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September 9, 2010

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

AOR 2010-25

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FEDERAL ELECTION
COMMISSION
2010 SEP -9 AM 11: 41
OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request – 20-Day Request

Dear Commissioners:

On behalf of RG Entertainment, Ltd. and Star Parker, a candidate for federal office on November 2, 2010, we respectfully request an advisory opinion from the Federal Election Commission (“the Commission”), pursuant to 2 U.S.C. § 437f, regarding the public dissemination of a new documentary film entitled I WANT YOUR MONEY. Specifically, RG Entertainment and Ms. Parker seek confirmation from the Commission that its production, marketing, and distribution of this political documentary are exempt from regulation by the Commission under one of three legal theories:

- (1) The production, marketing and distribution of I WANT YOUR MONEY is exempt from regulation pursuant to the “media exemption” set forth in 2 U.S.C. §§ 431(9)(B)(i), 434(f)(3)(B)(i), consistent with Advisory Opinions 2010-8 and 2003-34;
- (2) The production, marketing and distribution of I WANT YOUR MONEY is exempt from regulation pursuant to the “commercial vendor exemption” on the same basis as *Fahrenheit 9/11* in Matters Under Review 5474 & 5539; and
- (3) I WANT YOUR MONEY does not constitute regulated content, either as express advocacy in support or opposition to any clearly identified federal candidate or an electioneering communication.

The third legal proposition may present the most difficult question in light of the vague standard set forth in 11 C.F.R. § 100.22(b). If the Commission concludes that all aspects of the documentary film’s production, marketing and distribution are exempt from regulation in any event, this question may be avoided. If, however, the Commission concludes that any aspect of the film’s production, marketing or distribution is not exempt, then the Requestors need to know whether the Commission finds the film to constitute “express advocacy” for or against any “clearly identified candidate” and the appropriate regulatory treatment for any expenditures to market or exhibit the documentary.

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THE REQUESTORS

RG Entertainment, Ltd. ("RG Entertainment") is a feature film production company located in Beverly Hills, California. RG Entertainment is in the business of producing, marketing and distributing the films it produces for a profit. Information about the company and its film production work is publicly available on the internet at www.rgentertainment.com.

The company's principal is Ray Griggs, a movie producer and director. Mr. Griggs is a member of the Directors Guild of America and the Screen Actors Guild. Under Mr. Griggs, RG Entertainment has produced (either directly or through wholly-owned production subsidiaries) *Lucifer* (2005), a short film depicting the struggle between good and evil, and the feature film *Super Capers* (2009), a family and adventure film again treating themes of heroes versus villains. *Super Capers* was distributed in theatres nationally by Roadside Attractions and now is in DVD distribution through Lions Gate Home Entertainment. RG Entertainment and Mr. Griggs are currently producing (and Mr. Griggs is directing) a feature film *Wind in the Willows* in New Zealand. These films have won several film awards and nominations, including: Saturn Award Nomination (*Super Capers*, 2010), Cairo International Children's Film Festival Award (*Super Capers*, 2009), Accolade Competition-Short Subject Award (*Lucifer*, 2007), Ft. Lauderdale International Film Festival-Short Subject Award (*Lucifer*, 2007), and the Beverly Hills Film Festival-Short Subject Award (*Lucifer*, 2007). Additional information about each film is available on the company's website. Each film has its own dedicated website, as well.¹ And each film is reviewed in the Internet Movie Database available online.²

Importantly, RG Entertainment is not owned or controlled by any political party, political committee, or candidate. RG Entertainment funded the production of I WANT YOUR MONEY and owns the film. No political party, political committee or candidate has funded RG Entertainment or any of its film productions, including I WANT YOUR MONEY.

Star Parker is an author of three books, a syndicated columnist for Scripps Howard News Service, a social commentator, and founder of the Center for Urban Renewal & Education, a non-profit think tank that explores and promotes market-based public policies to address poverty in America. Ms. Parker is a regular commentator on *CNN*, *CNBC*, *CBN*, *FOX News*, and the United Kingdom's *BBC*. It was in her capacity as a social commentator that Ms. Parker was interviewed about her views on economic policy in early 2010 by Ray Griggs. Portions of her interview appear in I WANT YOUR MONEY. Ms. Parker also is a candidate for U.S. Congress in the 37th Congressional District in Los Angeles County, California. The election is scheduled for November 2, 2010. I WANT YOUR MONEY makes no reference to Ms. Parker as a candidate or to her election.

¹ See, www.thewindinthewillowsthemovie.net; www.supercapers.com; www.luciferthemovie.com.

² See, www.imdb.com and search each title.

I WANT YOUR MONEY will be promotionally screened in September and formally released in theatres beginning October 15 nationally, including Los Angeles County. Ms. Parker may be invited to attend one or more screenings and she needs to know whether her attendance or her agreement to speak at a screening will trigger a contribution to her campaign. She also needs to know whether a promotional screening or theatrical release of the film will constitute a regulated expenditure of express advocacy on her behalf or, if she coordinates a screening, whether the screening will constitute a contribution to her campaign. Finally, if Ms. Parker—in her personal capacity or through her campaign—decides to pay a license and event fee to host a promotional screening of the film in a local theatre, will Ms. Parker be required to report an independent expenditure in support of or opposition to a clearly identified candidate? Ms. Parker seeks the Commission's opinion regarding any regulatory implications of her appearance in I WANT YOUR MONEY, expenditures on production and marketing of the film, and expenditures to screen the film in theatres.

I WANT YOUR MONEY

The trailer for I WANT YOUR MONEY may be viewed at www.iwantyourmoney.net and a copy of the film will be provided to the Commission subject to protections restricting public exhibitions or copies of the copyrighted film, which we have agreed to with the General Counsel's office.

I WANT YOUR MONEY is a documentary film about government taxes, spending, and deficits, historically and currently. Director and Producer Ray Griggs narrates the film. The film posits a debate between President Ronald Reagan and President Barack Obama over free market economics, tax cuts, redistributive tax and spending theory, and deficit spending. The documentary contrasts footage of speeches by President Reagan and President Obama and depicts both of them in animation discussing economic policies. The film editorializes in favor of free market economics.

The documentary also features actual film clips, interviews and animations of other historical and present-day economists and public figures in an effort to enliven the policy debate. Among those depicted in actual film clips are Milton Freidman, Phil Donahue, Lyndon B. Johnson, Franklin Roosevelt, George W. Bush, and Jimmy Carter. The documentary features interviews about economic policy with Michael Reagan (*The Michael Reagan Show*), John Stossel (ABC News), Newt Gingrich, Ed Meese, Stephen Moore (*Wall Street Journal*), Steven Forbes (*Forbes Magazine*), Mike Huckabee (Fox News) and many others.³ The film also supplies wit and humor to an otherwise academic discussion of economic policy by including several animated historic and current public figures, including Ronald Reagan, Barack Obama, George W. Bush, George H.W. Bush, Richard Nixon, Jimmy Carter, Bill Clinton, Hillary Clinton, Sarah Palin, and Arnold Schwarzenegger.

³ The complete list of the individuals who are interviewed in the film is posted at www.imdb.com/title/tt1560957/.

As for current public figures who happen to be candidates for federal office in 2010, the film depicts in various formats—original film clips, interviews, or animation—the following individuals: Congressman Thaddeus McCotter (a current candidate for Congress in Michigan), Speaker of the House Nancy Pelosi (a current candidate for Congress in California), Senator Harry Reid (a current candidate for Senate in Nevada), and Congressman Tom McClintock (a current candidate for Congress in California). Although President Barack Obama is featured throughout the documentary, we do not understand President Obama to be a “candidate” for federal office at this time. The documentary also contains brief interview clips with Star Parker, a conservative activist who is a candidate for Congress in California.

The approximately 90-minute documentary contains discussions of the economic policies advanced by the two major political parties, electoral politics, and, for less than two minutes, the economic policy implications of electing one party or the other to control the United States Congress. The documentary does not, however, expressly advocate the election or defeat of any specifically named candidate. For example, the documentary does not contain any statement that says “Vote for Smith” or “Vote against Jones.”

PRODUCTION, MARKETING & DISTRIBUTION

RG Entertainment produced the film at its own expense and wholly owns the film. RG Entertainment now desires to release the film for public exhibition. Individual investors will invest in the film’s printing and advertising budget. None of the investors is a candidate, political committee or political party committee.

RG Entertainment has employed, for normal and usual compensation, a consortium of three professional marketing, publicity and film promotion companies to market and promote the film until September 30, 2010. The objective of this consortium is to generate widespread public interest in the film and drive people to theatres to watch the film when it is released theatrically in October 2010. The consortium consists of Motive Entertainment, engage 4 LLC, and InService America, Inc., collectively referred to as “MEISA.” Motive Entertainment (“Motive”)⁴ is a movie marketing company located in Westlake Village, California. Motive has marketed films such as *The Passion of the Christ*, *Rocky Balboa*, *The Polar Express*, and *United 93*. One of Motive’s key strengths is in grassroots marketing of niche films for pre-release screenings in targeted audiences. The marketing firm is engage4 LLC (“engage4”),⁵ a communications and marketing firm headquartered in Forest, Virginia, that specializes in direct marketing through social media, direct calls, viral internet strategies and email contacts, and both grassroots and grassstops strategies (i.e., networking through social channels and word of mouth). engage4 does not limit its marketing solely to films, but it directly markets a number of well known films through social networks too. engage4 is currently marketing films to individuals

⁴ Motive maintains a corporate website at www.motivemarketing.biz.

⁵ Engage4 maintains a corporate website at www.engage4.com.

and groups, including *The Blind Side* (a feature film), *Letters to God* (a feature film), *What's In The Bible* (a new children's animated feature), *A Necessary Journey* (an award-winning PBS documentary), *The Perfect Game* (a feature film), and *In God We Trust* (a faith-based documentary film in pre-production). InService America, Inc. ("ISA")⁶ is affiliated with engage4 and provides selected order fulfillment services, event management and logistical support for events, and ticket sales for events. ISA was involved in the grassroots/grasstops marketing of *The Passion of the Christ* with Motive. RG Entertainment has employed MEISA to market, publicize, and promote I WANT YOUR MONEY, and to conduct theatrical tests and arrange pre-screenings of the documentary.

RG Entertainment has employed Freestyle Releasing, Inc. ("Freestyle")⁷ to distribute I WANT YOUR MONEY in theatres nationally beginning October 15, 2010. Freestyle is a full-service, theatrical motion picture distribution company located in Los Angeles, California, that specializes in representing independent companies, major studios, and mini-major studios on a "service-deal" basis for the purpose of exhibiting their films in a first class theatrical release. Freestyle arranges national theatrical releases of films. Freestyle's objective is to place I WANT YOUR MONEY in a minimum of 500 theatres beginning October 15, increasing to as many as 1,200 theatres by the end of October. Freestyle may employ subcontractors and enter into contracts with movie theatres in the course of fulfilling its business commitments to RG Entertainment.

