

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFTS A and B of ADVISORY OPINION 2011-28 are now available for comment. They were requested by Dan Backer, Esq., on behalf of Western Representation PAC, and are scheduled to be considered by the Commission at its public meeting on January 19, 2012.

If you wish to comment on DRAFTS A and B of ADVISORY OPINION 2011-28, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on January 18, 2012.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fec.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.**
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.**
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.**

FOR FURTHER INFORMATION

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth
(202) 694-1040

Comment Submission Procedure: Kevin Deeley
Acting Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Drafts A and B of Advisory Opinion 2011-28, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of the Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
ATTN: Kevin Deeley, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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FEDERAL ELECTION
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FEDERAL ELECTION COMMISSION
Washington, DC 20463

2012 JAN 13 P 4: 54

AGENDA ITEM

For Meeting of 1/19/12

January 13, 2012

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Anthony Herman *AH*
General Counsel

Kevin Deeley *KD*
Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Tony Buckley *TB*
Attorney

Subject: Drafts A and B of AO 2011-28 (Western Representation PAC)

Attached are two alternative drafts of the subject advisory opinion. We have been asked to have these drafts placed on the Open Session agenda for January 19, 2012.

Attachment

2
3 Dan Backer, Esq.
4 DB Capitol Strategies
5 209 Pennsylvania Avenue, SE
6 Suite 2109
7 Washington, D.C. 20003

8
9 Dear Mr. Backer:

10 We are responding to your advisory opinion request on behalf of Western
11 Representation PAC (the "Committee"), concerning the application of the Federal
12 Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to
13 the Committee's reporting obligations for independent expenditures to be made by
14 advertisements placed on Facebook during the 2012 Presidential primary elections. The
15 Commission concludes that the Committee may not exclude the actual cost of
16 independent expenditure advertisements placed on Facebook from the calculation of its
17 expenses included on its 24-hour and 48-hour reports. Further, the Commission
18 concludes that the Committee must also attribute these costs to the various States'
19 Presidential primaries when reporting the monthly cost of its independent expenditure
20 advertisements placed on Facebook on its regular monthly reports.

21 ***Background***

22 The facts presented in this advisory opinion are based on your letter received on
23 November 21, 2011, your emails received on December 6 and 13, 2011, and telephone
24 conversations with Commission attorneys on December 2, 6, and 13, 2011.

25 The Committee is a nonconnected committee. It plans to place advertisements on
26 the Facebook website in connection with the 2012 Republican Presidential primary

1 elections. These advertisements will expressly advocate the election or defeat of a clearly
2 identified Federal candidate, and will constitute independent expenditures. Most of these
3 advertisements, but not all of them, will not reference a specific Presidential primary
4 election.

5 The Committee will budget \$2,000 per day for these advertisements. Although
6 the Committee may not spend this amount every day, the Committee asks the
7 Commission to assume that the Committee will spend a maximum of \$2,000 per day.

8 The Committee seeks to exclude the costs of placing its advertisements on
9 Facebook from its 24-hour and 48-hour notifications of independent expenditures. The
10 Committee also seeks to avoid attributing the costs of placing these advertisements to
11 various States' Presidential preference primary elections on its monthly reports. The
12 Committee claims that meeting these obligations will require it to determine, for every
13 advertisement placed: 1) to which State primaries the ad applies; 2) whether that
14 advertisement falls within that particular primary election's 24- or 48-hour reporting
15 period; and 3) the cost of placing each individual advertisement.

16 ***Questions Presented***

17 1. *May the Committee exclude the cost of placing each independent*
18 *expenditure advertisement on Facebook from the calculation of costs included in its 24-*
19 *and 48- hour reports, provided such costs are included in the Committee's regular*
20 *monthly reports?*

21 2. *May the Committee report the actual monthly cost of its independent*
22 *expenditure advertisement on Facebook on its regular monthly reports without*
23 *attributing these costs to the various States' Presidential primary elections?*

1 ***Legal Analysis and Conclusions***

2 1. ***May the Committee exclude the cost of placing each independent***
3 ***expenditure advertisement on Facebook from the calculation of costs included in its 24-***
4 ***and 48- hour reports, provided such costs are included in the Committee's regular***
5 ***monthly reports?***

6 No, the Committee may not exclude the actual cost of independent expenditure
7 advertisement placed on Facebook from the calculation of its expenses included on its
8 24-hour and 48-hour reports.

