

ADR 2011-24

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November 22, 2011

Anthony Herman, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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OFFICE OF GENERAL
COUNSEL

Re: Louder Solutions, LLC/StandLouder.com Advisory Opinion Request

Dear Mr. Herman:

On behalf of Louder Solutions, LLC, and pursuant to 2 U.S.C. §437f, this letter requests an Advisory Opinion on the permissibility under the Federal Election Campaign Act ("FECA" or "the Act") of 1971, as amended, of services to be offered by the Company through its website, StandLouder.com. (Louder Solutions, LLC and the website are referred to collectively throughout as the "Company" or "StandLouder.com.")

The StandLouder.com website enables users to submit proposed advertisements for posting on the website and to donate funds to help finance the airing of the advertisements on television, radio, or other media. The advertisements can concern any topic. The Company anticipates ads will relate to political and social issues and candidates for public office, as well as other topics, such as charitable causes, civic groups, or even products or services.

One of the objectives of StandLouder.com is to provide a platform that will help individuals and organizations with limited financial resources air their views on important issues of the day on local and national media. At a time when large corporations and well-funded associations and advocacy groups are free to make unlimited expenditures to fund issue and candidate oriented communications, StandLouder.com's goal is to provide a voice for individuals and small businesses that want to stand up and be heard.

Operation of StandLouder.Com

Louder Solutions, LLC is a for-profit limited liability company organized under the laws of North Carolina. The Company will do business under the name "StandLouder.com." The Company is operated for commercial purposes and not for the purpose of influencing any federal

election. Louder Solutions, LLC has a single natural person member, and it has not elected to be treated as a corporation by the Internal Revenue Service.¹

The Company is not established, financed, maintained or controlled by any candidate or political party. The Company will not conduct its activities in cooperation, consultation or concert with, or at the request or suggestion of any candidate or party. StandLouder.com's services will be offered on a strictly non-partisan basis without regard to party affiliation.

Website users can submit video, audio, or other visual content on any topic, although the Company anticipates that many submissions will be candidate or issue oriented communications. The Company refers to each submission as an "aditorial," and each aditorial is posted on the website for viewing by the public. The Company will charge a modest fee (\$25 or less) to post an aditorial on the website. At the onset of operations, the Company will only accept electoral aditorials that relate to federal candidates and officeholders, not state or local candidates or officeholders. A content provider can choose to have a personal or corporate name displayed on the website with the aditorial, but other identifying information (e.g., address, telephone numbers, website address) about the content provider will not be disclosed on the website.

Users of StandLouder.com can donate funds to support the airing of any aditorial through a credit card or direct transfer transaction on the website. As discussed in greater detail below, the Company will charge an appropriate transaction service charge for each online donation. All funds donated for aditorials will be kept in a separate company account, and the amounts donated to each ad will be accounted for separately.

When an aditorial is posted on the website, users are allowed to "pledge" funds to distribute the ad. During this initial stage, users can pledge as much as they wish to the aditorial, but only \$1 of the pledge will be charged to their credit card. The volume of pledges will be used to ascertain the level of support for the proposed aditorial and the likelihood that the ad will air.

When sufficient pledges have been obtained and the Company believes, in its judgment, that the ad will be successfully funded, the aditorial will be "open for sponsorship." At this point, a pledger will receive an email from the Company and will be required to take affirmative steps online to complete the balance due on the pledge. After doing so, the pledge balance, including the transaction fee on the entire pledge, will be deducted by the Company. Once an aditorial is "open for sponsorship" all users, including those who have not previously pledged, will be able to donate funds to aditorials, which will immediately be charged to their accounts.

When sufficient donations have been collected, the Company will purchase the air time from the appropriate broadcast entity or otherwise distribute the aditorial. The Company will select the most appropriate market, medium, place and time to air or display the aditorial. Aditorials that support competing candidates and positions on issues will be aired or displayed in equivalent times and markets.

¹ Louder Solutions, LLC may at some point in the future reorganize as a corporation.

If an aditorial is not aired or otherwise publicly distributed because of insufficient pledges, the pledgers will be notified that their unused \$1 pledges can be re-directed to another aditorial. If these funds are not redirected and remain unapplied for a period of twelve months after they are received by the Company, they will be applied *pro rata* to the charities listed on the Company website.