Each of these contractors is a for-profit company in the business of marketing, event-management, film promotion and distribution. Each is involved in marketing or distributing I WANT YOUR MONEY to earn fees and commissions. The financial arrangements are arms-distance business arrangements. None of the financial arrangements between RG Entertainment and the contractors provides for any portion of the fees or commissions to be paid over to a candidate or political committee. To our knowledge, none of these companies is owned or controlled by any political party, political committee or candidate.

I WANT YOUR MONEY will be released for public exhibition in three distinct phases, as is customary in the film industry. The first phase is a pre-theatrical release period from September 1, 2010 to September 30, 2010. This phase is underway. The second phase will be a national theatrical release from October 15, 2010 until theatrical viewings naturally run their course. The timing and details of the third phase are not fully determined, but it will likely include DVD sales and rentals, television broadcast and exhibition on the internet and mobile/wireless devices typical of commercial motion pictures.

⁶ InService America, Inc. maintains a corporate website at www.inserviceamerica.com.

⁷ Freestyle maintains a corporate website at www.freestylereleasing.com.

Phase 1: Pre-Theatrical Release (September 1, 2010 to September 30, 2010)

From September 1, 2010 to September 30, 2010, I WANT YOUR MONEY is being actively marketed through several traditional channels, including word of mouth campaigns, a dedicated website, internet strategies (including "teasers" posted on YouTube.com), email communications, press releases, and promotional screenings. Marketing a film before it is released theatrically is a well-established practice in the film industry and is absolutely necessary to the success of a film, especially a niche or documentary film.

As part of I WANT YOUR MONEY's promotional marketing strategy, the MEISA marketing companies are offering individuals and organizations the ability to host a promotional screening, called a "Private Leader Screening," of the film in theatres located in their local communities from September 1, 2010 to September 30, 2010. The marketing goal is to arrange hundreds of promotional screenings of the film in order to generate a public "buzz" about the film and obtain audience feedback that may further inform marketing and promotional decisions by R.G. Entertainment prior to formal theatrical release on October 15, 2010. Each individual or organization that is willing to host a promotional screening of the film must pay engage4 a fee of approximately \$500 to \$1,000 to cover the costs of theatre rental,⁸ logistical support, promotional materials, commissions or fees for any subcontractors, and profits. The fee may vary depending upon variances in rental charges at theatres (which range in price based upon the location, theatre company, night of the week, etc.). MEISA will assist each promotional screener in the reservation of a local theatre, will forward promotional materials related to the film,⁹ and will enter into a license agreement with the promotional screener, or Licensee, granting the screener a one-time exhibition right. A watermarked DVD will be provided to each promotional screener to protect against piracy. After the film is screened once (or more times if an appropriate license fee for more screenings is paid), the Licensee must return the DVD to engage4.

Consistent with the marketing objective to generate as much public interest in the film as possible by September 30, MEISA will license the film to virtually any individual, business or organization that applies to screen the film.¹⁰ Political organizations are permitted to pay the same license fee that is charged to any other individual or organization and to host a promotional screening. This may include 501(c)(4) organizations, political clubs, local, state and federal political party committees, and candidate committees. MEISA does not intend to discriminate

⁸ In some cases, an individual screener may make rental arrangements directly with a theatre and pay only a license fee (not including the cost of a theatre rental).

⁹ Promotional materials will include movie posters, a bobble head figurine of President Obama, and a copy of the Declaration of Independence and the U.S. Constitution.

¹⁰ MEISA reserves the right to decline an application if it has reason to believe the film will be used inappropriately or in a manner that might harm the film's reputation. Additionally, MEISA has informed 501(c)(3) organizations about the political content of the film and may not license the film to such organizations in order to protect them from an inadvertent violation of their 501(c)(3) status.

among potential screeners in terms of eligibility to host a screening for the fair market license fee.

Each promotional screener will determine its invitation list to the promotional screening. Each promotional screener will retain complete discretion to sell tickets to its screening or to permit free attendance. Neither RG Entertainment nor MEISA will share in ticket revenues generated by these promotional screenings.

All license and event fees generated from the promotional screening license fees will be divided between MEISA and RG Entertainment. The MEISA companies will pay for their promotional expenses, such as theatre rentals, subcontractor costs, and printing and promotional material costs, and keep the excess as their profits, in addition to a service fee paid by RG Entertainment for their services. No revenues from license or event fees will be shared with my candidate, political committee or political party committee.

Phase 2: National Theatrical Release (Commencing October 15, 2010)

Commencing October 15, 2010, Freestyle will take the lead in distributing I WANT YOUR MONEY through a national theatrical release. RG Entertainment and Freestyle anticipate that the documentary will be exhibited in at least 500 theatres nationwide. At this stage, the film may be advertised on television, radio, and print media to generate public interest and ticket sales. The film trailer, or a shortened variation of it, may be broadcast to advertise the film. The financial arrangement for placing I WANT YOUR MONEY in theatres will be similar to all other movie releases. Each movie theatre will share a percentage of each ticket sale with RG Entertainment and Freestyle. MEISA may assist Freestyle with group ticket sales as part of the continuing marketing efforts to promote the film during its formal theatrical release.

Phase 3: Post-Theatrical Release (To Be Determined)

We cannot predict at this time precisely when the film will run its course in theatres. Typically a film is shown in theatres from two to twelve weeks, depending upon its appeal and attendance.¹¹ We also cannot state with certainty how I WANT YOUR MONEY will be sold after its theatrical release, but we anticipate the documentary will continue to be marketed through a wide range of windows of exhibition, including DVD sales and rentals, pay-per-view, premium channels, television and cable exhibition. It is also possible that RG Entertainment will license the documentary for additional private screenings by individuals and organizations, similar to the promotional screenings being offered this September. We ask that the Commission consider all of these exhibition methods in its advisory opinion.

¹¹ For a helpful summary of the life cycle of a film's theatrical and post-theatrical release, see www.pbs.org/wgbh/pages/frontline/shows/hollywood/business/windows.html.

APPLICABLE LEGAL PRINCIPLES

I WANT YOUR MONEY's exemption from regulation by the Commission is well-precedented. In the past, the Commission has exempted professionally produced and distributed films from regulation under two statutory exemptions: (1) the "media exemption" and (2) the commercial vendor exemption. The Commission has historically applied the exemption to all aspects of a *bona fide* filmmaker's production, marketing and distribution activities.

The Commission's Analytical Approach

The Commission approaches claims to the media exemption through an analysis of three basic questions: (1) is the speaker a press entity, (2) is the speaker acting as a press entity in conducting the activity at issue, and (3) is the speaker owned by a political party, political committee, or candidate? See, *Readers Digest Ass'n v. FEC*, 509 F.Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC v. Phillips Publ'g, Inc.*, 517 F.Supp. 1308, 1312-13 (D.D.C. 1981). The Commission considers two factors in determining whether a press entity is engaging in its legitimate press function: (1) whether the press entity's materials are available to the general public and (2) whether the materials are comparable in form to those ordinarily issued by the entity. Advisory Opinion 2010-08 (Citizens United).

The Commission's Controlling Precedents

In the Summer and Fall of 2004, Michael Moore and his production company, Dog Eat Dog Films, Inc., with funding from private investors Harvey and Bob Weinstein, released *Fahrenheit 9/11*, a documentary highly critical of President and candidate George W. Bush and his international policies. Like I WANT YOUR MONEY, the film covered a wide range of subjects and bi-partisan criticism. Moore's *Fahrenheit 9/11* also contained electoral statements. For example, it included a scene filmed in a Veterans' hospital where a wounded soldier said that he had been a Republican but planned to do everything he could to make sure that Democrats "win control." In another scene, the mother of a soldier killed in Iraq read her son's last letter to his family. After referring to President Bush by name, she read on camera: "I really hope they don't re-elect that fool, honestly."

Two complaints were filed with the Commission alleging violations of the then-prohibition against corporate expenditures by Dog Eat Dog Films, Inc. and its various partners, investors, and marketing and distribution contractors.¹²

In MURs 5474/5539, the General Counsel concluded that (1) the film did not constitute "express advocacy" covered under the Federal Election Campaign Act and (2) in any event, Michael

¹² The parties affiliated with Dog Eat Dog Films, Inc. included Fellowship Adventure Group LLC (a special purpose LLC created by Harvey and Bob Weinstein for the sole purpose of investing in *Fahrenheit 9/11*), Harvey and Bob Weinstein, IFC Entertainment LLC, and Lions Gate Films, Inc.

Moore and Dog Eat Dog Films, Inc.—from production to marketing and distribution—were exempt from regulation under the Act pursuant to the commercial vendor exemption because they produced and distributed the film with the objective of making a profit. Regarding the commercial vendor exemption, the General Counsel concluded (at 15-16) that the “respondents are in the business of making, promoting, and/or distributing films, and no information has been presented to suggest that they failed to follow usual and normal business practices and industry standards in connection with *Fahrenheit 9/11*,” and thus the General Counsel concluded that all aspects of *Fahrenheit 9/11*’s production, marketing and distribution efforts were exempt from regulation as *bona fide* commercial activity. The General Counsel also concluded (at 16) that it was immaterial that Michael Moore personally desired to energize voters to vote against President Bush: “Indeed, even if energizing voters was a welcome consequence from Moore’s perspective, as some press accounts suggest [], this Office has no information that those who made disbursements related to the production and distribution of the film were motivated by anything other than making a profit.” The Commission summarily dismissed the complaints filed against Michael Moore and Dog Eat Dog Films, Inc., as well as the investors and marketing and distribution agents.

One curiosity of the First General Counsel’s Report in MURs 5474/5539 was footnote 11 (at 13), which asserted that theatrical release of a film does not qualify for the media exemption because films are not “distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication,” the specific language of 2 U.S.C. § 431(9)(B)(i). However, that legal issue was resolved definitively in favor of theatrical films in Advisory Opinion 2010-08 (Citizens United).

