

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

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

DRAFTS A and B of ADVISORY OPINION 2011-24 are now available for comment. They were requested by James A. Kahl, Esq., on behalf of Louder Solutions, LLC d/b/a StandLouder.com, and are scheduled to be considered by the Commission at its public meeting on January 12, 2012.

If you wish to comment on DRAFTS A and B of ADVISORY OPINION 2011-24, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on January 11, 2012.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

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

Under the program:

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

FOR FURTHER INFORMATION

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

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

Comment Submission Procedure: Rosemary C. Smith
Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Drafts A and B of Advisory Opinion 2011-24, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

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

Office of General Counsel
ATTN: Rosemary C. Smith, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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January 6, 2012

AGENDA ITEM

For Meeting of 1/12/12

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Anthony Herman *AH*
General Counsel

Rosemary C. Smith *PCS*
Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Jessica Selinkoff *JS by TML*
Attorney

Theodore Lutz *TML*
Attorney

Subject: Drafts A and B of AO 2011-24 (StandLouder.com)

Attached are two alternative drafts of the subject advisory opinion. We have been asked to have these drafts placed on the Open Session agenda for January 12, 2012. Additional drafts may be made public prior to the Open Session.

Attachment

1 ADVISORY OPINION 2011-24

2 James A. Kahl, Esquire
3 Womble Carlyle Sandridge & Rice
4 1200 Nineteenth Street, N.W., Suite 500
5 Washington, DC 20004
6

DRAFT A

7 Dear Mr. Kahl:

8 We are responding to your advisory opinion request on behalf of Louder
9 Solutions, LLC, d/b/a StandLouder.com (“StandLouder.com”), concerning the
10 application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and
11 Commission regulations to StandLouder.com’s projected business model.
12 StandLouder.com asks (1) whether it is a political committee; (2) whether
13 StandLouder.com, together with persons who use StandLouder.com to create, post, and
14 fund advertisements, are a political committee or a series of political committees; (3)
15 what disclosure and disclaimer obligations apply to these advertisements; and (4) if, as an
16 alternative, StandLouder.com may create an independent expenditure-only committee.

17 The Commission concludes that StandLouder.com by itself is not a political
18 committee, and that together with persons who it expects will use StandLouder.com will
19 not become part of a political committee. The Commission also concludes that the
20 disclaimer and disclosure provisions of the Act and Commission regulations apply to the
21 advertisements. Finally, the Commission concludes that, as an alternative,
22 StandLouder.com may create an independent expenditure-only committee.

23

1 ***Background***

2 The facts presented in this advisory opinion are based on your letter received on
3 November 22, 2011.

4 StandLouder.com is a for-profit limited liability company (“LLC”) established
5 under the laws of North Carolina. StandLouder.com has a single natural person member
6 and has not elected to be treated as a corporation by the Internal Revenue Service.

7 StandLouder.com represents that it will be operated exclusively for commercial purposes;
8 is not directly or indirectly established, financed, maintained, or controlled by any
9 candidate or party committee; and will not conduct the activities described below in
10 cooperation, consultation or concert with, or at the request or suggestion of, any
11 candidate or political party.

12 StandLouder.com plans to provide services through its website that will enable
13 users to submit proposed advertisements for posting on the website (“content creators”)
14 and to help finance the airing of those advertisements (“funders”) on television, radio, or
15 other media. StandLouder.com states that it will offer these services on a non-partisan
16 basis without regard to party affiliation.

17 An advertisement submitted to StandLouder.com for posting on its website may
18 concern any topic. StandLouder.com anticipates that advertisements will relate not only
19 to political and social issues and candidates for public office, but also to other topics,
20 such as charitable causes, civic groups, or products and services.

21 StandLouder.com will impose certain conditions and restrictions on
22 advertisements posted on its website. Advertisements may not solicit contributions to
23 any political committee, nor may advertisements republish, in whole or in part, any

1 broadcast, written, graphic or other material prepared by a candidate or candidate's
2 authorized committee, or their agents, unless those materials come from a public source
3 and are used in an advertisement that advocates the defeat of the candidate or political
4 party that created the materials. Content creators of advertisements that may qualify as
5 independent expenditures or electioneering communications must represent that they are
6 not Federal contractors, foreign national individuals, foreign corporations or other foreign
7 entities, Federally-chartered organizations, candidates, or party committees. Content
8 creators also must grant StandLouder.com the right to use, modify, or distribute their
9 advertisements. Any content creator that is not a nonconnected committee or a separate
10 segregated fund ("SSF") may choose to have its name displayed on StandLouder.com
11 alongside its advertisement, but StandLouder.com will not otherwise identify the content
12 creators.¹

13 StandLouder.com will review advertisements only to screen for issues of
14 defamation, intellectual property infringement, pornography, privacy, and fraud.
15 StandLouder.com will reserve the right to refuse to post an advertisement only if there is
16 such an issue or if the advertisement is "otherwise offensive or would harm the
17 reputation" of StandLouder.com.

18 Each advertisement posted on StandLouder.com will have a corresponding
19 message forum that is intended to facilitate discussions regarding the advertisement by
20 website users. Messages containing offensive content or that otherwise do not comply

¹ StandLouder.com proposes a policy under which nonconnected committees and SSFs will not be allowed to provide any identifying information in their advertisements or on the StandLouder.com website.

1 with the terms of service will be removed. The message forums will be moderated to
2 ensure that rules are observed.