9 An “independent expenditure” is an expenditure by a person expressly advocating
10 the election or defeat of a clearly identified candidate, that is not made in concert or
11 cooperation with or at the request or suggestion of, among others, the candidate.

12 2 U.S.C. 431(18)(A) and (B); 11 CFR 100.16(a).

13 A political committee that makes independent expenditures aggregating \$1,000 or
14 more after the 20th day, but more than 24 hours, before the date of a given election, must
15 file a report describing the expenditures within 24 hours. 2 U.S.C. 434(g)(1)(A); 11 CFR
16 104.4(c). The 24-hour filing period begins when the independent expenditure is publicly
17 distributed or otherwise publicly disseminated. 11 CFR 104.4(c). Reports must be filed
18 by 11:59 p.m. of the day following the date on which an advertisement is publicly
19 disseminated. *Id.* Additional reports must be filed within 24 hours each time the political
20 committee makes independent expenditures aggregating \$1,000 or more with respect to
21 the same election as that to which the initial report relates. 2 U.S.C. 434(g)(1)(B);
22 11 CFR 104.4(c).

1 A political committee that makes independent expenditures aggregating \$10,000
2 or more at any time up to and including the 20th day before the date of a given election
3 must file a report describing the expenditures within 48 hours. 2 U.S.C. 434(g)(2)(A);
4 11 CFR 104.4(b)(2). The 48-hour reporting period begins when the independent
5 expenditure is publicly distributed or otherwise publicly disseminated. 11 CFR
6 104.4(b)(2). Reports must be filed by 11:59 p.m. of the second day following the date on
7 which an advertisement is publicly disseminated. *Id.* Additional reports must be filed
8 within 48 hours each time the political committee makes additional independent
9 expenditures aggregating \$10,000 or more with respect to the same election as that to
10 which the initial report relates. 2 U.S.C. 434(g)(2)(B); 11 CFR 104.4(b)(2).

11 The Commission does not possess general authority to waive reporting
12 obligations. *See* Advisory Opinion 1994-35 (Alter). In fact, the Commission has specific
13 statutory authority to waive reporting requirements only in connection with special
14 elections. *See* 2 U.S.C. 434(a)(9). *See also* Advisory Opinion 1995-44 (Forbes for
15 President) (interpreting the reporting requirements of the Act but not waiving them.)

16 Independent expenditures are aggregated with respect to a given election
17 regardless of which candidate is identified in the communication. 11 CFR 104.4(a),
18 (b)(1)-(2), and (c); *see* Advisory Opinion 2003-40 (Navy Veterans) (concluding that two
19 separate advertisements for the same election, one favoring Candidate A (costing \$9,000)
20 and the other favoring Candidate B (costing \$4,000), had to be aggregated for purposes of
21 filing a 48-hour report because the advertisements were related to the same election); *see*
22 *also* Explanation and Justification, Bipartisan Campaign Reform Act of 2002 Reporting;
23 Coordinated and Independent Expenditures, 68 FR 404, 406 (January 3, 2003). For

1 purposes of aggregating independent expenditures, each State's Presidential primary
2 election is considered a separate election. *See* Advisory Opinion 2003-40 (Navy
3 Veterans).¹

4 The treasurer of a political committee "shall keep an account of . . . the name and
5 address of every person to whom any disbursement is made, the date, amount and
6 purpose of the disbursement, and the name of the candidate and the office sought by the
7 candidate, if any, for whom the disbursement was made. . . ." 2 U.S.C. 432(c)(5); *see*
8 *also* 11 CFR 102.9(b)(1)(i)-(iv). In performing recordkeeping duties, the treasurer must
9 use his or her best efforts to obtain, maintain and submit the required information.
10 2 U.S.C. 432(i); 11 CFR 102.9(d).

11 Under the circumstances described in your request, the calculation with respect to
12 advertisements that do not reference or target a specific election is straightforward. The
13 Committee would divide the cost of placing each advertisement by the number of
14 upcoming primary elections.² Thus, an advertisement for which the Committee paid
15 \$2,000 placed before the first primary election or caucus would relate to all subsequent
16 presidential primary elections. Therefore, the cost of this advertisement would be divided
17 by the total number of subsequent presidential primary elections.