Each aditorial posted on StandLoudor.com will have a corresponding message forum that is intended to facilitate discussions regarding the aditorial by website users. The message forums will be moderated to ensure that rules are observed. Messages containing offensive content or that otherwise do not comply with the terms of service will be removed. All individuals who use the message forum feature must represent that they are not compensated for their activities on StandLoudor.com.

All website users – content creators, donors and message forum participants – will be required to create an account and provide basic information (e.g., name, mailing address, email address, and a telephone number). The user may, but is not required to, specify a party preference. This information will not be made public.

Special rules will apply to aditorials that qualify as independent expenditures or may qualify as electioneering communications. As a general rule, individuals, partnerships, corporations, and other entities, including non-connected political committees and separate segregated funds, will be permitted to submit or donate to such aditorials. However, federal contractors, foreign national individuals, foreign corporations and other foreign entities, federally-chartered organizations, candidates and political party committees will not be permitted to submit or donate to ads that qualify as independent expenditures or to ads that would qualify as electioneering communications if aired in the applicable time periods.

Content creators and donors must represent that they do not fall into any of the restricted categories above. In addition, all website users, including individuals who use the message forum, must represent that their activities on the website are not undertaken in cooperation, consultation or concert with, or at the request or suggestion of a candidate, authorized committee of a candidate, a political party, or an agent of any of the foregoing. As a further measure to ensure that communications are not coordinated with candidates or political parties, message forum users must represent that they are not candidates, or employees or agents of candidates or political parties.

Aditorials may not solicit contributions for or to candidates or their campaign committees, political parties, PACs, separate segregated funds, or any other political committee.²

² Aditorials submitted by non-connected political committees and separated segregated funds cannot include the name, logo, or other identifying information relating to the committee, and StandLoudor.com will not display this information on the website.

Each content provider who posts an aditorial on any subject also must represent that it owns or has the right to use the material in the aditorial, and must grant the Company the right to use, modify or distribute such material, in whole or in part. Aditorials may not republish, in whole or in part, any broadcast, written, graphic or other materials prepared by a candidate, the candidate's authorized campaign committee, or their agents. However, campaign material available from a public source may be incorporated into a communication that advocates the defeat of a candidate or party that prepared the material. In addition, brief excerpts of such material that reflect a candidate's positions as a part of the content creator's expression of views are permitted.

During limited promotion periods, aditorial posting fees may be lowered or waived, and the Company may have occasional aditorial contests with cash prizes. The Company also may make a small payment to content creators whose aditorials attract sufficient financial support to be broadcast or otherwise publicly disseminated. The payment would be based on a small percentage of the total funding budget for the ad campaign and the related merchandise sales. These promotional programs are intended solely to encourage the submission of content to the site, and will be offered on a non-partisan basis.

Similarly, it is in the Company's business interests to maximize the number of aditorials that are aired or otherwise publicly distributed. To this end, the company intends to provide limited supplemental funding for aditorials during promotional periods. To ensure that such funding is non-partisan, the Company will develop financial qualification thresholds, and all aditorials receiving donations from website users that meet or exceed a threshold will be entitled to the same amount of funding. The Company will not be able to exercise any discretion to offer or deny financial support for any aditorial that meets or exceeds a threshold.

The Company will review all aditorials with regard to issues such as defamation, intellectual property infringement, pornography, privacy, and fraud. The Company reserves the editorial right to refuse to post an aditorial if any such issue is present, or if the aditorial is otherwise offensive or would harm the reputation of the Company.

The Company will review each aditorial to determine whether it qualifies as an independent expenditure or an electioneering communication. With regard to aditorials that qualify as independent expenditures, the Company will file independent expenditure reports (FEC Form 5) as required by Commission regulations at 11 CFR 109.10, 104.5. The reports will identify each website user who made a donation in excess of \$200 for the purpose of furthering the independent expenditure. With respect to aditorials that qualify as electioneering communications, the Company will file electioneering communication reports (FEC Form 9) as required by Commission regulations at 11 CFR 104.20. The report will identify each website user who has made a donation aggregating in excess of \$1000 for the purpose of furthering electioneering communications since the first day of the preceding calendar year.