In Advisory Opinion 2010-08, the Commission concluded that Citizens United, a tax-exempt advocacy organization that devotes 25% of its budget to fund film productions, marketing and distribution is entitled to the media exemption. There, Citizens United detailed its marketing and distribution costs to include “venue fees for film screenings and promotional activities,” “DVD replication, postage, shipping, and handling fees,” and “in-bound telemarketing.”¹³ Citizens United also explained its widely varying windows of exhibition and distribution to include private screenings:

Citizens United uses a variety of means to market and distribute its films. In conformity with motion picture industry standards, Citizens United routinely hosts one or more screenings in conjunction with the release of its films. For these screenings, select members of the public and news media are invited to view the film free of charge. The typical cost of a screening varies depending on the venue and audience size, ranging from \$5,000 to as much as \$75,000 for a venue such as The John F. Kennedy Center for the Performing Arts. Additionally, on one occasion, Citizens United attempted to stimulate sales of a film by providing a free

¹³ Advisory Opinion Request – Response to Request for Supplemental Information 2010-08 at p. 4 (Apr. 26, 2010).

DVD insert in newspapers in select markets. Further, Citizens United generally allows students and faculty at high schools, colleges, and universities to show its films in educational settings free of charge, provided no admission fee is charged. Also, as do many filmmakers, Citizens United frequently promotes its films by entering them in various film festivals across the country.... Except for the limited promotional and marketing activities discussed above, Citizens United charges a usual and normal rate for all sponsored showings of its films (as opposed to theatrical releases ...). Those rates vary depending on the size of the anticipated audience and the volume of DVDs ordered. For a newly released film, Citizens United charges a standard licensing fee. For a single show, this fee ranges from \$350 for an audience of 100 or less, to \$1,500 for an audience of 1,000 or more. The licensing fee is subject to a discount if the sponsoring group makes a bulk purchase of DVDs in connection with its event.¹⁴

Citizens United's financial arrangements with theatres also varies: "In some markets and theatres, Citizens United licensed its films for a percentage of box office ticket sales, generally 35%. In other markets and theatres, Citizens United paid a fee to the theatre for making its films available on certain dates and received 100% of the box office ticket sales."¹⁵

The Commission concluded that Citizens United is a *bona fide* press entity and that "distribution of documentary films to the public is the legitimate press function of an entity, such as Citizens United, that regularly produces 'news stories, commentary, or editorials' in the form of films."¹⁶ The Commission thus deemed Citizens United's expenditures to produce, advertise, market and distribute its films through a diverse range of marketing and distribution methods exempt from regulation under the Act, even if the films feature federal candidates or expressly advocate the election or defeat of such candidates.

One remaining precedent with relevance to this matter is Advisory Opinion 2003-34 (Showtime). There, the Commission concluded that *The American Candidate*, a reality television series that would discuss federal candidates was entitled to the media exemption. In very broad terms, the Commission stated: "[T]o the extent that actual Federal candidates or officeholders are depicted or discussed in the series or the website, no contribution or expenditure will result from payments for the production (including payments received for 'product placements'), promotion, distribution, or licensing of rights, even if statements that expressly advocate the election or defeat of a clearly identified Federal candidate are included."¹⁷

¹⁴ Advisory Opinion Request – Response to Request for Supplemental Information 2010-08 at p. 5 (Apr. 26, 2010).

¹⁵ Advisory Opinion Request – Response to Request for Supplemental Information 2010-08 at p. 7 (Apr. 26, 2010).

¹⁶ Advisory Opinion 2010-08 at 6.

¹⁷ Advisory Opinion 2003-34 at 3.

RG Entertainment Is Exempted Under Commission Precedents

Under these precedents, RG Entertainment and I WANT YOUR MONEY quite clearly qualify for the media exemption and the commercial vendor exemption. RG Entertainment is a *bona fide* filmmaker with several award-winning films to its credit and it is back in the field producing its next commercial film. RG Entertainment's regular and *bona fide* business is producing and selling films for a profit. RG Entertainment is not controlled or owned by any candidate, political committee or political party. And RG Entertainment has no financial arrangements to turn over any proceeds to any candidate, political committee or political party.

As for pursuing its legitimate press functions, RG Entertainment has employed *bona fide* marketing and distribution companies to market and distribute I WANT YOUR MONEY in the most cost-effective manner it can. Of course, we do not understand application of the media exemption to be dependent upon the filmmaker's long history of marketing this film in precisely the same manner as every other film, in one straight-jacketed manner.¹⁸ Instead there are a wide variety of methods to market a film, and all of these represent legitimate press functions (as contrasted to marketing activities or communications that might be conducted for a purpose wholly unrelated to the marketing of one's film). Specific marketing strategies vary, and new, more effective strategies evolve every decade. For example, until recently, viral internet marketing of a film was unprecedented. But in the mid-1990s, film owners and film marketers learned of its power to generate audience interest and ticket sales, particularly for lower budget films. *The Blair Witch Project* was a come-from-nowhere film that, for the first time, effectively harnessed an inexpensive internet campaign to build excitement for the film.¹⁹ Today, virtually every new film is marketed through its own dedicated website. *The Passion of the Christ* also was marketed by Motive, under contract to film owner Mel Gibson, in a completely unconventional manner. It was marketed through grassroots and grassroots church networks and faith-based organizations prior to its theatrical release. The strategy was hugely successful as ticket sales increased exponentially in anticipation of its theatrical release.²⁰ Now,

¹⁸ Indeed, the Commission has applied the media exemption to a broad and diverse set of media activities, even including media organizations' donation of free, unfettered time and space to federal candidates and national political parties to advocate their candidacies and even to solicit donations. See, Advisory Opinion 1998-17 (Daniels Cablevision); Advisory Opinion 1982-44 (Turner Broadcasting & WTBS); Matter Under Review 486 (free space in a newspaper). Other Commission precedents demonstrate the diversity of media activities exempt from Commission from regulation. See e.g., Matter Under Review 3560 (Garry Trudeau's *Doonesbury*); Matter Under Review 3624 (*The Rush Limbaugh Show*); Matter Under Review 3931 (*60 Minutes*); Matter Under Review 3660 (*Flower & Garden Magazine*).

¹⁹ For helpful commentaries on the effective internet marketing of *The Blair Witch Project*, see www.filmreference.com/encyclopedia/Independent-Film-Road-Movies/Internet-THE-BLAIR-WITCH-PROJECT-PARADIGM-AND-ONLINE-FAN-DISCOURSE and see <http://e-strategy.com/internetmarketingarticle.asp?section=Reports&story=online-movie-marketing-blair-witch-project>.

²⁰ Many accolades for Motive's effective grassroots/grassroots marketing strategy prior to release of *The Passion of the Christ* can be read on Motive's website at <http://inoviemarketing.biz/pressroom.html>. According to *Advertising Age* (Mar. 22, 2004): "*The Passion of the Christ* has stunned even the believers. It's defied all the

grassroots/grasstops marketing is quite typical of marketing campaigns for films. Indeed, in Advisory Opinion 2010-08, the Commission approved of Citizens United's highly varied marketing and distribution methods—in some cases varying from film to film—including private screenings for a license fee, the rental of theatres and even The John F. Kennedy Center, limited theatrical releases, wholesale bulk sales of DVDs to other organizations and retail businesses, and video-on-demand exhibition.²¹ Moreover, the First Amendment implications of a film owner's ability to market its film are quite profound.²² First Amendment principles animate the media exemption. RG Entertainment's strategy of selling up to 1,000 promotional screenings to build the same kind of excitement that accompanied the releases of *The Blair Witch Project* and *The Passion of the Christ* must be exempted from regulation by the Commission as part of the right of the media to comment on political matters.

Moreover, the commercial vendor exemption that was applied to Michael Moore's *Fahrenheit 9/11* applies with equal force to Ray Griggs' *I WANT YOUR MONEY*. In both cases, the films were produced and distributed for a profit. The films cannot be distinguished as commercial ventures.

Phase 1 Promotional Screeners Who Pay To Exhibit the Film

The applicability of the media exemption to the film's production, marketing and distribution by RG Entertainment and its marketing and distribution agents appears quite clear. However, the legal and regulatory implications of RG Entertainment's pre-theatrical release marketing strategy for those individuals and organizations who desire to pay RG Entertainment and MEISA for the right to host a promotional screening in their local communities, during Phase 1 of limited distribution in September 2010, are less clear under Commission precedent. We are not aware of any Commission guidance that addresses a paid promotional screening, sponsored by an individual or business or organization, of a documentary film that is otherwise entitled to the media exemption. Such a ruling by the Commission would obviously impinge upon RG Entertainment's ability to market and promote its film.

If the Commission concludes that promotional screenings paid for by individuals and organizations are not exempt from regulation under the Act, then the Requestors respectfully request the Commission to view the film *in camera* to determine whether *I WANT YOUR MONEY*, a documentary about national economic policy, constitutes "express advocacy" in support of or opposition to any "clearly identified federal candidate."

practiced way of doing things. It has become a textbook study in both high-profile and below-the-radar marketing." (emphasis added).

²¹ See Advisory Opinion Request 2010-08 by Citizens United at p. 3 (Mar. 29, 2010).

²² See *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 166 (1948) ("We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment").

The documentary does not contain any explicit statements exhorting any viewer to "vote for Smith" or "vote against Jones." Therefore, the relevant legal standard—if it can be called a "standard"—for determining whether the film constitutes "express advocacy" is set forth in 11 C.F.R. § 100.22(b), which defines "express advocacy" as any public communication that:

[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

The General Counsel's analysis of *Fahrenheit 9/11* is of such pointed relevance to an analysis of I WANT YOUR MONEY that it bears quoting at length on this topic. There, the First General Counsel's Report observed (at 17-18) that

While *Fahrenheit 9/11* contains a great deal of political content and criticism, and leaves no doubt about Moore's discontent with the policies and practices of the Bush Administration, the film does not expressly advocate the defeat of President Bush or the election or defeat of any other clearly identified candidate. In fact, the film's criticism is wide-ranging: it targets the Bush Administration, Republican and Democratic members of Congress, and the mainstream media; it also challenges the results of the 2000 Presidential election, military recruitment policies, federal budget priorities, the Patriot Act, and the prosecution of the war in Iraq; it criticizes the federal government's response (and that of President Bush) to the attacks of September 11; and it suggests ties between the Bush Administration and companies profiting from the war.

In this two-hour film, only two comments refer in some manner to future elections, but this Office believes that they are not express advocacy under either 11 C.F.R. §§ 100.22(a) or 100.22(b). In a scene filmed in a Veterans' hospital, a wounded soldier says that he was a Republican but now plans to do everything that he can to make sure that the Democrats 'win control.' The soldier does not indicate whether he is referring to the White House or Congress or both, and does not refer to a clearly identified federal candidate. In another scene, the mother of a soldier killed in Iraq reads her son's last letter to his family in which, shortly after referring to President Bush by name, he writes: "I really hope they don't re-elect that fool, honestly." Notwithstanding the use of the term "re-elect," taken in context, reasonable minds could differ as to whether this statement expressly advocates the election or defeat of a particular candidate or whether, for example, it appears in support of the film's anti-war theme to illustrate one soldier's anguish as a result of the war.