¹ The Commission notes that Advisory Opinion 1995-44 (Forbes for President) is distinguishable from Western Representation PAC's situation. In Advisory Opinion 1995-44 (Forbes for President), the Commission concluded that a Presidential candidate's principal campaign committee need not file 48-hour notifications of contributions received. Advisory Opinion 1995-44 (Forbes for President) recognizes that the 48-hour notification requirement is intended to apply to contributions received just before an election that can be used for that election. When presidential primaries follow one another in rapid succession, it can be "difficult or arbitrary" to attribute contributions received to a particular primary election given that the candidate committee may not know which primary or primaries it will spend these contributions on. In contrast, by placing advertisements on Facebook that do not reference any particular primary elections, the Committee has determined that it will make independent expenditures to sway voters in all these States.

² As noted above, each State's Presidential primary election is considered a separate election for purposes of aggregating independent expenditures.

1 The Committee may, however, choose to target certain advertisements to specific
2 elections. One way to do so would be through language identifying a specific State's
3 election or the date of an election. Additionally, Facebook provides the ability to limit an
4 advertisement so that it appears only in certain geographic locations.³ In these instances,
5 the cost of the advertisement would be divided by the number of States to which the
6 advertisement relates. For example, an advertisement that encourages people vote for a
7 specific candidate on April 24, 2012 would be divided by five, because five States
8 (Connecticut, Delaware, New York, Pennsylvania, and Rhode Island) will be holding
9 primary elections on that day. Thus, assuming the advertisement cost \$2,000, the cost per
10 State primary election would be \$400.

11 Facebook charges its advertisers once per calendar day for each advertisement.⁴
12 Thus, for example, an advertisement running on February 5, 2012 will be billed at the end
13 of that day regardless the number of hours it was accessible on that day. In the case of a
14 24-hour report, the Committee will have at least one full day to determine that it has
15 reached the \$1,000 threshold and to file the report. Accordingly, the obligation to file 24-
16 hour and 48-hour reports for advertisements placed on Facebook is not onerous, and will
17 further the statutory goal of providing transparency at critical times before elections.

18 2. *May the Committee report the actual monthly cost of its independent*
19 *expenditure advertisements on Facebook on its regular monthly reports without*
20 *attributing these costs to the various States' Presidential primary elections?*

³ Facebook allows advertisers to limit the exposure of their advertisements to certain geographic regions by selecting criteria which must be established before the advertisement will appear, such as zip code. See <http://www.facebook.com/help/?page=203882222982239> (last accessed December 21, 2011).

⁴ See <http://www.facebook.com/help/?page=121272714621547> (last accessed December 20, 2011).

1 No, the Committee may not report the actual monthly cost of sending its
2 independent expenditure emails on its regular monthly reports without attributing these
3 costs to the various States' Presidential primaries.

4 Every political committee must file reports of its receipts and disbursements.
5 2 U.S.C. 434(a)(1); 11 CFR 104.1(a). Nonconnected committees shall file either
6 quarterly reports, or monthly reports which shall be filed no later than the 20th day after
7 the last day of the month. *See* 2 U.S.C. 434(a)(4)(B); 11 CFR 104.5(c)(3).
8 Nonconnected committees must disclose their independent expenditures on their monthly
9 or quarterly reports. 2 U.S.C. 434(b)(4)(H)(iii); 11 CFR 104.3(b)(3)(vii). These reports
10 must disclose all independent expenditures aggregating less than \$10,000 with respect to
11 a given election any time during the calendar year up to and including the 20th day before
12 an election. 11 CFR 104.4(b)(1). As noted above, for purposes of aggregating
13 independent expenditures, each State's Presidential primary election is considered a
14 separate election. *See* Advisory Opinion 2003-40 (Navy Veterans). The Committee will
15 file monthly reports in 2012.

16 The examples and calculations set forth above demonstrate how the Committee
17 must determine its costs for placing independent expenditure advertisements on Facebook
18 with respect to the various States' primary elections. Once the Committee has done so, it
19 must aggregate costs for each State's Presidential primary election during the reporting
20 period and list the States and amounts per State on Form 3X, Schedule E. Because the
21 Committee does not have to file its monthly report until the 20th day after the last day of
22 the month, it has sufficient time to aggregate its costs and report them to the Commission.

1 These statutory reporting obligations further the important goal of providing transparency
2 at critical times during the Presidential primary season.