3 StandLouder.com will establish a two-stage process for collecting funds from
4 users of its website who wish to finance an advertisement. When StandLouder.com first
5 posts an advertisement on its website, a user may pledge any amount to help finance its
6 distribution, but StandLouder.com will initially charge only \$1 of that pledge to the
7 funder's credit card. StandLouder.com will ascertain the level of support for each
8 advertisement based on the volume of the pledges that it receives. When
9 StandLouder.com receives enough pledges to indicate that, in its judgment, the
10 advertisement will be successfully funded, StandLouder.com will "open [the
11 advertisement] for sponsorship."² At this second stage, funders who have already
12 pledged funds will receive an email from StandLouder.com and will have to take
13 affirmative steps online to pay the balance due on the pledge. Other users will also be
14 able to provide funds, which will immediately be charged to their accounts. All funds
15 received for advertisements will be kept in a separate company account, and the amounts
16 received for each advertisement will be accounted for separately.

17 StandLouder.com will allow individuals, partnerships, corporations,
18 nonconnected committees, and SSFs to help finance an advertisement. Persons wishing
19 to finance advertisements that qualify as independent expenditures or that would qualify
20 as electioneering communications if distributed in the applicable time periods must
21 represent that they are not Federal contractors, foreign national individuals, foreign

² If StandLouder.com receives insufficient pledges to support an advertisement, pledgers will be notified that their unused \$1 pledges may be redirected to another advertisement. Any funds not redirected after twelve months will be given to charities listed on the website.

1 corporations and other foreign entities, or Federally-chartered organizations.
2 Additionally, all users must represent that they are not candidates or employees or agents
3 of candidates or party committees, and that their activities on StandLouder.com are not
4 undertaken in cooperation, consultation or concert with, or at the request or suggestion of
5 any candidate, authorized committee, or political party, or their agents.

6 Once StandLouder.com determines that sufficient funds have been collected for a
7 given advertisement, it will purchase air time for, or otherwise distribute, the
8 advertisement. StandLouder.com will select the most appropriate market, medium, place,
9 and time to air or distribute the advertisement. StandLouder.com will air or distribute
10 advertisements that support competing candidates and take opposing positions on issues
11 in equivalent times and markets.

12 StandLouder.com states that its activities “are strictly profit-oriented and
13 undertaken at normal and usual rates.” It generally will charge content creators a fee of
14 \$25 or less to post their advertisements on the website. In addition, StandLouder.com
15 plans to charge its users a transaction fee for each online donation.

16 StandLouder.com will periodically engage in promotional activities to encourage
17 greater use of its services. For example, StandLouder.com may occasionally waive the
18 \$25 content fee. StandLouder.com also intends to provide limited supplemental funding
19 for advertisements during promotional periods, because “it is in the Company’s business
20 interests to maximize the number of [advertisements] that are aired or otherwise publicly
21 distributed.” StandLouder.com will develop financial qualification thresholds and all
22 advertisements that meet or exceed the thresholds will be entitled to the same amount of
23 funding. StandLouder.com will not be able to exercise any discretion to offer or deny

1 funding to any advertisement that meets or exceeds a threshold. Further, as a means of
2 encouraging submissions, StandLouder.com will award cash prizes or make small
3 payments to content creators whose advertisements are broadcast. These prizes and
4 payments would also be offered on a non-partisan basis. Finally, StandLouder.com
5 proposes to contract with vendors to manufacture products, such as t-shirts, hats, and
6 mugs, that contain popular messages from advertisements posted on its website. These
7 products will be sold online at StandLouder.com.

8 StandLouder.com states that it intends to will file the reports required by
9 Commission regulations at 11 CFR 104.5, 104.20, and 109.10 for any advertisements that
10 it determines to be independent expenditures or electioneering communications. The
11 reports will include the total amount provided to support the advertisement, including the
12 funds used to compensate media buyers and other third parties involved in the broadcast
13 or distribution of the advertisement. StandLouder.com states Tthe reports will identify
14 each funder who provided funding in excess of \$200 for the purpose of furthering an
15 independent expenditure or in excess of \$1,000 for the purpose furthering an
16 electioneering communication, as well as StandLouder.com's own funding or waiver of
17 fees, if applicable. If requirod, StandLouder.com also will report the identity of the
18 content creator and the cost to create and post the advertisement, as those costs are
19 reported to StandLouder.com by the content creator. StandLouder.com will not report
20 the \$25 placement fee paid by a content creator or any transaction fees that it receives
21 from website users.

22 StandLouder.com states that the advertisements will include any necessary disclaimers
23 required by 11 CFR 110.11 in advertisements that qualify as independent expenditures or

1 electioneering communications. Radio and television advertisements placed by
2 StandLouder.com will contain the following proposed disclaimer with voiceover:
3 StandLouder.com is responsible for the content of this advertising. Paid for by
4 StandLouder.com. Not authorized by any candidate or candidate's committee.
5 (www.StandLouder.com)

6 Apart from the first sentence, print advertisements placed by StandLouder.com will
7 contain the same disclaimer.

8 ***Questions Presented***

- 9 1. *Is StandLouder.com a "political committee"?*
- 10 2. *Will StandLouder.com, the content creators, and the users who donate funds*
11 *collectively become a political committee or a series of political committees?*
- 12 3. *What disclosure and disclaimer obligations apply to StandLouder.com's*
13 *advertisements?*
- 14 4. *As an alternative, can StandLouder.com form an independent expenditure-only*
15 *committee for the purpose of accepting advertisement content, receiving*
16 *contributions, and funding independent expenditures or electioneering*
17 *communications?*