The independent expenditure and electioneering communication reports will reflect the total amount donated to the aditorial, including the portion of those funds used to compensate media buyers and other third parties that assist in broadcast or distribution of the aditorial. The

editorial placement fee and the donation transaction charges will not be reported in the respective disclosure reports.

Aditorials that qualify as independent expenditures and electioneering communications will contain the disclaimers required by the Commission's regulations at 11 CFR 110.11. The disclaimer will satisfy the "specification requirements" of 11 CFR 110.11 (c)(1), and the "specific requirements for radio and television communications" at 11 CFR 110.11(c)(4).

The Company will also enter into contractual arrangements with vendors to manufacture products, such as t-shirts, hats, mugs, etc. that contain popular aditorial messages. These products will be available for sale on the website. Such products will comply with the disclaimer requirements of 11 CFR 110.11 and related Commission advisory opinions.

Questions Presented

As discussed above, StandLouder.com is a commercial enterprise that will, among other activities, assist its customers in the promotion and airing of their views on important issues through local and national media. The Commission approved a similar proposal involving a commercial website for airing and funding political advertising in Advisory Opinion 2008-10 (VoterVoter.com). Like StandLouder.com, the VoterVoter.com website enabled members of the public to create and post original political videos, some containing express advocacy communications, and individuals could donate funds through the website to fund the broadcast of those communications on television.

While there are three notable differences between this proposal and VoterVoter.com, we believe this proposal is permissible under the Act and Commission regulations. First, StandLouder.com intends to accept content and donations from individuals and incorporated entities. *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010), specifically permits corporate support of candidate advocacy communications, so long as it is not coordinated with a candidate or party committee. Since all corporate donors must attest to the absence of coordination, there is no basis for prohibiting StandLouder.com from accepting corporate donations. Second, StandLouder.com intends to aggregate donations to fund the aditorials, while VoterVoter.com's business plan contemplated that each ad would be funded by one individual. Finally, VoterVoter.com required the individual ad sponsor to file his or her own disclosure reports and be named in the disclaimer. StandLouder.com, however, will be identified as the sponsor in the disclaimers and will file the required disclosure reports, as in the case with other entities, such as associations and advocacy groups that aggregate funds to sponsor political communications.

We believe the questions presented by this advisory opinion request are as follows:

- 1. Is StandLouder.com a "political committee?"**
- 2. Will StandLouder.com, the content creators and the users who donate funds collectively become a political committee or a series of political committees?**
- 3. What disclosure and disclaimer obligations apply to StandLouder.com's aditorials?**

4. As an alternative, can StandLouder.com form an independent expenditure-only committee for the purpose of accepting aditorial content, receiving contributions, and funding aditorials that meet the definition of "independent expenditure" or "electioneering communication?"

Discussion

1. Is StandLouder.com a "political committee?"

StandLouder.com is a commercial vendor engaged in bona fide commercial activity and not a political committee. The Act and Commission regulations define a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1000 during a calendar year or which makes expenditures aggregating in excess of \$1000 during a calendar year." 2 U.S.C. §431(4)(A); 11 CFR 100.5(a). The Supreme Court construed the term "political committee" to encompass only organizations that are under the control of a candidate or whose major purpose is the nomination or election of a candidate. *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

In the VoterVoter.com advisory opinion, the Commission found that the company was not a political committee because it was acting for genuine commercial purposes and not for the purpose of influencing any Federal election. The Commission based its decision on a line of earlier advisory opinions concerning the manufacture and sale of political paraphernalia. See, e.g., Advisory Opinion 1994-30 (Conservative Concepts, Inc.). Some of the factors that the Commission has applied to determine if a company is a "commercial vendor" include: (1) whether the company is engaging in the activity for a genuinely commercial purpose; (2) whether the activity involves fundraising for a candidate; (3) whether items are sold at the usual and normal charge and whether normal business practices are followed; (4) whether the purchase is made for the individual's personal use; and (5) whether the entity is owned, controlled or affiliated with a candidate or party.