3 This response constitutes an advisory opinion concerning the application of the
4 Act and Commission regulations to the specific transaction or activity set forth in your
5 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
6 of the facts or assumptions presented, and such facts or assumptions are material to a
7 conclusion presented in this advisory opinion, then the requestor may not rely on that
8 conclusion as support for its proposed activity. Any person involved in any specific
9 transaction or activity which is indistinguishable in all its material aspects from the
10 transaction or activity with respect to which this advisory opinion is rendered may rely on
11 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
12 conclusions in this advisory opinion may be affected by subsequent developments in the
13 law, including, but not limited to, statutes, regulations, advisory opinions, and case law.
14 The cited advisory opinions are available on the Commission's website, www.fec.gov, or
15 directly from the Commission's Advisory Opinion searchable database at
16 <http://www.fec.gov/searchao>.

17 On behalf of the Commission,

18
19
20 Caroline C. Hunter
21 Chair

2
3 Dan Backer, Esq.
4 DB Capitol Strategies
5 209 Pennsylvania Avenue, SE
6 Suite 2109
7 Washington, D.C. 20003

8
9 Dear Mr. Backer:

10 We are responding to your advisory opinion request on behalf of Western
11 Representation PAC (the “Committee”), concerning the application of the Federal
12 Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to
13 the Committee’s reporting obligations for independent expenditures to be made to place
14 advertisements on Facebook during the 2012 Presidential primary elections. The
15 Commission concludes that the Committee may not exclude the actual costs of
16 independent expenditure advertisements placed on Facebook from the calculation of its
17 expenses included on its 24-hour and 48-hour reports. Further, the Commission
18 concludes that the Committee must attribute these costs to the various States’ Presidential
19 primary elections when reporting the monthly cost of its independent expenditure
20 advertisements placed on Facebook on its regular monthly reports.

21 ***Background***

22 The facts presented in this advisory opinion are based on your letter received on
23 November 21, 2011, your emails received on December 6 and 13, 2011, and telephone
24 conversations with the Office of General Counsel on December 2, 6, and 13, 2011.

25 The Committee is a nonconnected committee. It plans to place advertisements on
26 Facebook in connection with the 2012 Republican Presidential primary elections. These

1 advertisements will expressly advocate the election or defeat of a clearly identified
2 Federal candidate and will constitute independent expenditures. Some of these
3 advertisements will reference a specific Presidential primary election, while others will
4 not.

5 The Committee will budget \$2,000 per day for these advertisements. Although
6 the Committee may not spend this amount every day, the Committee asks the
7 Commission to assume that the Committee will spend a maximum of \$2,000 per day.

8 The Committee seeks to exclude the costs of placing its advertisements on
9 Facebook from its 24-hour and 48-hour reports of independent expenditures. The
10 Committee also seeks to avoid attributing the costs of placing these advertisements to
11 various States' Presidential preference primary elections on its monthly reports. The
12 Committee claims that meeting these obligations "constitutes a significant legal
13 encumbrance upon [the Committee's] First Amendment rights," in that it will require it to
14 determine, for every advertisement placed: 1) the State primary elections to which the ad
15 applies; 2) whether that advertisement falls within that particular primary election's 24-
16 or 48-hour reporting period; and 3) the cost of placing each individual advertisement.

17 ***Questions Presented***

18 1. *May the Committee exclude the cost of placing each independent*
19 *expenditure advertisement on Facebook from the calculation of costs included in its 24-*
20 *and 48-hour reports, provided such cost is included in the Committee's regular monthly*
21 *reports?*

1 2. *May the Committee report the actual monthly costs of its independent*
2 *expenditure advertisement on Facebook on its regular monthly reports without*
3 *attributing these costs to the various States' Presidential primary elections?*

4 ***Legal Analysis and Conclusions***

5 1. *May the Committee exclude the cost of placing each independent*
6 *expenditure advertisement on Facebook from the calculation of costs included in its 24-*
7 *and 48-hour reports, provided such cost is included in the Committee's regular monthly*
8 *reports?*

9 No, the Committee may not exclude the actual costs of independent expenditure
10 advertisements placed on Facebook from the calculation of its expenses included on its
11 24-hour and 48-hour reports.

12 An “independent expenditure” is an expenditure by a person expressly advocating
13 the election or defeat of a clearly identified candidate, that is not made in concert or
14 cooperation with or at the request or suggestion of, among others, the candidate.
15 2 U.S.C. 431(17)(A) and (B); 11 CFR 100.16(a).