In sum, *Fahrenheit 9/11* was an editorial documentary against the incumbent President Bush and his Administration's policies, released in the Summer and Fall of 2004, and punctuated with a mother's emotional reading of a her deceased soldier-son's express exhortation not to re-elect the President. We are convinced that *I WANT YOUR MONEY* does not constitute "express advocacy" under the *Fahrenheit 9/11* standard.

But even if the Commission were to deem *I WANT YOUR MONEY* to constitute "express advocacy"—and it is not—then the Requestors need to know if the documentary expressly advocates the election or defeat of any "clearly identified candidate." Five current officeholders appear in the documentary: Congressman Thaddeus McCotter, Congressman Robert McClintock, Congresswoman Nancy Pelosi, Senator Harry Reid, and President Barack Obama. We understand that Representatives McCotter, McClintock, and Pelosi, and Senator Reid, are "candidates" for re-election on November 2, 2010. Non-incumbent candidate Star Parker also appears in the film. We do not understand President Obama to be a "candidate" for re-election at this time. Unlike *Fahrenheit 9/11*, which contained an express statement that President Bush should not be re-elected, *I WANT YOUR MONEY* does not discuss the election, re-election or defeat of any specific candidate. It's only brief references to elections are oblique by comparison. And to the extent the film references the policy implications of a partisan change of control in Congress, such references are not directed at "clearly identified candidates." See, Advisory Opinion 2004-33 (Ripon Society) (a reference to "'Republicans in Congress' does not constitute an unambiguous reference to any specific Federal candidate").

If the Commission were to determine that an individual's payment (of \$500 to \$1,500) to host a promotional screening of *I WANT YOUR MONEY* constitutes a regulated expenditure on "express advocacy" for or against a "clearly identified candidate," a host of issues arise for each individual or organization that pays to host a screening. Should they report the expenditure on FEC Form 5? Which candidates do they identify on FEC Form 5? If they coordinate their decision to screen the documentary with a candidate—although not the content of the documentary itself, which was determined by RG Entertainment—does the expenditure constitute a "coordinated expenditure" and thus a contribution? What is the regulatory result if the individual or organization merely invites a candidate to attend the screening and to make a few remarks at the screening? If the Commission determines that a payment to screen the documentary is an expenditure for "express advocacy" in support of or opposition to any "clearly identified candidate," the Requestors respectfully request the Commission's opinion on these important questions.

Finally, even if the film does not constitute express advocacy in support or opposition to a clearly identified federal candidate, individual and organizational screeners need to know whether they can host a promotional screening in coordination with a candidate. Specifically, they need to know whether they can coordinate a decision to screen the film, or to coordinate the timing or venue of a screening, with a candidate or political party. Furthermore, they need to know if they can invite a candidate to attend and/or to speak at a screening they pay to host without triggering a contribution or expenditure that must be reported to the Commission.

Legal Notice Provided to Individual Screeners

RG Entertainment and the marketing companies were not alerted to potential regulation of the documentary by the FEC prior to commencing their marketing efforts. After being alerted to that potential--remote as it was--they decided they had a responsibility to take two prudent legal measures: (1) make this request for an advisory opinion and (2) provide each screener a summary of the legal issues raised in this request and provide FEC Form 5 and Form 5 Instructions. This was done not to concede that promotional screenings of I WANT YOUR MONEY for a fee constitute regulated expenditures, but in an abundance of caution given the tight time frame for film marketing and the seriousness of the legal issues involved. A copy of that Legal Notice is being provided to the General Counsel's Office for informational purposes.

QUESTIONS PRESENTED

1. May RG Entertainment and its marketing and distribution agents market, promote, advertise and distribute I WANT YOUR MONEY in the manner set forth in this letter free of regulation by the Commission (e.g., reporting, disclaimer and coordination regulations)?
2. Are RG Entertainment and its marketing and distribution agents exempted from regulation under the media exemption?
3. Are RG Entertainment and its marketing and distribution agents exempted from regulation under the commercial vendor exemption?
4. Are individuals and organizations that pay a fee to RG Entertainment (or its marketing agent) in order to host a promotional screening of I WANT YOUR MONEY during Phase 1 of the distribution plan exempt from regulation as part of RG Entertainment's media exemption or commercial vendor exemption?
5. Does I WANT YOUR MONEY constitute "express advocacy" in support of or opposition to "any clearly identified candidate"?
6. Does an individual or organization's payment of a fee in order to host a promotional screening of I WANT YOUR MONEY constitute a federal regulated expenditure? If so, what is the proper way for each screener to report its expenditure? If a screener reports its expenditure on FEC Form 5, which candidates should be identified as the object of the expenditures? Should the promotional screener report the fee paid for licensing the film and hosting the event as the independent expenditure?
7. If an individual or organization coordinates its decision to screen the film, or the venue or audience of the screening, with a federal candidate (or political party), does the fee paid to host a screening constitute a "coordinated expenditure" and therefore a contribution to the candidate (or political party)? If the individual or organization

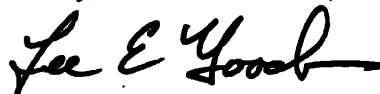
does not coordinate the screening or event, but merely invites a candidate to attend the screening and permits the candidate to speak at the forum, does the fee paid to host a screening constitute a "coordinated expenditure" and therefore a contribution to the candidate?

8. Looking ahead to future distribution of the film, between January of 2011 and November of 2012, and assuming one or more of the following individuals depicted in the documentary become candidates for public office—Barack Obama, Newt Gingrich, Sarah Palin, Mike Huckabee—will individual screeners' payments to exhibit the film constitute regulated expenditures with respect to any such candidate?

CONCLUSION

Uncertainty regarding Commission regulations and the legal obligations of promotional screeners already is limiting marketing and promotional plans. Some individuals and organizations are reluctant to host a screening in Phase 1 given unclear regulatory treatment. Phase 1 promotional screenings end September 30, 2010, and independent expenditure reports made in September must be filed no later than October 15, 2010. Likewise, some theatres have expressed reluctance to screen the film in light of historical legal controversies over *Fahrenheit 9/11* and *Hillary The Movie*. Therefore, a prompt and clear advisory opinion from the Commission is necessary and beneficial to remove the chill of uncertain regulatory treatment. We respectfully request that the Commission act upon this request as swiftly as possible to obviate any further unnecessary chilling of the First Amendment right of citizens to see an important documentary film.

Sincerely,



Lee E. Goodinan

Enclosure: Legal Notice Provided to Promotional Screeners

cc: Matthew S. Peterson, Chairman
Cynthia L. Bauerly, Vice Chairman
Caroline C. Hunter, Commissioner
Donald F. McGahn, Commissioner
Steven T. Walther, Commissioner
Ellen L. Weintraub, Commissioner

EXHIBIT

Legal Notice Provided to Promotional Screeners

LEGAL NOTICE

Thank you for agreeing to host a private screening of I WANT YOUR MONEY, a provocative documentary film about government spending policy. I WANT YOUR MONEY is a film about public policy, but public policy cannot be discussed openly without reference to the policy positions being advanced in Congress by current public office holders and other public figures responsible for directing our country's economic policies. Accordingly, I WANT YOUR MONEY contains brief references to electoral politics as they relate to the federal government's spending policies. I WANT YOUR MONEY also contains depictions, film clips, and interviews of federal office holders who are candidates for office on November 2, 2010. Because I WANT YOUR MONEY contains references to public office holders and to public elections, the federal government may attempt to regulate your private screening of the documentary. This Legal Notice is not intended as legal advice, but is intended to alert you to certain federal regulations that may apply to your private screening. You must consult with your own attorney for specific legal advice regarding your unique circumstances.

The First Amendment

Your right to host a private screening of I WANT YOUR MONEY is protected by the First Amendment of the U.S. Constitution and we thank you for exercising your constitutional rights. However, certain government regulations and restrictions may nonetheless apply to your screening.

Internal Revenue Service Regulations

The Internal Revenue Code and regulations issued by the Internal Revenue Service prohibit 501(c)(3) organizations from intervening in elections or funding electioneering messages. Although I WANT YOUR MONEY does not call for the election or defeat of any specific candidate by name, it briefly discusses the election or defeat of Democrats and Republicans to Congress in general terms. For this reason, I WANT YOUR MONEY may not be appropriate for screening by a 501(c)(3) organization. Individuals affiliated with 501(c)(3) organizations are free to sponsor the film in their individual capacities. I WANT YOUR MONEY is appropriate for screening by other types of tax-exempt organizations, such as 501(c)(4), 501(c)(6) and 527 organizations (including campaign committees, political action committees and political party organizations). Individuals and business corporations also may screen I WANT YOUR MONEY under IRS rules.

Federal Election Commission Regulations

The Federal Election Campaign Act and regulations issued by the Federal Election Commission ("FEC") regulate "expenditures" on electoral messages that "expressly advocate" the election or defeat of clearly identified federal candidates. Unfortunately, the FEC's definition of "express advocacy" is vague. The FEC defines "express advocacy" as any public communication that

[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

You may recall Michael Moore's film *Fahrenheit 9/11*, which was released in the Summer and Fall of 2004. That film included interviews with people who explicitly advocated the defeat of President Bush in the election of 2004. Nevertheless, the FEC General Counsel opined that, in the context of the broader documentary context, the film did not constitute "express advocacy." I WANT YOUR MONEY should receive the same legal treatment, but it remains difficult to predict with certainty whether the FEC might treat your expenditure to host a private screening of I WANT YOUR MONEY as a regulated "expenditure" in connection with a federal election because it briefly discusses the policy implications of a Republican takeover of Congress.

We believe I WANT YOUR MONEY's documentary exposition of the federal government's economic policies and the policy implications of a change in partisan control of Congress should not be regulated by the FEC as "express advocacy" and, moreover, that your expenditure to host a private screening should not be regulated as an "expenditure" in support or opposition to any specific candidate depicted in the film. However, we cannot predict how the FEC might decide to interpret the film's content. Therefore, the owner and producer of the film, RG Entertainment Ltd. has requested a formal advisory opinion from the FEC seeking the agency's regulatory position on the right of the producer, distributors and marketing agents to release the film theatrically and of private screeners to host pre-theatrical release screenings. You will be provided a copy of the FEC advisory opinion as soon as it is issued.

Because we cannot predict the FEC's regulatory approach or precisely when the FEC may issue a formal advisory opinion, in an abundance of caution, we are providing you a set of guidelines that you should undertake in connection with your screening, based upon the assumption that the FEC might regulate your expenditure to host a private screening. These guidelines are provided as a courtesy to you, and we are not in a position to provide you legal advice. You should consult your own attorney or the FEC at 1-800-424-9530 if you have any questions.