As was the case in the VoterVoter.com advisory opinion, StandLouder.com's activities are strictly profit-oriented and undertaken at normal and usual rates. Indeed, the same rates apply to aditorials containing political content as aditorials that do not. Aditorial supporters are charged a transaction fee on their donations; content creators are charged a modest fee to post their ads on the website; and the air time and other costs of distributing the communications are paid for by the Company with donor funds at available rates. In addition, in order to maximize income, StandLouder.com's services are offered on a non-partisan basis to all eligible users. Further, like many companies, StandLouder.com will periodically have promotions and other incentive programs to drive business to the website. Finally, the aditorial cannot solicit contributions to any political committee, and none of the activities on the StandLouder.com website are undertaken in coordination with or on behalf of any candidate or political party. In fact, content creators and donors must execute a certification to this effect, and aditorials may not solicit contributions for a candidate or political party.³

³ Even if the Commission were to conclude that one of StandLouder.com's purposes is to influence elections, the Company still would not qualify as a political committee since this would not be its "major purpose."

Accordingly, as in VoteVoter.com, StandLouder.com is not a political committee. The Company and the website operate as a commercial vendor and its activities are not for the purpose of influencing federal elections.

2. Will StandLouder.com, the content creators and the users who donate funds collectively be regarded as a political committee or a series of political committees?

Under current Commission rules, StandLouder.com, the content creators, and the users who donate funds collectively will not become a political committee or series of political committees.

In VoterVoter.com, the Commission concluded that because there was no communication or prearrangement between the ad creator and the ad purchaser, and the company did not provide any information about the creator to the purchaser (other than the creator's identity), the creator, purchaser and the company would not be a "group" within the statutory definition of political committee. However, the Commission noted that the advisory opinion did "not address whether any agreements or collaboration between a creator and a purchaser" would result in the formation of a "group of persons." (Emphasis added)

StandLouder.com will not provide any information about an aditorial creator, other than a name if the content creator chooses to disclose it. StandLouder.com will, however, encourage all individual website users to engage in online discussions about the posted aditorials through the message forum. Under Commission regulations, these on-line communications by uncompensated website users do not result in the creation of one or more "political committees."

The Commission's rules on uncompensated Internet activity state clearly that when an "individual or *group of individuals*. . . engages in Internet activities for the purpose of influencing a Federal election," neither their uncompensated personal services nor their use of equipment or services is a contribution or an expenditure. 11 CFR 100.94, 100.155(a) (emphasis added). "Internet activities" include any communication over the Internet. *Id.*

The Explanation and Justification for the Internet rule, 71 Fed. Reg. 18589 (April 12, 2006), explains that individuals can take advantage of the uncompensated Internet activities exception "whenever they engage in Internet activities for the purpose of influencing a Federal election alone or collectively as a group of individuals." *Id.* at 18604. The Commission concluded that:

[A] group of individuals will *not trigger political committee status* through Internet activities covered by the new exceptions because those Internet activities would not constitute contributions or expenditures under the Act. [*Id.*] [*emphasis added*]

StandLouder.com will accept aditorials on any topic, and the Company anticipates that only a limited number of communications will contain express advocacy or its equivalent or qualify as electioneering communications.

The Commission explained its rationale for this approach as follows:

[T]he [Internet] rule is carefully tailored to avoid infringing on the free and low-cost uses of the Internet that enable individuals and groups to engage in political discussion and advocacy on equal footing with corporations and labor organizations (through their SSFs) and other political committees, without the need to raise large amounts of funds.” [Id. at 18594]

Since all individuals using the website message forum must represent that they are not compensated for their activities on StandLouder.com, their discussions through the on-line message forum will not cause the content creators, the donors and the Company to become a political committee or a series of political committees, regardless of the content of those on-line discussions.

It should also be emphasized that this conclusion is consistent with the reporting requirements for non-registered entities when they sponsor independent expenditures and electioneering communications with funds provided by others. As discussed in greater detail below, the sponsor identifies the donors in the relevant disclosure reports if the donors contribute funds (above certain dollar thresholds) to further the airing of a communication. Each such communication is not viewed as a separate political committee consisting of the sponsoring organization and those members who elect to contribute for the purpose of furthering the communication. We submit there is no need to adopt a different approach regarding the operations of StandLouder.com

3. *What disclosure and disclaimer obligations apply to StandLouder.com's editorials?*

The Supreme Court's *Citizens United* ruling opened up new opportunities for individuals and incorporated organizations to sponsor (and help fund) independent communications that advocate for and against candidates for federal and state office. While new disclosure regulations have not yet been issued, we believe that existing regulations provide a logical framework for fully disclosing the funding sources for those StandLouder.com editorials that qualify as independent expenditures or electioneering communications.