16 Under the Act and Commission regulations, a political committee that makes
17 independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24
18 hours, before the date of a given election, must file a report describing the expenditures
19 within 24 hours. 2 U.S.C. 434(g)(1)(A); 11 CFR 104.4(c). The 24-hour filing period
20 begins when the independent expenditure is publicly distributed or otherwise publicly
21 disseminated. 11 CFR 104.4(c). Reports must be filed by 11:59 p.m. of the day
22 following the date on which an advertisement is publicly disseminated. *Id.* Additional
23 reports must be filed within 24 hours each time the political committee makes

1 independent expenditures aggregating \$1,000 or more with respect to the same election
2 as that to which the initial report relates. 2 U.S.C. 434(g)(1)(B); 11 CFR 104.4(c).

3 A political committee that makes independent expenditures aggregating \$10,000
4 or more at any time up to and including the 20th day before the date of a given election
5 must file a report describing the expenditures within 48 hours. 2 U.S.C. 434(g)(2)(A);
6 11 CFR 104.4(b)(2). The 48-hour reporting period begins when the independent
7 expenditure is publicly distributed or otherwise publicly disseminated. 11 CFR
8 104.4(b)(2). Reports must be filed by 11:59 p.m. of the second day following the date on
9 which an advertisement is publicly disseminated. *Id.* Additional reports must be filed
10 within 48 hours each time the political committee makes additional independent
11 expenditures aggregating \$10,000 or more with respect to the same election as that to
12 which the initial report relates. 2 U.S.C. 434(g)(2)(B); 11 CFR 104.4(b)(2).

13 Independent expenditures are aggregated with respect to a given election
14 regardless of which candidate is identified in the communication. 11 CFR 104.4(a),
15 (b)(1)-(2), and (c); *see* Advisory Opinion 2003-40 (Navy Veterans) (concluding that two
16 separate advertisements for the same election, one favoring Candidate A (costing \$9,000)
17 and the other favoring Candidate B (costing \$4,000), had to be aggregated for purposes of
18 filing a 48-hour report because the advertisements were related to the same election); *see*
19 *also* Explanation and Justification, Bipartisan Campaign Reform Act of 2002 Reporting;
20 Coordinated and Independent Expenditures, 68 FR 404, 406 (January 3, 2003). For
21 purposes of aggregating independent expenditures, each State's Presidential primary
22 election is considered a separate election. *See* Advisory Opinion 2003-40 (Navy
23 Veterans).

1 The treasurer of a political committee “shall keep an account of . . . the name and
2 address of every person to whom any disbursement is made, the date, amount and
3 purpose of the disbursement, and the name of the candidate and the office sought by the
4 candidate, if any, for whom the disbursement was made. . . .” 2 U.S.C. 432(c)(5); *see*
5 *also* 11 CFR 102.9(b)(1)(i)-(iv). In performing recordkeeping duties, the treasurer must
6 use his or her best efforts to obtain, maintain and submit the required information.
7 2 U.S.C. 432(i); 11 CFR 102.9(d).

8 Under the circumstances described in your request, the calculation for
9 advertisements that do not reference or target a specific election is the following: The
10 Committee would divide the cost of placing each advertisement by the number of
11 upcoming primary elections.¹ For example, an advertisement for which the Committee
12 paid \$2,000 that was placed before the first primary election of the cycle would relate to
13 all subsequent presidential primary elections.² And the cost of this advertisement would
14 be \$2,000, divided by the total number of primary elections for that cycle. After a
15 presidential primary election has occurred, no further advertising costs are attributable to
16 that election for that cycle.

17 In the case of advertisements targeted to specific elections, the cost of the
18 advertisement would be divided by the number of states to which the advertisement
19 relates. For example, an advertisement that encourages people vote for a specific

¹ As noted above, each State’s Presidential primary election is considered a separate election for purposes of aggregating independent expenditures.

² Commission regulations explain that a primary election is one of the specific types of elections which is included within the definition of “election.” 11 CFR 100.6(b). A list of the 2012 Presidential primary elections may be found at <http://www.fec.gov/pubrec/fe2012/2012dates.pdf>. A caucus or convention of a political party is an election only if it “has authority to select a nominee.” 11 CFR 100.6(d). *See also* AO 1979-71 (PASPAC).