FEC Guidelines:

- **INDEPENDENT DECISION:** You, or your organization or business, must not discuss or coordinate your decision to screen the film, or the timing or venue of the screening, with any federal candidate, campaign or political party. In other words, your screening plans should be made wholly independent from any federal candidate, campaign or political party.
- **POST DISCLAIMER:** Assuming you do not coordinate or discuss your plans to screen the film with a candidate, campaign or political party, at your screening, post a written disclaimer that states: "This private screening of I WANT YOUR MONEY is sponsored and paid for by [YOUR NAME OR ORGANIZATION NAME PAYING FOR THE SCREENING] and is not authorized by any candidate or candidate's committee. Contact us at [INSERT YOUR/ORGANIZATION'S ADDRESS]." A disclaimer appropriate for posting at your event is enclosed.
- **FILE FEC FORM 5:** Assuming you do not coordinate or discuss your plans to screen the film with a candidate, campaign or political party, you should consider completing the enclosed FEC Form 5 and filing it with the FEC by mailing the form in the enclosed envelopes. The FEC requires independent expenditures on express advocacy to be disclosed publicly on Form 5. For expenditures in September 2010, Form 5 must be filed no later than October 15, 2010. Instructions for completing and filing the form, published by the FEC, are enclosed. You also may obtain advice from the FEC by calling 1-800-424-9530. We hope to receive an advisory opinion providing greater clarity from the FEC before October 15, but we cannot control the FEC's timetable.
- **IF YOU COORDINATE:** When an individual or political committee pays for a communication that is coordinated with a candidate, campaign or political party, the expenditure is considered an in-kind contribution to that candidate or party. You should not discuss or coordinate your plan to screen the film. However, if you do coordinate or discuss (even inadvertently) your plans to screen the film with a candidate, campaign representative, or political party representative, the FEC may treat your expenditure as a contribution to the candidate or party. Therefore, if you coordinate or discuss your screening plans with a candidate, campaign or political party, FEC Form 5 is not applicable. Instead, you must report your expenditure to screen the film to the candidate's campaign Treasurer (or political party's Treasurer) so that the campaign can report your expenditure as a contribution on its FEC reports. You should provide the Treasurer a copy of your receipt for the screening.
- **CORPORATE COORDINATION IS PROHIBITED:** There are several important implications that flow from coordination or discussions and treatment of your expenditure as a contribution. First, corporations (including business corporations and tax-exempt corporations) are strictly prohibited from making contributions to a federal candidate. Therefore, no screening coordinated or discussed with a candidate can be sponsored (i.e., paid for) by a corporation. Second, if you use your personal funds to pay for a screening that you coordinate or discuss with a candidate, campaign or political party, your screening expense will count toward your contribution limit for the candidate, which is currently \$2,400 per election. (For example, if you pay \$900 to screen the film in coordination with the candidate, you cannot donate more than \$1,500 for the 2010 general election).
- **CANDIDATE ATTENDANCE:** After you have decided to screen the film and you have made all of your arrangements, you may invite a federal candidate in your area to attend your screening. However, if the film sponsor is a corporation it is legally risky to allow the candidate to speak to the audience because the FEC might consider the forum to be an in-kind contribution to the candidate. Therefore, we advise that you exercise caution and consult the FEC at 1-800-424-9530 before inviting a candidate to speak at your screening.
- **CAMPAIGN AND PARTY COMMITTEES:** If your organization is a candidate campaign committee, political action committee, or political party committee, you may pay to host a screening and simply report the expenditure on your next FEC report.

Compliance with all government regulations that may apply to a private screening of I WANT YOUR MONEY is ultimately your responsibility. You should consult with your attorney or with the relevant agency of the federal government to ensure your legal compliance. You may contact the FEC at 1-800-424-9530 for advice. You will be notified when the FEC issues a formal advisory opinion.

We are pleased to host tonight's screening of the political documentary *I WANT YOUR MONEY*, a provocative look at our government's taxing and spending policies.

Because of the political content of tonight's film, we are obligated by law to provide you the following disclaimer:

This screening of *I WANT YOUR MONEY* is sponsored and paid for by _____ and is not authorized by any candidate or candidate's committee. You may contact us at _____.

FEDERAL ELECTION COMMISSION

Instructions for Preparing FEC FORM 5

(Report of Independent Expenditures Made and Contributions Received to be Used by Persons (Other Than Political Committees) Including Qualified Nonprofit Corporations)

Who Must File

Every person, group of persons or organization, other than a political committee, that makes or contracts to make independent expenditures aggregating in excess of \$250 with respect to a given election in a calendar year must report these expenditures by submitting FEC Form 5 or a signed statement satisfying the requirements of 11 CFR 109.10. (Political committees that make independent expenditures shall report them on FEC Form 3X, Schedule E.)

Corporations that make independent expenditures must also submit these reports, and must certify that they are a qualified nonprofit corporation that is exempt from the prohibition on independent expenditures under 11 CFR 114.10.

Note: Individuals and other persons (including qualified nonprofit corporations) must file this form in an electronic format under 11 CFR 104.18 if they make independent expenditures in excess of \$50,000 in a calendar year, or if they have reason to expect that they will exceed this threshold during the calendar year. If you have reached this level of activity, you must file this form in an electronic format. Contact the FEC for more information on filing electronically.

Definitions

Contribution means any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.

Independent expenditure means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation or prior consent of, in consultation with, or at the request or suggestion of,

a candidate or an agent or authorized committee of a candidate or a political party committee or its agents. 11 CFR 100.16. For a definition of "expressly advocating," see 11 CFR 100.22.

Publicly Distributed or Publicly Disseminated. "Publicly distributed" means aired, broadcast, cablecast or otherwise disseminated for a fee through the facilities of a television or radio station or cable television or satellite system. 11 CFR 100.29(b)(3). "Publicly disseminated" refers to communications made public via other media (e.g., newspapers, magazines, etc.) 11 CFR 104.4(f).

Qualified nonprofit corporation is a corporation with the following characteristics: (i)(a) Its only express purpose is the promotion of political ideas (i.e., issue advocacy, election influencing activity and research, training or educational activity expressly tied to its political goals); (b) It cannot engage in business activities; (c) It does not have (1) shareholders or persons (other than employees and creditors) who are affiliated in a way that could allow them to make a claim on its assets or earnings; or (2) persons who receive a benefit that is a disincentive for them to disassociate themselves from the corporation on the basis of the corporation's position on a political issue; (d) It was not established by a business corporation or labor organization; does not accept donations from business corporations or labor organizations; and, if unable, for good cause, to demonstrate that it has not accepted such donations, has a written policy against accepting donations from business corporations or labor organizations; and (e) It is described in 26 U.S.C. § 501(c)(4) (See 11 CFR 114.10.); or (ii) has been deemed entitled to qualified nonprofit corporation status by a court in competent jurisdiction in a case in which the same corporation was a party. (See 11 CFR 114.10(e)(1)(i)(B).)

Name of Employer means the organization or person by whom an individual is employed, rather than the name of his or her supervisor. Individuals who are self employed should indicate "self-employed."

Occupation means the principal job title or position of an individual.

Purpose means a brief statement or description of why the disbursement was made.

When to File

File reports of independent expenditures made during a calendar quarter reporting period in which these expenditures aggregate in excess of \$250 with respect to a given election in the calendar year, and for any subsequent quarter that year in which additional independent expenditures of any amount are made. In addition to this quarterly reporting of independent expenditures, more timely reports are required for independent expenditures of \$10,000 or more made more than 20 days before the election ("48-hour reports") and of \$1,000 or more made less than twenty days before the election ("24-hour reports"). See below.

Corporations must certify that they are qualified nonprofit corporations under 11 CFR 114.10 when they submit their first independent expenditure report.

Election year reporting

Election years are divided into quarterly reporting periods. There are also special reporting requirements (48-Hour Reports and 24-Hour Reports) for independent expenditures aggregating in excess of certain amounts within specific time frames prior to an election. (See "48-Hour Reports" and "24-Hour Reports," below.) All quarterly independent expenditure reports must disclose all reportable contributions received

and independent expenditures made from the closing date of the last report filed through the end of the reporting period for which the report is submitted. Quarterly reports are due April 15, July 15 and October 15 of the election year and January 31 of the nonelection year, and must disclose all reportable activity through the end of the calendar quarter. 11 CFR 109.10(b).

48-Hour Reports

In addition to quarterly reports, any person that makes or contracts to make independent expenditures aggregating \$10,000 or more with respect to a given election during the calendar year up to and including the 20th day before an election must report these expenditures within 48 hours. The report must be received no later than 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which an independent expenditure is publicly distributed or disseminated. The person must continue to file additional 48-hour reports every time subsequent independent expenditures reach the \$10,000 threshold with respect to the same election to which the first report related. The report must include all of the information required on Form 5 and by 11 CFR 109.10(e), including a statement indicating whether the independent expenditure was in support of, or in opposition to, a particular candidate and a verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or authorized committee or agent or a political party committee or agents thereof. All 48-hour reports shall be filed with the Federal Election Commission. Filers other than electronic filers may submit 48-hour reports by fax (to 202-219-0174), electronic mail or on the Commission's web site at www.fec.gov.

24-Hour Reports

In addition to the quarterly reports and 48-Hour Reports, persons who make independent expenditures aggregating \$1,000 or more with respect to a given election after the twentieth day but more than 24 hours before 12:01 A.M. of

the day of the election must file 24-Hour reports. The report must be received by 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which the \$1,000 threshold is reached during the final 20 days before the election. Note that, if a disbursement is made before the communication is distributed or disseminated, the filer voluntarily may use the earlier date of a disbursement, rather than the date of the public distribution or dissemination of the communication, to calculate when the independent expenditure is reported. These reports must contain all of the information required on Form 5 and by 11 CFR 109.10(e), including a statement indicating whether the independent expenditure was in support of, or in opposition to, a particular candidate and a verified certification under penalty of perjury as to whether such independent expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or authorized committee or agent or a political party committee or its agents. All 24-Hour reports shall be filed with the Federal Election Commission. Filers other than electronic filers may submit 24-Hour reports by fax (to 202-219-0174), electronic mail or on the Commission's web site at www.fec.gov.

Special election reporting

The Commission establishes separate reporting schedules for special elections. Contact the Commission for special election reporting dates.

Nonelection year reporting

Nonelection years are divided into quarterly reporting periods, due April 15, July 15 and October 15 of the nonelection year and January 31 of the election year, and must disclose all reportable activity through the end of the calendar quarter. 11 CFR 109.10(b).

