graham, as one commenter pointed out.⁵

This absence of information is concerning in light of what Team Graham has described. Team Graham plans to have “substantial discussions” with the joint fundraising committee about solicitation materials. The phrase “substantial discussions” is a defined term that includes discussion about the candidate’s nonpublic “campaign plans, projects, activities, or needs[.]”⁶ Although Team Graham states it “will not discuss the nonpublic campaign plans, projects, activities, or needs of Senator Graham or his campaign” with Security is Strength PAC,⁷ Team Graham acknowledges that it will discuss its private campaign plans and strategies with the joint fundraising committee, of which Security is Strength PAC is a member.⁸ These assertions are contradictory. As one commenter noted, this “allow[s] for a candidate to fully coordinate with a Super PAC on one paid advertisement on a Monday, and then permit[s] the same Super PAC to claim that a different ad made on Tuesday was fully independent.”⁹ I share the commenter’s conclusion that this scenario is “preposterous.”¹⁰

Moreover, as another commenter noted, in reaching this outcome, the Commission draws the wrong conclusion from a 2004 advisory opinion that predates the modern super PAC and was based on very different underlying facts.¹¹ There, the Commission held that a public communication that featured numerous distinct candidates and was paid for proportionally by those different candidates according to the portions of the brochure in which they appeared did not satisfy the payment prong of the coordinated communications regulation.¹² But here, no other candidates are involved, and the purpose of the joint fundraising committee appears to be to support a single candidate. The Requestor did not submit any proposed solicitation materials. Without reviewing those materials, it is impossible to say whether those communications will be capable of a rational apportionment amongst the various participants. But it does not seem reasonable to preapprove those unseen communications. The conclusion that the payment prong is not met here, an essential element of the advisory opinion’s analysis, is based on an inapt precedent and an insufficient factual predicate.

⁵ Elias Law Group, Comment at 3 (July 15, 2024).

⁶ See AOR003; 11 C.F.R. § 109.21(d)(3).

⁷ See AOR008.

⁸ Moreover, while the request states that the joint fundraising committee will not solicit funds that are not subject to the limits, prohibitions, and reporting requirements of the Act, Team Graham’s proposed incorporation of Security is Strength PAC into its fundraising apparatus conveys an implicit endorsement. See Statement of Reasons, Comm’r Weintraub, MUR 7609R (Make America Great Again PAC (f/k/a Donald J. Trump for President, Inc.)).

⁹ Elias Law Group, Comment at 2 (Aug. 28, 2024).

¹⁰ *Id.*

¹¹ See Campaign Legal Center, Comment at 3 (Aug. 29, 2024).

¹² See Advisory Opinion 2004-37 (Waters).

I appreciate the edits that my colleagues made to earlier drafts of the opinion. The version that was adopted was a marked improvement over the original draft, particularly in the addition of footnote 26.¹³ With the addition of that footnote, it may well be that all Team Graham will accomplish by adding Security is Strength PAC to its joint fundraising committee is to effectively disable the super PAC from making further expenditures that support Senator Graham because any such spending could be deemed a coordinated, in-kind contribution.

Allowing a joint fundraising committee comprised of an authorized committee and a super PAC nonetheless breaks new ground. Unfortunately, the Commission has already created far too many holes in what should be a solid wall dividing candidates and their committees from the super PACs that support them.¹⁴ Because I am unwilling to pull another brick from that essential barrier, I respectfully dissent.

August 30, 2024

Date



Ellen L. Weintraub
Vice Chair

¹³ Advisory Opinion 2024-07 (Team Graham, Inc.) at 12, n.26 (“ . . . Because it is not raised by this request, the Commission makes no determinations regarding whether information conveyed by Team Graham for the purpose of the joint fundraising solicitations could satisfy the conduct standard and, thus, result in a coordinated communication if used by the NRSC or [Security is Strength] PAC for a public communication *other* than the joint fundraising communications.”).

¹⁴ See, e.g., Advisory Opinion 2024-01 (Texas Majority PAC); Advisory Opinion 2024-05 (Nevadans for Reproductive Freedom).