1 candidate on April 24, 2012 would be divided by five, because five States (Connecticut,
2 Delaware, New York, Pennsylvania, and Rhode Island) will be holding primary elections
3 on that day. Thus, assuming the advertisement cost \$2,000, the cost per State primary
4 election would be \$400.³

5 Facebook charges its advertisers once per calendar day for each advertisement.⁴
6 Thus, for example, an advertisement running on February 5, 2012 will be billed at the end
7 of that day regardless the number of hours it was accessible on that day. In the case of a
8 24-hour report, the Committee will have at least one full day to determine that it has
9 reached the \$1,000 threshold and to file the report.

10 Accordingly, the Commission concludes that the Committee is required to file
11 such reports as set forth in the Act and the Commission's regulations.

12 2. *May the Committee report the actual monthly costs of its independent*
13 *expenditure advertisements on Facebook on its regular monthly reports without*
14 *attributing these costs to the various States' Presidential primary elections?*

15 No, the Committee may not report the actual monthly costs of its independent
16 expenditure advertisements on Facebook on its regular monthly reports without
17 attributing these costs to the various States' Presidential primary elections.

³ In Advisory Opinion 1995-44 (Forbes for President), the Commission concluded that the statute did not require a Presidential candidate's principal campaign committee to file 48-hour notifications of contributions received. Advisory Opinion 1995-44 (Forbes for President) recognizes that the 48-hour notification requirement is intended to apply to contributions received just before an election that can be used for that election. When presidential primary elections follow one another in rapid succession, it can be difficult to attribute numerous contributions received to a particular primary election particularly when those contributions may be used to pay expenses not tied to any particular State or that benefit the campaign nationally and the Commission declined to interpret the statutory reporting obligation in a way that would lead to an arbitrary result. In contrast, here, for those advertisements that the Committee places on Facebook that are geographically limited, the Committee will know in advance the elections to which the advertisements relate; and, for those advertisements that are not geographically limited, it is neither difficult nor especially burdensome to attribute an equal amount to each subsequent election.

⁴ See <http://www.facebook.com/help/?page=121272714621547> (last accessed December 20, 2011).

1 **Every political committee must file reports of its receipts and disbursements.**
2 **2 U.S.C. 434(a)(1); 11 CFR 104.1(a). Nonconnected committees shall file either**
3 **quarterly reports, or monthly reports which shall be filed no later than the 20th day after**
4 **the last day of the month. *See* 2 U.S.C. 434(a)(4)(B); 11 CFR 104.5(c)(3).**
5 **Nonconnected committees must disclose their independent expenditures on their monthly**
6 **or quarterly reports. 2 U.S.C. 434(b)(4)(H)(iii); 11 CFR 104.3(b)(3)(vii). These reports**
7 **must disclose all independent expenditures aggregating less than \$10,000 with respect to**
8 **a given election any time during the calendar year up to and including the 20th day before**
9 **an election. 11 CFR 104.4(b)(1).**

10 **As noted above, for purposes of aggregating independent expenditures, each**
11 **State's Presidential primary election is considered a separate election. *See* Advisory**
12 **Opinion 2003-40 (Navy Veterans). The Committee will file monthly reports in 2012.**

13 **The examples and calculations set forth above demonstrate how the Committee**
14 **must determine its costs for placing independent expenditure advertisements on Facebook**
15 **with respect to the various States' primary elections. Once the Committee has done so, it**
16 **must aggregate costs for each State's Presidential primary election during the reporting**
17 **period and list the States and amounts per State on Form 3X, Schedule E. Because the**
18 **Committee does not have to file its monthly report until the 20th day after the last day of**
19 **the month, it has sufficient time to aggregate its costs and report them to the Commission.**

20 **This response constitutes an advisory opinion concerning the application of the**
21 **Act and Commission regulations to the specific transaction or activity set forth in your**
22 **request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any**
23 **of the facts or assumptions presented, and such facts or assumptions are material to a**

1 conclusion presented in this advisory opinion, then the requestor may not rely on that
2 conclusion as support for its proposed activity. Any person involved in any specific
3 transaction or activity which is indistinguishable in all its material aspects from the
4 transaction or activity with respect to which this advisory opinion is rendered may rely on
5 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
6 conclusions in this advisory opinion may be affected by subsequent developments in the
7 law, including, but not limited to, statutes, regulations, advisory opinions, and case law.
8 The cited advisory opinions are available on the Commission's website, www.fec.gov, or
9 directly from the Commission's Advisory Opinion searchable database at
10 <http://www.fec.gov/searchao>.

11 On behalf of the Commission,

12
13
14 Caroline C. Hunter
15 Chair

16