Where To File

File all reports of independent expenditures supporting or opposing candidates for the U.S. House and President with the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. File reports of independent expenditures supporting or opposing only candidates for the U.S. Senate with the Secretary of the Senate, Office of Public Records, 232 Hart Senate Office Building, Washington, DC 20510-7116. Mail addressed to the Secretary of the Senate should read: "Office of Public Records, P.O. Box 5109, Alexandria, VA 22301-0109." Exception: 24-hour and 48-hour reports of expenditures supporting or opposing only candidates for the Senate must be filed with the Federal Election Commission.

For reports of independent expenditures supporting or opposing a candidate in Guam or Puerto Rico for the House, submit a copy of this form to the territory in which the candidate seeks election. For reports of independent expenditures made in Guam or Puerto Rico supporting or opposing a candidate for President or Vice President, submit a copy of this form to the territory in which the expenditure is made. As of August 2005, these territories had not qualified for the Commission's state filing waiver program.

Record retention. Persons filing independent expenditure reports must retain copies of their reports for a period of not less than 3 years from the date of filing.

INSTRUCTIONS FOR FEC FORM 05 AND RELATED SCHEDULES

Line By Line Instructions

LINE 1. Name of Individual, Organization or Corporation. Provide the name and mailing address of the filer.

LINE 2. Corporate filers—indicate if you are a qualified nonprofit corporation. **Individual filers**—provide the name of your employer and your occupation.

LINE 3. FEC Identification Number. First time filers—leave this line blank. Previous filers with an identification number—enter that number.

LINE 4. Type of Report. (a). Indicate the type of report being filed by checking the appropriate box. For “48-Hour” and “24-Hour” reports, check the box “48-Hour Report” or “24-Hour Report” as applicable.

(b). Indicate if the report is an amendment.

LINE 5. Covering Period. Enter report coverage dates. Include all activity from the ending coverage date of the last report filed. When submitting multiple forms for a single period, indicate the current page number and total pages submitted for the period.

LINE 6. Total Contributions. Enter total contributions received during the reporting period, including contributions of \$200 or less that were not itemized on Schedule 5-A. When submitting multiple forms for a single period, enter total on page 1.

LINE 7. Total Independent Expenditures. Enter the total amount of independent expenditures made during this reporting period. When submitting multiple forms for a single period, enter total on page 1.

Verification

FEC FORM 5 must be signed by the person making the independent expenditure, who must certify verifiably under penalty of perjury that the expenditure was not made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or authorized committee or agent or a political party committee or its agents. 11 CFR

109.10(e)(1)(v) and (2). Electronic filers: Type the name of the person making the independent expenditure after the certification.

Instructions for Schedule 5-A (Itemized Receipts)

Provide the requested information for each contribution over \$200 that was made for the purpose of furthering the independent expenditures.

Instructions for Schedule 5-E (Itemized Independent Expenditures)

Once the total of independent expenditures made exceeds \$250 per election in a calendar year, provide the requested information about the payee, the date the independent expenditure was made and the amount.

Indicate under “Purpose of Expenditure,” the specific type of communication made (e.g., television ad, radio ad). Along with reporting the purpose of the expenditure, filers should also broadly characterize disbursements by providing the category/type code for each category of disbursement. Examples of the types of disbursements that fall within each of the broad categories are listed below. Use only one code for each itemized disbursement. In cases where the disbursement was for several purposes, assign one of the following codes according to the primary purpose of the disbursement. Note that some of the category titles are not acceptable as the “purpose” of the disbursement and that the categories are not intended to replace or to serve as a substitute for the “purpose of disbursement.”

004 Advertising Expenses -including general public political advertising (e.g., purchases of radio/television broadcast/cable time, print advertisements and related production costs)

Identify the candidate supported or opposed by the independent expenditure by indicating the candidate's name, office sought and the election for which the disbursement was made. Also, list the total amount expended in the aggregate during the calendar year, per election, per office sought.

Subtotal the expenditures at the bottom of Schedule 5-E and add them to the subtotal of unitemized independent expenditures at the bottom of the last Schedule 5-E page. Carry the total forward to Line 7 of Form 5.

FEC FORM 5

REPORT OF INDEPENDENT EXPENDITURES MADE AND CONTRIBUTIONS RECEIVED

To Be Used by Persons (Other than Political Committees) Including Qualified Nonprofit Corporations

1. (a) Name of Individual, Organization or Corporation		3. FEC Identification Number C
(b) Address (number and street) <input type="checkbox"/> check if different than previously reported		
(c) City, State and ZIP Code		
2. Corporate filers only	Is the filer a qualified nonprofit corporation? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Individual filers only	Name of Employer	Occupation

4. TYPE OF REPORT (check appropriate boxes):

- (a) ☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☐ January 31 Year-End Report
- ☐ 24-Hour Report
☐ 48-Hour Report

b) Is this Report an amendment? Yes ☐ No ☐

5. COVERING PERIOD: FROM

MONTH DAY YEAR

THROUGH

MONTH DAY YEAR

6. TOTAL CONTRIBUTIONS.....

7. TOTAL INDEPENDENT EXPENDITURES

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or any political party committee or its agent. In addition, (if the independent expenditures reported herein were made by a corporation) I certify that the corporation is a qualified nonprofit corporation under the Commission's regulations.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

SIGNATURE

DATE

NOTE: Submission of false, erroneous or incomplete information may subject the person signing this report to the penalties of 2 U.S.C. §437g.

For further information, contact:

Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463 Toll Free 800-424-9530, Local 202-694-1100

SCHEDULE 5-A
ITEMIZED RECEIPTS

PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF FILER (In Full)

A. Full Name (Last, First, Middle Initial)

Mailing Address

City

State

Zip Code

FEC ID number of contributing federal political committee.

C

Name of Employer

Occupation

Date of Receipt

Amount of Each Receipt this Period

B. Full Name (Last, First, Middle Initial)

Mailing Address

City

State

Zip Code

FEC ID number of contributing federal political committee.

C

Name of Employer

Occupation

Date of Receipt

Amount of Each Receipt this Period

C. Full Name (Last, First, Middle Initial)

Mailing Address

City

State

Zip Code

FEC ID number of contributing federal political committee.

C

Name of Employer

Occupation

Date of Receipt

Amount of Each Receipt this Period

D. Full Name (Last, First, Middle Initial)

Mailing Address

City

State

Zip Code

FEC ID number of contributing federal political committee.

C

Name of Employer

Occupation

Date of Receipt

Amount of Each Receipt this Period

SUBTOTAL of Receipts This Page (optional)

TOTAL This Period (last page carry total to Line 6)

SCHEDULE 5-E
ITEMIZED INDEPENDENT EXPENDITURES

PAGE OF
 FOR LINE 7 OF FORM 5

NAME OF FILER (In Full)

Full Name (Last, First, Middle Initial) of Payee		Date Amount
Mailing Address		
City	State	
Purpose of Expenditure	Category/ Type	Office Sought: <input type="checkbox"/> House State: _____ <input type="checkbox"/> Senate District: _____ <input type="checkbox"/> President Check One: <input type="checkbox"/> Support <input type="checkbox"/> Oppose
Name of Federal Candidate Supported or Opposed by Expenditure:		
Calendar Year-To-Date Per Election for Office Sought		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶ _____

Full Name (Last, First, Middle Initial) of Payee		Date Amount
Mailing Address		
City	State	
Purpose of Expenditure	Category/ Type	Office Sought: <input type="checkbox"/> House State: _____ <input type="checkbox"/> Senate District: _____ <input type="checkbox"/> President Check One: <input type="checkbox"/> Support <input type="checkbox"/> Oppose
Name of Federal Candidate Supported or Opposed by Expenditure:		
Calendar Year-To-Date Per Election for Office Sought		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶ _____

Full Name (Last, First, Middle Initial) of Payee		Date Amount
Mailing Address		
City	State	
Purpose of Expenditure	Category/ Type	Office Sought: <input type="checkbox"/> House State: _____ <input type="checkbox"/> Senate District: _____ <input type="checkbox"/> President Check One: <input type="checkbox"/> Support <input type="checkbox"/> Oppose
Name of Federal Candidate Supported or Opposed by Expenditure:		
Calendar Year-To-Date Per Election for Office Sought		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶ _____

Full Name (Last, First, Middle Initial) of Payee		Date Amount
Mailing Address		
City	State	
Purpose of Expenditure	Category/ Type	Office Sought: <input type="checkbox"/> House State: _____ <input type="checkbox"/> Senate District: _____ <input type="checkbox"/> President Check One: <input type="checkbox"/> Support <input type="checkbox"/> Oppose
Name of Federal Candidate Supported or Opposed by Expenditure:		
Calendar Year-To-Date Per Election for Office Sought		Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▶ _____

(a) SUBTOTAL of Itemized Independent Expenditures.....▶	\$,	,	.
(b) SUBTOTAL of Unitemized Independent Expenditures.....▶	\$,	,	.
(c) TOTAL Independent Expenditures.....▶ (carry total from last page forward to Line 7)	\$,	,	.



September 20, 2010

Amy Rothstein, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20036

Via Email & U.S. Mail

Re: Advisory Opinion Request – Supplemental Information

Dear Ms. Rothstein:

This letter follows up on our discussions of September 13, 17 and 20, 2010. It appears that the Commission cannot within its current regulatory scheme for advisory opinions review a documentary film to determine whether it constitutes express advocacy in support of or opposition to a clearly identified candidate, under 11 C.F.R. § 100.22, without making the film widely available for free public viewing. That regulatory limitation would directly and materially diminish the commercial value of the film, and effectively prohibits a filmmaker in the position of RG Entertainment, Ltd. from obtaining a pre-release review of its film. To the extent we were under the impression that the Commission would agree to accept, or could accept, a film for *in camera* review, or make it available for a public viewing at the Commission, we were mistaken, requiring this supplementation and modification of the questions we originally posed to the Commission in our submission dated September 9, 2010.

In light of the above, we respectfully request that the Commission proceed to provide the Requestors an advisory opinion on all issues that do not hinge upon the determination that the documentary film constitutes express advocacy in support of or opposition to any clearly identified candidate. As for questions that do hinge on such a determination, we request that the Commission assume—solely for the sake of providing this advisory opinion and without determining that ultimate question with respect to I WANT YOUR MONEY—that the film constitutes express advocacy based upon the detailed description we have provided to the Commission in our original submission and here.¹

¹ We will defer to another day how we might find a practical way to obtain a contextual review of the film for a Commission opinion on whether I WANT YOUR MONEY constitutes express advocacy. But that need not delay the issuance of an advisory opinion based upon these modified terms.