18 ***Legal Analysis and Conclusions***

- 19 1. *Is StandLouder.com a "political committee"?*

20 The Act and Commission regulations define a "political committee" as "any
21 committee, club, association or other group of persons which receives contributions
22 aggregating in excess of \$1,000 during a calendar year or which makes expenditures
23 aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. 431(4)(A); *see also*

1 11 CFR 100.5. The Act and Commission regulations define the terms “contribution” and
2 “expenditure” to include any gift of money or “anything of value” for the purpose of
3 influencing a Federal election. 2 U.S.C. 431(8)(A) and (9)(A); 11 CFR 100.52(a) and
4 100.111(a). An organization that has made expenditures in excess of \$1,000, however,
5 will not be considered a “political committee” unless, in addition, its “major purpose is
6 Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”

7 Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg.
8 5595, 5597 (Feb. 7, 2007) (“Supplemental E&J”); *see Buckley v. Valeo*, 424 U.S. 1, 79
9 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

10 The Commission concludes that StandLouder.com is not a political committee
11 because it is neither receiving contributions nor making expenditures, nor does it possess
12 the requisite major purpose.

13 The activities that StandLouder.com proposes to engage in are “strictly profit-
14 oriented.” Its online platform will allow users to post and fund advertisements on any
15 topic, both political and non-political. Moreover, StandLouder.com will afford the same
16 treatment to all advertisements with political content – regardless of partisan orientation.
17 StandLouder.com will charge users a service fee for all online transactions and will
18 require a \$25 fee from all content creators. Except for limited promotions designed to
19 increase StandLouder.com’s business, these service fees will apply equally to all
20 transactions. Finally, StandLouder.com will not act in cooperation, consultation, or
21 concert with, or at the request or suggestion of any candidate or political party.

22 Users will provide funds to be posted in a separate company account, and the
23 amounts received for each advertisement will be accounted for separately.

1 StandLouder.com's purpose in collecting such funds is merely to act as a vendor and
2 intermediary for the purpose of facilitating its users' aggregation of their own monies to
3 fund their own independent expenditures and electioneering communications, rather than
4 to advance any of StandLouder.com's own political purposes. StandLouder.com's
5 facilitation of the aggregation of its users' funds is analogous to a bank providing
6 commercial accounts to political committees for the purpose of aggregating the
7 committees' own funds; in neither instance is the commercial vendor treated as receiving
8 contributions for the purposes of the Act.

9 For similar reasons, StandLouder.com would not be acting as the "maker" of the
10 expenditures. As the Commission explained in AO 2008-10 (VoterVoter.com), which
11 involved a similar fact pattern as the one presented here, "the distribution of express
12 advocacy messages to the general public is permissible as '*bona fide* commercial
13 activity,' if done by an entity organized and maintained for commercial purposes only
14 and not for the purpose of influencing any elections, and the activities themselves are for
15 purely commercial purposes." Here, StandLouder.com's proposed model meets all of
16 these conditions and thus any communications it distributes would be treated as
17 commercial activity and not its own expenditures.³

18 With respect to major purpose, confronted with a similar issue in Advisory
19 Opinion 2009-13 (Black Rock Group), the Commission concluded that the requestor, a

³ Although StandLouder.com states it will periodically engage in promotional activities such as waiving the \$25 content fee, providing limited supplemental funding for advertisements, and awarding cash prizes or making small payments to content creators whose advertisements are broadcast, it will do so on the basis of preexisting objective criteria, solely for the purpose of maximizing the number of advertisements that are purchased through its service, and not on the basis of the political content of the advertisements. Such promotional expenses would not constitute contributions or expenditures under the Act because they will be done in the ordinary course of its business and not at less than its usual and normal charge. See 11 CFR 100.52(d)(2) and 100.111(e)(2); see also AO 2010-06 (Famos) (a commercially reasonable transaction made in the vendor's ordinary course of business is not less than usual and normal charge).

1 consulting firm that offered “strategic communication and general consulting services,”
2 was not a political committee because the firm was “organized and operated for
3 commercial purposes.” In reaching this conclusion, the Commission emphasized that the
4 firm provided services to “a variety of clients” and had never “advocated the election of
5 any Federal candidate, . . . supported any political party, or [] expressed any political
6 goal, or stated any political purpose, or intends to do so in the future.” *Id.*

7 As the facts discussed above indicate, StandLouder.com plans to provide services
8 on the same bases. The differences between StandLoader.com’s proposal and the facts
9 in Advisory Opinion 2009-13 (Black Rock Group) are minor and not material. First,
10 while unlike the Black Rock Group, StandLouder.com will select the “most appropriate”
11 market, medium, place, and time to air advertisements, more importantly, like the Black
12 Rock Group, StandLouder.com will not control the content of any of the advertisements
13 that it runs. *Id.* Second, while StandLouder.com, unlike the Black Rock Group, plans to
14 provide supplemental funding for certain advertisements, all advertisements meeting or
15 exceeding StandLouder.com’s predetermined financial qualification thresholds will be
16 entitled to funding, regardless of the advertisements’ content – including if there are
17 advertisements with competing content or views on candidates or issues.