To provide transparency with respect to the funds contributed to support editorials, StandLouder.com will file, consistent with reporting requirements and thresholds, independent expenditure reports (FEC Form 5) and electioneering communication reports (FEC Form 9). The reports will identify website users who provide editorial funding, as required by Commission regulations. See 11 CFR 109.10 and 104.20.

The Company will require ad creators to disclose their ad production costs. If a content creator does not qualify for the personal Internet activity exception, the cost to create and post the editorial will be included in the cost of the independent expenditure or electioneering communication and the creator will be identified when required. Similarly, if the Company's activities result in a contribution for an independent expenditure or a donation for an electioneering communication (e.g., waiving an editorial posting fee or providing supplemental

funding), a corresponding amount will be included in the reported costs. See Advisory Opinion 2008-10, footnote 11.

With regard to disclaimers, the Act and Commission regulations require express advocacy communications and electioneering communications to identify the person who "paid for the communication." 2 U.S.C. §441d(a)(3); 11 CFR 110.11(b)(3). Neither the Act nor Commission regulations explain what it means to pay for a communication. As discussed above, however, StandLouder.com will pay the broadcasters or other media outlets to air or display each aditorial, just as any trade association, advocacy group, or coalition pays for ads with funds contributed by others.⁴ Accordingly, the Company will use the disclaimer below in radio and television ads and it will be spoken in voiceover. The disclaimer, absent the first sentence, will be used in print aditorials.

*StandLouder.com is responsible for the content of this advertising. Paid for by StandLouder.com. Not authorized by any candidate or candidate's committee.
(www.StandLouder.com.)*

Through these steps, StandLouder.com will provide the same level of disclosure currently required of any other organization that is not a political committee, but which collects funds to air independent expenditures or electioneering communications. While the FEC's current disclaimer rules do not contemplate the political communication funding model developed by the Company, we believe these steps offer a "practical and faithful" application of the Act's disclaimer and disclosure requirements. See Advisory Opinion 2004-10 (Metro Networks, Inc.).

4. As an alternative, can StandLouder.com form an independent expenditure-only committee for the purpose of accepting aditorial content, receiving contributions, and funding aditorials that meet the definition of "independent expenditure" or "electioneering communication?"

As an alternative, can StandLouder.com form an independent expenditure-only committee that would accept content from aditorial creators, receive contributions from aditorial donors, and fund the airing and distribution of those aditorials that meet the definition of independent expenditures and electioneering communications. Other than conducting these activities through the political committee, all of the material facts discussed above regarding the operations of the Company and StandLouder.com would be the same.

The political committee, which the Company would name StandLouder.com PAC, would register with the Commission and file all reports required by FEC regulations, including independent expenditure reports. The aditorials would include all disclaimers and notices required by the Act and Commission regulations. The Company would pay for the committee's

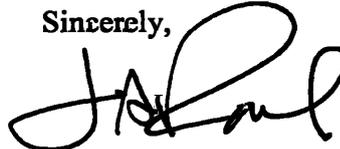
⁴ There is scant advisory opinion guidance on this point. The Commission previously stated that a political committee, rather than its agents or vendors, should be identified in the disclaimer. Advisory Opinion 1994-13 (Voter Education Project) (see footnote 3). This opinion would appear to have limited applicability to this request since StandLouder.com has significantly more control over the aditorials than the vendor in that opinion, and in some instances StandLouder.com may provide in-kind contributions in support of the aditorials.

establishment, administration, and solicitation expenses, and the committee would report all such payments as contributions from the Company. *See Advisory Opinion 2010-09 (Club for Growth, Inc.)*.

The committee would not make any coordinated communications or coordinate any expenditure with any candidate, authorized committee, political party committee, or agent of such persons. In addition, the Committee would not accept contributions from, make contributions to, or accept aditorials from any such person or committee.

We appreciate the Commission's consideration of these questions. We would be pleased to provide any additional information you require regarding this advisory opinion request.

Sincerely,



James A. Kahl
Counsel to Louder Solutions, LLC