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ATTORNEYS AT LAW \ WWW.LECLAIRRYAN.COM

Revised Questions Presented

We believe that the following questions can be answered without regard to an express advocacy determination:

1. Are expenditures for the production, marketing, advertising and distribution of I WANT YOUR MONEY by RG Entertainment, Ltd. (and its marketing and distribution agents) exempt from FEC regulation under the media exemption?²
2. Are expenditures for the production, marketing, advertising and distribution of I WANT YOUR MONEY by RG Entertainment, Ltd. (and its marketing and distribution agents) exempt from FEC regulation under the commercial vendor exemption?
3. Will expenditures for the production, marketing, advertising and distribution of I WANT YOUR MONEY by RG Entertainment, Ltd. (and its marketing and distribution agents) be exempt from treatment as contributions or expenditures in support of Star Parker under the media exemption?
4. Will expenditures for the production, marketing, advertising and distribution of I WANT YOUR MONEY by RG Entertainment, Ltd. (and its marketing and distribution agents) be exempt from treatment as contributions or expenditures in support of Star Parker under the commercial vendor exemption?
5. May RG Entertainment, Ltd. (and its marketing and distribution agents) market, promote, advertise and distribute I WANT YOUR MONEY in the manner set forth in this request free of regulation by the Commission under the media exemption and/or the commercial vendor exemption?
6. Are the individuals and organizations that pay a license and exhibition fee to RG Entertainment, Ltd. and MEISA in order to host a promotional pre-screening of I WANT YOUR MONEY in a theatre arranged by MEISA exempt from regulation under the media exemption or commercial vendor exemption?

² In the past, the Commission has opined on whether a media organization qualifies under the media exemption without first having to review the content of the organization's actual communications. In Advisory Opinion 2003-34 (Showtime), the television series at issue, *The American Candidate*, had not been filmed when the Commission issued its advisory opinion. The series was in pre-production when it was presented to the Commission. That did not prevent the Commission from reviewing the media organization's entitlement to the media exemption. Similarly, in Advisory Opinion 2005-16 (Fired Up! LLC), the requestors brought before the Commission a new website, recently organized, that had only "two postings" of original journalistic articles. The Commission did not opine that any of the limited content posted on the website was express advocacy, or that a finding of express advocacy was a necessary threshold to reviewing the website's bona fide press status under the Act.

7. Does exhibition of a documentary film within the four walls of a movie theatre, before an audience of approximately 50-500 citizens, constitute a "public communication" pursuant to 11 C.F.R. § 100.26?
8. May RG Entertainment, Ltd. pay for national broadcast advertisements for I WANT YOUR MONEY in October 2010 in compliance with the Federal Election Campaign Act and Commission regulations, including Commission regulations concerning electioneering communications?

If the Commission determines that an answer to any of these questions (No. 1-8), contrary to our analysis, hinges upon the conclusion that I WANT YOUR MONEY does (or does not) constitute express advocacy under 11 C.F.R. 100.22, then please answer the question assuming (but not deciding) that the film does constitute express advocacy under that regulation as set forth below.

As for the questions that the Requestors submit pursuant to the legal assumption that I WANT YOUR MONEY constitutes express advocacy—made solely to facilitate legal guidance from the Commission—we submit the following questions:

9. By appearing in the film, has Star Parker coordinated an expenditure in support of her candidacy with RG Entertainment, Ltd.?
10. If the Commission determines that individual promotional screeners are not covered by the media exemption when they pay a fee to exhibit the film in a theatre in September 2010 (see Question No. 6 above), if Star Parker spends personal funds (approximately \$500 to \$1,500) to host a promotional screening of the film in a theatre, will she be required to file Form 5 with the Commission by October 15, 2010?
11. If Star Parker attends a promotional screening of I WANT YOUR MONEY paid for by an individual (with personal funds) and speaks to the audience at the screening, will her attendance and speech constitute a coordinated expenditure by the promotional screener and must Star Parker report the amount of the license/exhibition fee paid by the individual host? Does it matter whether she speaks about economic policy only or whether she speaks about her candidacy for Congress?
12. If Star Parker attends a promotional screening of I WANT YOUR MONEY paid for by a business corporation (as described below) and speaks to the audience at the screening, will her attendance and speech constitute a prohibited coordinated expenditure by the corporate promotional screener? Does it matter whether she speaks about economic policy only or whether she speaks about her candidacy for Congress?

13. What disclaimers, if any, will be required to be posted at public theatrical exhibitions of I WANT YOUR MONEY?

We hope this approach will facilitate an advisory opinion within the scope of the Commission's regulations.

Supplemental Information

You also have requested additional information to supplement our original submission dated September 9. This information is provided below.

1. Is RG Entertainment Ltd. organized and in business solely for commercial purposes?

Yes, RG Entertainment Ltd. is a for-profit company organized solely for business and commercial purposes. RG Entertainment Ltd. is not organized or operated for political or non-commercial purposes. RG Entertainment Ltd.'s sole business purpose is the production and distribution of motion pictures for a profit. RG Entertainment, Ltd. was established for no other line of business other than the production and distribution of motion pictures for a profit. RG Entertainment, Ltd. holds itself out to the public as a film production company and no other kind of enterprise. As noted previously, RG Entertainment is currently working on production of its fourth film, *The Wind in the Willows*. RG Entertainment also intends to make political documentaries in the future, although a specific film or script has not been prepared. RG Entertainment plans to make both dramatic films and political documentaries in the future with Ray Griggs serving as Producer and Director. Future films will be marketed and promoted in a variety of ways depending upon budgets for each film. Grassroots marketing will remain one marketing measure for films with small printing and advertising budgets. Other measures that RG Entertainment may avail itself of include DVD releases, promotional screenings paid for by RG Entertainment, broadcast advertising and other marketing strategies common to the film industry. Future distributions of RG Entertainment's films will be similar to the theatrical distribution set forth in this request for Phase 2 as well as the windows of exhibition set forth in Phase 3.

2. Has RG Entertainment Ltd. produced and distributed I WANT YOUR MONEY solely for business and commercial purposes?

Yes, RG Entertainment Ltd.'s sole purpose in producing and distributing the documentary film I WANT YOUR MONEY has been a commercial, for-profit endeavor. RG Entertainment Ltd.'s goal is to distribute I WANT YOUR MONEY for a profit.

3. Does Star Parker's campaign committee join the request for an advisory opinion?

Yes.

4. Do the MEISA marketing, promotion and distribution companies join the request for an advisory opinion?

Yes.

5. Provide a narrative description of I WANT YOUR MONEY.

The following description of the documentary is provided to inform the Commission's consideration of this request to the extent it is useful or necessary in addressing any of the questions, but we understand that the Commission is not going to review the film for a full contextual review. Description of a film is an inherently subjective exercise. The description of content provided in our submission dated September 9 is incorporated by reference and further detail is provided here. I WANT YOUR MONEY is a 90-minute documentary film about American economic policy and specifically taxes, government spending, government programs, and deficits and national debt. The vehicle for illuminating these issues is a running debate between President Ronald Reagan and President Barack Obama. The debate is substantive and dominates the entire documentary. The debate proceeds through juxtaposition of actual film footage of speeches by the two Presidents, as if they were talking to each other. The debate also is spiced with wit, satire and humor in animated scenes featuring approximately 12 current and historical characters, including President Obama and President Reagan.

The debate and economic policy discussion is further enhanced by interviews with approximately 24 prominent public officials, economists, journalists and other public figures about history, economics, Congress's passage of the Stimulus Bill, American exceptionalism, and related topics. The economic policy discussion covers not only the country's current economic policies, but puts our current economic policies into historical context by walking the viewer through a history lesson on our country's historical economic crises and policies. The documentary includes numerous film clips of historical scenes in the United States—from job lines and speeches by President Franklin Roosevelt in the 1930s, to film clips of President Kennedy and discussion of his tax cut policies in the 1960s, to film clips of President Johnson and his Great Society programs, to scenes of long gas lines and speeches by President Carter in the 1970s, to cultural scenes of the 1980s, to President Clinton's policies in the 1990s, and criticism of excessive government spending under President George W. Bush in 2000s. The film also includes over a dozen man-on-the-street interviews with American citizens from all walks of life who express support for school choice, virtuous public officials, lower taxes, and a wise and frugal government.

The documentary covers a wide range of economic policies and themes, including taxes, government spending, government programs and their effect on people, poverty in America and solutions to poverty, government deficits and the national debt, the intergenerational effects of the national debt, the philosophical underpinnings of free market economics (featured in a discussion between Phil Donahue and Milton Friedman),

government's responsiveness to the people, the Tea Party movement, populism and civic participation by ordinary people, government regulation, individual liberty and responsibility, redistributive economics, American optimism, and America's future as a strong nation.

The entire film is devoted to these subjects explained above and the debate between President Reagan and President Obama, all of which dominates over 85 minutes of the 90-minute film. There are a few brief references to electoral politics that we wish to draw the Commission's attention to:

- (a) The following statement by the film narrator spans 14 seconds of the 90-minute film: "This Democratic Congress must be replaced with one that will follow time-tested economic principles that will empower the American people to grow the economy. We need another '94-style congressional revolution, and you the people can make it happen." While this audio is playing, the visual on the screen is stock film of the House of Representatives in session, and Speaker Nancy Pelosi appears on screen at the dais of the House for 3 seconds of that visual.
- (b) The following statement by a media personality (not a candidate for office or party official) spans 37 seconds of the 90-minute film: "I think if Republicans are able to come up with comprehensive, specific policies that would present an alternative to the radical approach of Barack Obama—which I think they can—then I think we're going to see a Republican resurgence in these upcoming mid-term elections in 2010. And I don't think the same thing is going to happen to Barack Obama. I don't think he's going to be able to govern as a moderate as Bill Clinton was able to do. It's just not in him. He is a liberal. He is an extreme liberal. And he's not going to be able to moderate those sufficiently. So I think his second term is in serious jeopardy." The visual throughout this statement is the individual talking.
- (c) Temporally unrelated to the two statements noted above, there appears in the film an animated boxing match between President Reagan and President Obama. For 7 seconds, an animated depiction of Governor Sarah Palin appears in the ring, holding a poster similar to a poster marking a round of a boxing match. These words appear on the poster: "Palin America 2012." The animated character says "Oh goodness, thank you! Yes, Joe, long time no see. 2012." Immediately following, for 5 seconds, an animated depiction of Speaker Nancy Pelosi appears in the ring holding a poster, much like a poster marking the round of a boxing match, and on the poster appear the words: "Pelosi 2010." The animated character looks at the camera and says "Nice." That scene is immediately followed by an animation of former President Bill Clinton standing between Sarah Palin and Nancy Pelosi saying "Hey, hey ladies! You are both lookin' lovely tonight" whereupon an animated Hillary Clinton says "You

pig" and slaps President Clinton. The scene then goes to the animated boxing match. The context of this animated scene is clearly humorous and satirical.³

- (d) While the credits run at the conclusion of the film, the background is a faux dollar bill which features, in lieu of a serial number, the text: "GO VOTE 11 02 10". This appears in the background for approximately 25 seconds off and on as movie credits appear.