18 StandLouder.com represents that it is in its business interests to maximize the
19 number of advertisements that it airs. Indeed, StandLouder.com plans to capitalize on
20 successful advertisements by contracting with vendors to manufacture products
21 containing popular advertising messages and selling those items on its website.

22 In sum, like the Black Rock Group, StandLouder.com stresses that it is
23 exclusively “organized and operated for commercial purposes.” *Id.* Accordingly, the

1 Commission concludes that, based on StandLouder.com's business plan, its major
2 purpose is not Federal campaign activity and therefore it is not a political committee
3 under the Act and Commission regulations.

4 2. *Will StandLouder.com, the content creators, and the users who donate funds*
5 *collectively become a political committee or a series of political committees?*

6 No, StandLouder.com, the content creators, and the users who donate funds
7 collectively will not become a political committee or a series of political committees, for
8 the reasons set forth in the response to Question 1, above

9 3. *What disclosure and disclaimer obligations apply to StandLouder.com's*
10 *advertisements?*

11 a) Disclaimers

12 Electioneering communications⁴ and public communications⁵ expressly
13 advocating the election or defeat of a clearly identified candidate generally must include
14 disclaimers. *See* 2 U.S.C. 441d; 11 CFR 110.11(a)(2) and (4). If the communication is
15 not authorized by a candidate, an authorized committee of a candidate, or an agent of
16 either, the disclaimer must "clearly state the full name and permanent street address,
17 telephone number, or World Wide Web address of *the person who paid* for the
18 communication, and that the communication is not authorized by any candidate or
19 candidate's committee." 11 CFR 110.11(b)(3); *see also* 2 U.S.C.

⁴ An electioneering communication is defined by the Act and Commission regulations as any broadcast, cable, or satellite communication that refers to a clearly identified candidate for Federal office, is publicly distributed within sixty days before a general, special, or runoff election (or thirty days before a primary) for the office sought by the candidate and, in the case of a communication that refers to a candidate for an office other than that of President or Vice President, is targeted to the relevant electorate. *See* 2 U.S.C. 434(f)(3)(A); 11 CFR 100.29(a).

⁵ The term "public communication" includes communications placed for a fee on another person's website, as well as communications by means of any broadcast, cable, or satellite, newspaper, or magazine. 11 CFR 100.26; *see also* 2 U.S.C. 431(22).

1 441d(a)(3). Additionally, radio and television communications paid for by other persons
2 and not authorized by a candidate must include a written disclaimer stating who paid for
3 the communication, as well as a spoken voiceover of the same information by the
4 person(s) who paid for the communication or, in the case of an organization, a
5 representative of such organization. See 11 CFR 110.11(c)(4).

6 However, these requirements do not apply to “means of displaying an
7 advertisement of such a nature that the inclusion of a disclaimer would be impracticable.”
8 11 CFR 110.11(f)(1)(ii). See also AO 2004-10 (Metro Networks) (“in certain
9 circumstances it is impracticable to provide a full disclosure statement in the prescribed
10 manner”).

11 StandLouder.com itself will not have any disclaimer obligations because
12 StandLouder.com will act solely as a commercial vendor with respect to the
13 communications at issue and will not have “paid for” any public communication
14 containing express advocacy or electioneering communication.

15 For any advertisement for which a full disclaimer statement would otherwise be
16 required, but for which the inclusion of such would be impracticable (for example, due to
17 the amount of time or space required for a full disclaimer), a partial disclaimer is
18 sufficient.

19 One form of an acceptable partial disclaimer is for StandLouder.com
20 each advertisement (in writing and voiceover) the address
21 names of the payors of each communication may be found.
22 disclaimer should have a Uniform Resource Locator (“URL”),
23 be associated with the corresponding disclosure reports. For ex

1 entitled "Future" may have a URL address of www.standlouder.com/future, and the
2 corresponding disclosure report may have "www.StandLouder.com/Future" as the name
3 of the filer. The following is an example of an acceptable disclaimer with voiceover:

4 A group of persons identified at www.StandLouder.com/Future is
5 responsible for the content of this advertising. Paid for by persons
6 identified at www.StandLouder.com/Future. Not authorized by any
7 candidate or candidate's committee.

8
9 Another acceptable form of partial disclaimer could simply state, at a minimum,
10 that the advertisement was: (1) paid for persons who are not a political committee; and
11 (2) not authorized by any candidate or candidate's committee.

12 b) Disclosure

13 The Act and Commission regulations establish reporting requirements for
14 political committees, persons who make certain independent expenditures, and persons
15 who make electioneering communications. See 2 U.S.C. 432, 433, and 434;
16 11 CFR Parts 102, 104, and 109.

17 Every person, other than a political committee, that makes or contracts to make
18 independent expenditures aggregating in excess of \$250 with respect to a given election
19 in a calendar year must report these expenditures by submitting FEC Form 5 or a signed
20 statement satisfying the requirements of 11 CFR 109.10. Individuals must file this form
21 in an electronic format under 11 CFR 104.18 if they make independent expenditures in
22 excess of \$50,000 in a calendar year, or if they have reason to expect that they will
23 exceed this threshold during the calendar year.

24 Pursuant to 11 CFR 104.5(j), every person that makes a disbursement for an
25 electioneering communications aggregating in excess of \$10,000 during a calendar year

1 must report any such disbursements by submitting FEC Form 9. The Commission must
2 receive the notice by 11:59 p.m. of the day following the date of the first public
3 disclosure of the electioneering communication that triggers the reporting requirement.
4 Each time subsequent disbursements for electioneering communications made by the
5 same person aggregate in excess of \$10,000, another notice must be submitted.

