



FEDERAL ELECTION COMMISSION

Washington, DC 20463

**MEMORANDUM**

**TO: The Commission**

**FROM: Office of the Commission Secretary <sup>VFV</sup>**

**DATE: June 22, 2022**

**SUBJECT: AO 2022-05 (DSCC) Draft B**

**Attached are comments for AO 2022-05 (DSCC) Draft B.**

**Attachment**

**RECEIVED**

By Office of the Commission Secretary at 10:03 am, Jun 22, 2022

June 21, 2022

**BY ELECTRONIC MAIL DELIVERY**

The Honorable Allen Dickerson, Chairman  
Federal Election Commission  
1050 First Street NE  
Washington, DC 20463

**Re: Comment Regarding AO 2022-05 Draft Advisory Opinion**

Dear Commissioners:

We submit these comments on behalf of DSCC (the “Committee”) regarding Draft B (the “Draft”) of Advisory Opinion 2022-05, which the Commission provided on June 17, 2022. We urge the Commission to approve the conclusion in this Draft. Below we provide our recommendation for the Draft’s legal analysis.

**DISCUSSION**

The Draft holds that the value of the research book that will be purchased by DSCC for \$30,000 and used by DSCC for its own purposes, and then provided to two Democratic primary campaigns for U.S. Senate, may be allocated \$10,000 to each committee if that allocation reasonably reflects the benefit derived. We strongly agree with this conclusion.

The Draft correctly uses the polling valuation regulation as a “model” here to determine the benefit reasonably derived for each committee. As the Draft explains, polls and research often provide “varying degrees of benefit” to different committees and therefore splitting the costs equally is a reasonable allocation method. Further, the valuation method approved by the Draft avoids an attribution of costs per committee that exceeds the aggregate amount of the expenditure.<sup>1</sup> Accordingly, DSCC urges the Commission to adopt Draft B.

Without undermining our overall support for the Draft, we do wish to offer one peripheral comment on the analysis as general practitioners in this space. While the Draft generally recommends using the polling allocation method as a model, the analysis also states that the “time or space method” of valuation is not applicable here because the research book does not devote time or space to any of the candidates that will benefit from it.<sup>2</sup> We recommend removing this justification for rejecting the time or space method and instead adopting the general principle that, given the similarities between polling and research, the polling allocation method of

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<sup>1</sup> As discussed in the initial request and our comments to Draft A, the Commission has held on several occasions that the calculation of the “benefit reasonably expected to be derived” from a resource by a federal candidate equals only a proportion of the total expense, even when multiple committees may have access to, and use for, the entire resource. *See* Adv. Ops 1980-38 (Allen), 1986-30 (Martin) and 2007-24 (Burkee/Walz).

<sup>2</sup> “If the book does not devote time or space to any of the candidates that will us, then expenditures for the book would not be allocable under the time or space method.” Draft B at 4.

dividing costs evenly is a permissible allocation option for determining multiple committees' use and benefit of a research book.

We believe requiring a different allocation method for self-research books and opposition research books will create unnecessary confusion for the regulated community. Further, the time/space allocation method is not directly applicable in the context of a research book. The method comes from 11 C.F.R. 106.1(a), which states, "*in the case of a publication or 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." This standard is based upon the fact that the cost being divided is for advertising to the general public. So naturally, dividing the cost by the amount of time or space a candidate is featured is a reasonable way to calculate the benefit derived by that candidate. In the context of a research book, the benefit derived is not so easily calculated by the space devoted to a candidate. Instead, as the Draft explains, the research value is variable depending on the information used by each recipient.

In the case of a poll commissioned and used by a political committee, and then subsequently provided to a candidate committee, the Commission provides clear guidance that the value of the poll can be determined by evenly dividing the costs.<sup>3</sup> This is the case even if the poll exclusively includes questions related to the candidate whose authorized committee is receiving the poll. Given the similarities between polling results and research books, as acknowledged and outlined by the Commission in the Draft, we recommend concluding without qualification that the polling allocation method of dividing costs evenly is a permissible allocation option for determining multiple committees' use and benefit of a research book.

Very truly yours,



Jacquelyn K. Lopez  
Zachary P. Morrison

Counsel to DSCC

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<sup>3</sup> *Id.* § 106.4(e)(2). *See, e.g.*, Factual & Legal Analysis at 4, MUR 7391 (Jason Crow for Congress, *et. al.*) ("the purchase of opinion poll results by an unauthorized political committee and the subsequent acceptance of such results (absent payment) by the candidate or candidate's authorized committee is an in-kind contribution[] from the unauthorized committee to the candidate or the authorized committee. The value of such a contribution is determined using one of the allocation formulas outlined in 11 C.F.R. § 106.4(e). One such method includes dividing the overall cost of the poll equally among candidates or political committees receiving the results.").