6. What is the context in which Star Parker appears in the film?

Star Parker appears in several places throughout the film being interviewed. Her remarks are limited to discussions of public policy. Star Parker is identified in the film as "Author and Founder, Center for Urban Renewal & Education." The film does not identify Ms. Parker as a candidate or Republican and the film does not discuss her candidacy or party identification. Because of the electoral content noted above, RG Entertainment and Star Parker wish to know if her appearance in a film that contains the electoral statements favorable to Republicans set forth above constitutes a regulated expenditure or contribution in connection with her campaign for Congress. This request is similar to the approach taken by the requestors and the Commission in Advisory Opinion 2004-33 (Ripon Society & Sue Kelly). Star Parker wants to know if RG Entertainment, Ltd.'s expenditures to produce, market, advertise and distribute I WANT YOUR MONEY constitute a coordinated contribution on her behalf or an independent expenditure on her behalf, or whether those expenditures are exempt from regulation under the media exemption and commercial vendor exemption, even assuming the film constitutes express advocacy.

7. Will RG Entertainment or its marketing agents advertise the film over broadcast television or radio? If so, where?

Yes. RG Entertainment plans to advertise the film nationally on television and radio in October and November 2010. The trailer available to the public at www.iwantyourmoney.net, or a shortened variation of it, will appear in broadcast advertisements.

³ The Requestors do not understand this brief, humorous animated scene to constitute express advocacy under the General Counsel's analysis of *Fahrenheit 9/11* and other Commission precedents. See Advisory Opinion Request at p.4 (Sept. 9, 2010) ("The documentary does not, however, expressly advocate the election or defeat of any specifically named candidate. For example, the documentary does not contain any statement that says 'Vote for Smith' or 'Vote against Jones'"). Requestors originally sought a review of the entire film by the Commission, to consider all scenes, including animated scenes, in the context of the entire film, in the manner in which brief electoral statements appeared in *Fahrenheit 9/11*, in order to obtain the Commission's opinion on this issue. We have since modified our request for an advisory opinion based on an assumption that express advocacy is present, but solely for the purpose of facilitating an opinion on other issues.

8. Will I WANT YOUR MONEY be broadcast on television or radio prior to the November 2, 2010 election?

No. I WANT YOUR MONEY will be shown only in theatres on or before November 2, 2010.

9. Will RG Entertainment or its marketing agents coordinate (as defined in 11 C.F.R. § 109.21) the film's broadcast advertising plans with any federal candidate, campaign or political party?

No. RG Entertainment and its marketing agents intend to advertise the film on broadcast media without any coordination with any candidate, campaign or political party and will make advertising decisions based upon financial resources and optimal commercial value to make a profit on the film. Broadcast advertisements are planned for October 2010. The trailer available to the public at www.iwantyourmoney.net, or a shortened variation of it, will appear in broadcast advertisements.

10. You requested additional details regarding Star Parker's plans to attend a promotional screenings of I WANT YOUR MONEY:

Ms. Parker has received two inquiries from two distinct promotional screeners of I WANT YOUR MONEY during Phase 1 of the film's marketing plan. First, an individual person who is planning to host a promotional screening with personal funds has asked Ms. Parker if she is legally permitted to attend and speak at his promotional screening. If she is legally permitted, this individual person would like for Ms. Parker to attend and speak at his promotional screening to be held at a public theatre arranged by Motive Entertainment. The audience would consist of members of the public, principally friends of the individual screener who is paying for the event.

Second, a small incorporated business that is planning to host a promotional screening with corporate funds has asked Ms. Parker if she is legally permitted to attend and speak at its promotional screening. If she is legally permitted, this corporation would like for Ms. Parker to attend and speak at its promotional screening to be held in a public theatre arranged by Motive Entertainment. The audience would consist of members of the public invited by the corporation. The audience would not consist solely of the restricted class of the corporation or the corporation's employees and their families.

In response to both inquiries, Ms. Parker seeks the Commission's opinion regarding (1) whether she can legally attend the screening, (2) whether she can discuss her campaign at the screening or should limit her remarks to policy issues related to the documentary, and (3) whether a lawful or unlawful contribution (required to be reported by her campaign) would result from her attendance at a promotional screening, if she discusses her campaign or discusses only policy issues.

Ms. Parker also intends to pay a license fee to host a screening of the film (with personal funds) and desires to do so in compliance with all legal requirements. She can conduct the screening as a campaign-related event or avoid advertising the event as campaign-related. Likewise, she can speak at the event as a candidate, discuss her candidacy and solicit funds, or she can avoid all campaign-related discussions and conduct the screening as a non-political event. Assuming the film constitutes express advocacy with respect to another federal candidate, Ms. Parker needs to know whether paying a license fee to host a promotional screening is exempt from regulation under the media exemption or other exemption. If it is not exempt, Ms. Parker needs to know if she will be required to file an FEC Form 5 by October 15. She also needs to know whether she can discuss her candidacy at the screening and what regulatory compliance requirements may result when she does so.

11. Do the Requestors seek an advisory opinion on whether a screening within a theatre constitutes a "public communication" under 11 C.F.R. § 100.26?

Yes. We have assumed that this issue would be subsumed, as a threshold issue, in the Commission's answer to Ms. Parker's question about whether attendance at a screening inside a theatre might constitute "coordination" or a "contribution" under 11 C.F.R. § 109.21 (coordinated communications) since that coordination regulation presupposes that the subject of the coordinated activity is a "public communication." It does not appear that a theatrical exhibition of a film within the four walls of a theatre before an audience of 50-400 moviegoers—that is not otherwise broadcast to the general public—constitutes a "public communication" under the regulation. However, if in Phase 3 of the distribution plan the film is broadcast on television, we understand that the exhibition of the film would constitute a "public communication." The Requestors seek the Commission's guidance on this point.

12. Do the Requestors seek guidance on the proper use of disclaimers at any screenings?

Yes, if the Commission concludes that any discrete aspect of RG Entertainment's production, marketing or distribution of I WANT YOUR MONEY is not entitled to the media exemption or the commercial vendor exemption and that the film's content requires a disclaimer as a regulated expenditure, then the Requestors need to know how to post a proper disclaimer at any non-exempt exhibition of the film.

It appears clear that RG Entertainment and its marketing and distribution agents are exempt from regulation for their production, marketing and distribution of the film. Courts and the Commission have held that the media exemption applies to all aspects of a media organization's legitimate efforts to market and advertise its electoral content. *See, e.g., FEC v. Phillips Publishing*, 517 F. Supp. 1308, 1312-1313 (D.D.C. 1981) (because "the purpose of the solicitation letter was to publicize [the newsletter] and obtain new subscribers, both of which are normal, legitimate press functions, the press exemption applies"); *Readers Digest Assoc. v. FEC*, 509 F.Supp. 1210, 1215 (S.D.N.Y. 1981)

(magazine was acting in its legitimate press function when it disseminated a free tape to publicize the magazine); Advisory Opinion 2003-34 (Showtime) ("to the extent that actual Federal candidates or officeholders are depicted or discussed in the series or the websites, no contribution or expenditure will result from payments for the production (including payments received for 'product placement'), **promotion, distribution, or licensing of rights**, even if statements that expressly advocate the election or defeat of a clearly identified Federal candidate are included.") (emphasis added); *see also*, Advisory Opinion 2005-16 (Fired Up! LLC) (a new internet publisher, established by former U.S. Senator Jean Carnahan, with a journalistic history of "two postings" of original articles along with free postings to any reader, is exempt under the media exemption).

Therefore, we do not anticipate that theatres across the United States are going to be required to post disclaimers in order to exhibit I WANT YOUR MONEY or that RG Entertainment's advertisements for the film will require disclaimers. However, we seek the Commission's guidance in an abundance of caution.

We trust this letter provides the Commission the reformulation of the questions presented and the supplemental information that you requested and we respectfully renew our request for the Commission to provide the legal guidance requested as soon as possible so that we may comply with the law. The film is to be advertised on television in October and in theatres beginning October 15. If a promotional screener who expends funds to pre-screen the film in September is required to file a Form 5, the deadline will be October 15.

The Requestors believe they are entitled to an opinion within 20 days. The questions posed by Star Parker are integrally related to the questions posed by RG Entertainment. Both Star Parker and RG Entertainment need to know whether expenditures to produce and distribute a film in which Ms. Parker appears constitute a coordinated expenditure in support of her candidacy or whether the expenditures are exempt. Answering this question for both Requestors at the same time would appear to be the most efficient process. However, in the event the Commission desires to answer the Requestors on different timetables, then RG Entertainment (and its marketing and distribution agents) would be entitled to an opinion within 30 days pursuant to established Commission policy:

The Commission...will attempt to apply an expedited schedule to any entity or individual who, within 60 calendar days preceding the date of an election for Federal office, submits an advisory opinion request pertaining to a proposed public communication referencing a clearly identified Federal candidate.

The Commission notes that this new practice with respect to election-sensitive requests is in addition to the Commission's current, informal practice of expediting certain highly significant time-sensitive requests (whether or not relating to an upcoming election). The Commission

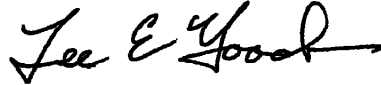
Amy Rothstein, Esq.
September 20, 2010
Page 11

endeavors to issue advisory opinions within 30 days under this general expedited process.

FEC Notice 2009-11, Notice of New Advisory Opinion Procedures and Explanation of Existing Procedures, Federal Register 32160-32162 (Vol. 74, No. 128, July 7, 2009).

Here, RG Entertainment's national broadcast advertisements will reference at least three federal candidates (see www.IWantYourMoney.net) in October 2010. Also, one of RG Entertainment's questions is whether theatrical exhibitions of the film in September and October 2010 will constitute "public communications." The importance of the questions presented, relating to a theatrical release of a provocative documentary film, also merits prompt attention.

Sincerely,

A handwritten signature in black ink that reads "Lee E Goodman" with a stylized flourish at the end.

Lee E. Goodman

cc: Hon. Matthew S. Peterson, Chairman
Hon. Cynthia L. Bauerly, Vice Chairman
Hon. Caroline C. Hunter, Commissioner
Hon. Donald F. McGahn II, Commissioner
Hon. Steven T. Walther, Commissioner
Hon. Ellen L. Weintraub, Commissioner