6 As with the disclaimers, StandLouder.com will not have any disclosure
7 obligations because StandLouder.com will act solely as a commercial vendor with respect
8 to the communications at issue and will not have "made" any independent expenditure or
9 electioneering communication. Nonetheless, StandLouder.com may facilitate its users in
10 satisfying the independent expenditure (FEC Form 5) and electioneering communication
11 (FEC Form 9) reporting requirements. *See* 11 CFR 109.10 and 104.20. As discussed
12 above, in order to facilitate the public's ability to match the reports with their
13 corresponding advertisements, it is advisable for the name of the filer listed on the reports
14 to correspond with an easily identifiable URL provided in each advertisements'
15 disclaimer.

16 Alternatively, any content creator or other user that triggers the independent
17 expenditure or electioneering communication reporting thresholds individually may file
18 the appropriate report on his or her own behalf if StandLouder.com does not do so.

19 4. *As an alternative, can StandLouder.com form an independent expenditure-only*
20 *committee for the purpose of accepting advertisement content, receiving*
21 *contributions, and funding independent expenditures or electioneering*
22 *communications?*

1 Yes, StandLouder.com may form an independent expenditure-only committee for
2 the purpose of accepting advertisement content, receiving contributions, and funding
3 independent expenditures and electioneering communications.

4 Nonconnected committees that make only independent expenditures may solicit
5 and accept unlimited contributions from individuals, corporations, labor organizations,
6 and other political committees, but not from foreign nationals, Federal contractors,
7 national banks, or corporations organized by any law of Congress. *See, e.g.,* Advisory
8 Opinion 2011-11 (Colbert); *see also Citizens United v. FEC*, 130 S. Ct. 876 (2010);
9 *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*); *EMILY's List v. FEC*,
10 581 F.3d 1, 12 (D.C. Cir. 2009). These political committees must register with the
11 Commission and comply with all applicable reporting rules. *See SpeechNow*, 599 F.3d at
12 698.

13 In prior advisory opinions, the Commission has concluded that nonconnected
14 committees that make only independent expenditures could solicit and receive unlimited
15 contributions from individuals, political committees, corporations, and labor organizations.
16 *See* Advisory Opinions 2011-11 (Colbert) and 2010-11 (Commonsense Ten). Like the
17 political committees in those advisory opinions, StandLouder.com asserts that its independent
18 expenditure-only committee would register as a nonconnected committee, would make only
19 independent expenditures, would not make contributions or coordinated communications,
20 and would comply with all applicable disclaimer and reporting requirements of the Act and
21 Commission regulations.

22 Accordingly, the Commission concludes that StandLouder.com may establish and
23 operate an independent expenditure-only committee. The committee may solicit and

1 accept unlimited contributions from individuals, political committees, corporations, and
2 labor organizations, but it may not solicit or accept contributions from foreign nationals.
3 The committee must comply with all applicable reporting and disclaimer requirements.
4 *See, generally*, 2 U.S.C. 432, 433, 434, and 441d.

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

19 On behalf of the Commission,
20

21
22
23 Caroline C. Hunter
24 Chair
25

1 **ADVISORY OPINION 2011-24**

2 **James A. Kahl, Esquire**
3 **Womble Carlyle Sandridge & Rice**
4 **1200 Nineteenth Street, N.W., Suite 500**
5 **Washington, DC 20004**
6

DRAFT B

7 **Dear Mr. Kahl:**

8 **We are responding to your advisory opinion request on behalf of Louder**
9 **Solutions, LLC, d/b/a StandLouder.com (“StandLouder.com”), concerning the**
10 **application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and**
11 **Commission regulations to StandLouder.com’s projected business model.**
12 **StandLouder.com asks (1) whether it is a political committee; (2) whether**
13 **StandLouder.com, together with persons who use StandLouder.com to create, post, and**
14 **fund advertisements, are a political committee or a series of political committees; (3)**
15 **what disclosure and disclaimer obligations apply to these advertisements; and (4) if, as an**
16 **alternative, StandLouder.com may create an independent expenditure-only committee.**

17 **The Commission concludes that StandLouder.com by itself is not a political**
18 **committee, and that together with persons who it expects will use StandLouder.com will**
19 **not become part of a political committee. The Commission also concludes that the**
20 **disclaimer and disclosure provisions of the Act and Commission regulations apply to**
21 **StandLouder.com in certain instances. Finally, the Commission concludes that, as an**
22 **alternative, StandLouder.com may create an independent expenditure-only committee.**

23

1 ***Background***

2 The facts presented in this advisory opinion are based on your letter received on
3 November 22, 2011.

4 StandLouder.com is a for-profit limited liability company (“LLC”) established
5 under the laws of North Carolina. StandLouder.com has a single natural person member
6 and has not elected to be treated as a corporation by the Internal Revenue Service.
7 StandLouder.com represents that it will be operated exclusively for commercial purposes;
8 is not directly or indirectly established, financed, maintained, or controlled by any
9 candidate or party committee; and will not conduct the activities described below in
10 cooperation, consultation or concert with, or at the request or suggestion of, any
11 candidate or political party.

12 StandLouder.com plans to provide services through its website that will enable
13 users to submit proposed advertisements for posting on the website (“content creators”)
14 and to help finance the airing of those advertisements (“funders”) on television, radio, or
15 other media. StandLouder.com states that it will offer these services on a non-partisan
16 basis without regard to party affiliation.

17 An advertisement submitted to StandLouder.com for posting on its website may
18 concern any topic. StandLouder.com anticipates that advertisements will relate not only
19 to political and social issues and candidates for public office, but also to other topics,
20 such as charitable causes, civic groups, or products and services.

21 StandLouder.com will impose certain conditions and restrictions on
22 advertisements posted on its website. Advertisements may not solicit contributions to
23 any political committee, nor may advertisements republish, in whole or in part, any

1 broadcast, written, graphic or other material prepared by a candidate or candidate's
2 authorized committee, or their agents, unless those materials come from a public source
3 and are used in an advertisement that advocates the defeat of the candidate or political
4 party that created the materials. Content creators of advertisements that may qualify as
5 independent expenditures or electioneering communications must represent that they are
6 not Federal contractors, foreign national individuals, foreign corporations or other foreign
7 entities, Federally-chartered organizations, candidates, or party committees. Content
8 creators also must grant StandLouder.com the right to use, modify, or distribute their
9 advertisements. Any content creator that is not a nonconnected committee or a separate
10 segregated fund ("SSF") may choose to have its name displayed on StandLouder.com
11 alongside its advertisement, but StandLouder.com will not otherwise identify the content
12 creators.¹

13 StandLouder.com will review advertisements only to screen for issues of
14 defamation, intellectual property infringement, pornography, privacy, and fraud.
15 StandLouder.com will reserve the right to refuse to post an advertisement only if there is
16 such an issue or if the advertisement is "otherwise offensive or would harm the
17 reputation" of StandLouder.com.

18 Each advertisement posted on StandLouder.com will have a corresponding
19 message forum that is intended to facilitate discussions regarding the advertisement by
20 website users. Messages containing offensive content or that otherwise do not comply

¹ Nonconnected committees and SSFs will not be allowed to provide any identifying information in their advertisements or on the StandLouder.com website.

1 with the terms of service will be removed. The message forums will be moderated to
2 ensure that rules are observed.

3 StandLouder.com will establish a two-stage process for collecting funds from
4 users of its website who wish to finance an advertisement. When StandLouder.com first
5 posts an advertisement on its website, a user may pledge any amount to help finance its
6 distribution, but StandLouder.com will initially charge only \$1 of that pledge to the
7 funder's credit card. StandLouder.com will ascertain the level of support for each
8 advertisement based on the volume of the pledges that it receives. When
9 StandLouder.com receives enough pledges to indicate that, in its judgment, the
10 advertisement will be successfully funded, StandLouder.com will "open [the
11 advertisement] for sponsorship."² At this second stage, funders who have already
12 pledged funds will receive an email from StandLouder.com and will have to take
13 affirmative steps online to pay the balance due on the pledge. Other users will also be
14 able to provide funds, which will immediately be charged to their accounts. All funds
15 received for advertisements will be kept in a separate company account, and the amounts
16 received for each advertisement will be accounted for separately.

17 StandLouder.com will allow individuals, partnerships, corporations,
18 nonconnected committees, and SSFs to help finance an advertisement. Persons wishing
19 to finance advertisements that qualify as independent expenditures or that would qualify
20 as electioneering communications if distributed in the applicable time periods must
21 represent that they are not Federal contractors, foreign national individuals, foreign

² If StandLouder.com receives insufficient pledges to support an advertisement, pledgers will be notified that their unused \$1 pledges may be redirected to another advertisement. Any funds not redirected after twelve months will be given to charities listed on the website.

1 corporations and other foreign entities, or Federally-chartered organizations.
2 Additionally, all users must represent that they are not candidates or employees or agents
3 of candidates or party committees, and that their activities on StandLouder.com are not
4 undertaken in cooperation, consultation or concert with, or at the request or suggestion of
5 any candidate, authorized committee, or political party, or their agents.

6 Once StandLouder.com determines that sufficient funds have been collected for a
7 given advertisement, it will purchase air time for, or otherwise distribute, the
8 advertisement. StandLouder.com will select the most appropriate market, medium, place,
9 and time to air or distribute the advertisement. StandLouder.com will air or distribute
10 advertisements that support competing candidates and take opposing positions on issues
11 in equivalent times and markets.

12 StandLouder.com states that its activities “are strictly profit-oriented and
13 undertaken at normal and usual rates.” It generally will charge content creators a fee of
14 \$25 or less to post their advertisements on the website. In addition, StandLouder.com
15 plans to charge its users a transaction fee for each online donation.

16 StandLouder.com will periodically engage in promotional activities to encourage
17 greater use of its services. For example, StandLouder.com may occasionally waive the
18 \$25 content fee. StandLouder.com also intends to provide limited supplemental funding
19 for advertisements during promotional periods, because “it is in the Company’s business
20 interests to maximize the number of [advertisements] that are aired or otherwise publicly
21 distributed.” StandLouder.com will develop financial qualification thresholds and all
22 advertisements that meet or exceed the thresholds will be entitled to the same amount of
23 funding. StandLouder.com will not be able to exercise any discretion to offer or deny

1 funding to any advertisement that meets or exceeds a threshold. Further, as a means of
2 encouraging submissions, StandLouder.com will award cash prizes or make small
3 payments to content creators whose advertisements are broadcast. These prizes and
4 payments would also be offered on a non-partisan basis. Finally, StandLouder.com
5 proposes to contract with vendors to manufacture products, such as t-shirts, hats, and
6 mugs, that contain popular messages from advertisements posted on its website. These
7 products will be sold online at StandLouder.com.

8 StandLouder.com will file the reports required by Commission regulations at
9 11 CFR 104.5, 104.20, and 109.10 for any advertisements that it determines to be
10 independent expenditures or electioneering communications. The reports will include the
11 total amount provided to support the advertisement, including the funds used to
12 compensate media buyers and other third parties involved in the broadcast or distribution
13 of the advertisement. The reports will identify each funder who provided funding in
14 excess of \$200 for the purpose of furthering an independent expenditure or in excess of
15 \$1,000 for the purpose furthering an electioneering communication, as well as
16 StandLouder.com's own funding or waiver of fees, if applicable. If required,
17 StandLouder.com also will report the identity of the content creator and the cost to create
18 and post the advertisement, as those costs are reported to StandLouder.com by the
19 content creator. StandLouder.com will not report the \$25 placement fee paid by a content
20 creator or any transaction fees that it receives from website users.

21 StandLouder.com states that it will include any necessary disclaimers required by
22 11 CFR 110.11 in advertisements that qualify as independent expenditures or

1 electioneering communications. Radio and television advertisements placed by
2 StandLouder.com will contain the following disclaimer with voiceover:

3 StandLouder.com is responsible for the content of this advertising. Paid for by
4 StandLouder.com. Not authorized by any candidate or candidate's committee.
5 (www.StandLouder.com)
6

7 Apart from the first sentence, print advertisements placed by StandLouder.com will
8 contain the same disclaimer.

9 ***Questions Presented***

- 10 1. *Is StandLouder.com a "political committee"?*
11 2. *Will StandLouder.com, the content creators, and the users who donate funds*
12 *collectively become a political committee or a series of political committees?*
13 3. *What disclosure and disclaimer obligations apply to StandLouder.com's*
14 *advertisements?*
15 4. *As an alternative, can StandLouder.com form an independent expenditure-only*
16 *committee for the purpose of accepting advertisement content, receiving*
17 *contributions, and funding independent expenditures or electioneering*
18 *communications?*

19 ***Legal Analysis and Conclusions***

- 20 1. *Is StandLouder.com a "political committee"?*

21 No. The Commission concludes that StandLouder.com is not a political
22 committee because it lacks the requisite major purpose.

23 The Act and Commission regulations define a "political committee" as "any
24 committee, club, association or other group of persons which receives contributions
25 aggregating in excess of \$1,000 during a calendar year or which makes expenditures

1 aggregating in excess of \$1,000 during a calendar year.” 2 U.S.C. 431(4)(A); *see also*
2 11 CFR 100.5. An organization that has made expenditures in excess of \$1,000,
3 however, will not be considered a “political committee” unless, in addition, its “major
4 purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal
5 candidate).” Political Committee Status: Supplemental Explanation and Justification, 72
6 Fed. Reg. 5595, 5597 (Feb. 7, 2007) (“Supplemental E&J”); *see Buckley v. Valeo*, 424
7 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262
8 (1986).

9 Confronted with a similar issue in Advisory Opinion 2009-13 (Black Rock
10 Group), the Commission concluded that the requestor, a consulting firm that offered
11 “strategic communication and general consulting services,” was not a political committee
12 because the firm was “organized and operated for commercial purposes.” In reaching
13 this conclusion, the Commission emphasized that the firm provided services to “a variety
14 of clients” and had never “advocated the election of any Federal candidate, . . . supported
15 any political party, or [] expressed any political goal, or stated any political purpose, or
16 intends to do so in the future.” *Id.*

17 StandLouder.com plans to provide services on the same bases. The activities that
18 StandLouder.com proposes to engage in are “strictly profit-oriented.” Its online platform
19 will allow users to post and fund advertisements on any topic, both political and non-
20 political. Moreover, StandLouder.com will afford the same treatment to all
21 advertisements with political content – regardless of partisan orientation.
22 StandLouder.com will charge users a service fee for all online transactions and will
23 require a \$25 fee from all content creators. Except for limited promotions designed to

1 increase StandLouder.com's business, these service fees will apply equally to all
2 transactions. Finally, StandLouder.com will not act in cooperation, consultation, or
3 concert with, or at the request or suggestion of any candidate or political party.

4 The differences between StandLouder.com's proposal and the facts in Advisory
5 Opinion 2009-13 (Black Rock Group) are minor and not material. While
6 StandLouder.com, unlike the Black Rock Group, plans to provide supplemental funding
7 for certain advertisements and select the marked, medium, place, and time to air the
8 advertisements, all advertisements meeting or exceeding StandLouder.com's
9 predetermined financial qualification thresholds will be entitled to funding, regardless of
10 the advertisements' content – including if there are advertisements with competing
11 content or views on candidates or issues.

12 StandLouder.com represents that it is in its business interests to maximize the
13 number of advertisements that it airs. Indeed, StandLouder.com plans to capitalize on
14 successful advertisements by contracting with vendors to manufacture products
15 containing popular advertising messages and selling those items on its website.

16 In sum, like the Black Rock Group, StandLouder.com stresses that it is
17 exclusively "organized and operated for commercial purposes." *Id.* Accordingly, the
18 Commission concludes that, based on StandLouder.com's business plan, its major
19 purpose is not Federal campaign activity and therefore it is not a political committee
20 under the Act and Commission regulations.

21

1 2. *Will StandLouder.com, the content creators, and the users who donate funds*
2 *collectively become a political committee or a series of political committees?*

3 No, StandLouder.com, the content creators, and the users who donate funds
4 collectively will not become a political committee or a series of political committees, for
5 the reasons set forth in the response to Question 1, above.

6 3. *What disclosure and disclaimer obligations apply to StandLouder.com's*
7 *advertisements?*

8 a) Disclaimers

9 Electioneering communications³ and public communications⁴ expressly
10 advocating the election or defeat of a clearly identified candidate generally must include
11 disclaimers. *See* 2 U.S.C. 441d; 11 CFR 110.11(a)(2) and (4). If the communication is
12 not authorized by a candidate, an authorized committee of a candidate, or an agent of
13 either, the disclaimer must “clearly state the full name and permanent street address,
14 telephone number, or World Wide Web address of the person who paid for the
15 communication, and that the communication is not authorized by any candidate or
16 candidate’s committee.” 11 CFR 110.11(b)(3); *see also* 2 U.S.C. 441d(a)(3).

17 Unlike traditional vendors, StandLouder.com will acquire the rights to use,
18 modify, and distribute the advertisements, recruit funding for the advertisements,
19 determine thresholds for which advertisements to distribute, and select the medium,

³ An electioneering communication is any broadcast, cable, or satellite communication that refers to a clearly identified candidate for Federal office, is publicly distributed within sixty days before a general, special, or runoff election (or thirty days before a primary) for the office sought by the candidate and, in the case of a communication that refers to a candidate for an office other than that of President or Vice President, is targeted to the relevant electorate. *See* 2 U.S.C. 434(f)(3)(A); 11 CFR 100.29(a).

⁴ The term “public communication” includes communications placed for a fee on another person’s website, as well as communications by means of any broadcast, cable, or satellite, newspaper, or magazine. 11 CFR 100.26; *see also* 2 U.S.C. 431(22).

1 place, and time to air advertisements. Those persons who give money to
2 StandLouder.com in order to run the particular advertisement do not gain ownership or
3 any creative control over that content merely through the provision of funds. Rather, the
4 speech remains StandLouder.com's. As a result, StandLouder.com, under Commission
5 regulations, is funding the advertisements in question.

6 Thus, the Act and Commission regulations require a disclaimer indicating that
7 StandLouder.com paid for the communication. StandLouder.com's proposed disclaimer
8 language -- "StandLouder.com is responsible for the content of this advertising. Paid for
9 by StandLouder.com. Not authorized by any candidate or candidate's committee.
10 (www.StandLouder.com)" -- suffices.

11 b) Disclosure

12 The Act and Commission regulations establish reporting requirements for
13 political committees, persons who make certain independent expenditures, and persons
14 who make electioneering communications. *See* 2 U.S.C. 432, 433, and 434;
15 11 CFR Parts 102, 104, and 109. Because StandLouder.com paid for the communication,
16 for the reasons stated above, it has the sole obligation for reporting any independent
17 expenditures or electioneering communications that arise from its proposal. Those
18 reports would include any person who gave funds to StandLouder.com in excess of the
19 relevant threshold for the specific advertisement that is the subject of the report.

20 4. *As an alternative, can StandLouder.com form an independent expenditure-only*
21 *committee for the purpose of accepting advertisement content, receiving*
22 *contributions, and funding independent expenditures or electioneering*
23 *communications?*

1 Yes, StandLouder.com may form an independent expenditure-only committee for
2 the purpose of accepting advertisement content, receiving contributions, and funding
3 independent expenditures.⁵

4 Nonconnected committees that make only independent expenditures may solicit
5 and accept unlimited contributions from individuals, corporations, labor organizations,
6 and other political committees, but not from foreign nationals, Federal contractors,
7 national banks, or corporations organized by any law of Congress. *See, e.g.*, Advisory
8 Opinion 2011-11 (Colbert); *see also Citizens United v. FEC*, 130 S. Ct. 876 (2010);
9 *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*); *EMILY's List v. FEC*,
10 581 F.3d 1, 12 (D.C. Cir. 2009). These political committees must register with the
11 Commission and comply with all applicable reporting rules. *See SpeechNow*, 599 F.3d at
12 698.

13 In prior advisory opinions, the Commission has concluded that nonconnected
14 committees that do not make contributions could solicit and receive unlimited contributions
15 from individuals, political committees, corporations, and labor organizations. *See Advisory*
16 *Opinions 2011-11 (Colbert) and 2010-11 (Commonsense Ten)*. Like the political
17 committees in those advisory opinions, StandLouder.com asserts that its independent
18 expenditure-only committee would register as a nonconnected committee, would not make
19 contributions or coordinated communications, and would comply with all applicable
20 disclaimer and reporting requirements of the Act and Commission regulations.

⁵ While StandLouder.com also asks whether it may create an independent expenditure-only committee to fund electioneering communications, political committees, "by operation of the expenditure and independent expenditure exemption from the definition of 'electioneering communications,' . . . do not make disbursements for electioneering communications." *See Final Rules on Bipartisan Campaign Reform Act of 2002 Reporting: Coordinated and Independent Expenditures*, 68 FR 404, 412 (Jan. 3, 2003). Instead, political committees must report their disbursements for communications as independent expenditures or expenditures under 11 CFR 104.3 and 104.4. 11 CFR 104.20(b).

