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FEDERAL ELECTION COMMISSION
Washington, DC 20463

Sept. 18, 2017

MEMORANDUM

TO: The Commission

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Subject: Draft AO 2017-05 (GAP and CDP) Draft C

Attached is a proposed draft of the subject advisory opinion. It is scheduled to be considered by the Commission by tally vote on Sept. 20, 2017.

Members of the public may submit written comments on the draft advisory opinion. This draft is available for comment until 4:00 pm (Eastern Time) on Sept. 19, 2017.

For more information about how to submit comments, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>

Attachment

1 ADVISORY OPINION 2017-05

2

3 Dan Backer, Esq.
4 political.law
5 203 South Union Street
6 Suite 300
7 Alexandria, VA 22314

DRAFT C

8

9 Dear Mr. Backer:

10 We are responding to your advisory opinion request on behalf of Great America PAC and
11 The Committee to Defend the President, concerning the application of the Federal Election
12 Campaign Act, 52 U.S.C. §§ 30101-43126 (the “Act”), and Commission regulations to your
13 proposal to use Twitter handles in disclaimers on public communications, emails, and websites,
14 and to maintain Twitter profiles without a disclaimer. The Commission concludes that Great
15 America PAC may use its Twitter handle in lieu of its full name in disclaimers, and that The
16 Committee to Defend the President may include its Twitter handle along with its full name as
17 long as the disclaimer’s language makes clear that the committee is paying for the
18 communication, but that neither committee may use Twitter handles as an alternative to their
19 permanent street address, telephone number, or World Wide Web address. The Commission
20 could not approve a response by the required four affirmative votes regarding whether the
21 committees’ Twitter profile pages must include disclaimers.

22 ***Background***

23 The facts presented in this advisory opinion are based on your letter received on June 5,
24 2017, and publicly available information.

25 Great America PAC and The Committee to Defend the President are nonconnected
26 political committees.¹ Advisory Opinion Request at AOR002. They each maintain a publicly

¹ See The Committee to Defend the President, Statement of Organization, FEC Form 1, Amend (Jan. 28,

1 accessible Twitter profile,² and they assert that they plan to make independent expenditures for
2 various types of communications that are within the scope of the disclaimer requirements under
3 the Act and Commission regulations, including “public communications” within the meaning of
4 11 C.F.R. § 100.26 (for example, certain broadcast, cable, newspaper, magazine, and mass
5 mailings), emails of substantially similar content distributed to more than 500 recipients, and
6 their respective publicly accessible websites. AOR002-003.

7 Twitter is free to use and “allows users to disseminate, receive, and read online messages
8 called ‘tweets,’ which may include text, hypertext links, audio, and video components.”
9 AOR002. Before sending tweets, each user must obtain a unique Twitter “handle” — a
10 username preceded by the “@” symbol — at which point “Twitter automatically creates a
11 Twitter profile page under the Twitter.com domain.” *Id.* As noted in the request, a “profile page
12 displays the user’s name and handle; a biography or description of the user, not exceeding 160
13 characters; the web address for, and hypertext link to, the user’s home page; a personal picture
14 and header picture; and a list of the user’s [t]weets.” *Id.* Though users create the content for
15 their Twitter profiles, Twitter maintains ownership interests in its software (which it merely
16 licenses to users for free) and retains the right to “remove or refuse to distribute any [c]ontent on
17 [its] [s]ervices, suspend or terminate users, and reclaim usernames.”³

2017), <http://docquery.fec.gov/pdf/619/201701289041532619/201701289041532619.pdf>; Great America PAC, Statement of Organization, FEC Form 1, Amend (May 26, 2016), <http://docquery.fec.gov/pdf/493/201605269017304493/201605269017304493.pdf>.

² See The Committee to Defend the President, @Defend_Trump, https://twitter.com/defend_trump?lang=en; Great America PAC, @GreatAmericaPAC, https://twitter.com/GreatAmericaPAC?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor.

³ Twitter, Terms of Service ¶ 4, <https://twitter.com/en/tos> (last visited June 19, 2017).

1 Great America PAC’s Twitter handle is @GreatAmericaPAC. *Id.* at AOR003. By
2 contrast, as acknowledged in the request, The Committee to Defend the President’s Twitter
3 handle — @Defend_Trump — is not “materially identical” to its name. *Id.*

4 ***Questions Presented***

5 1. When Great America PAC pays for and disseminates a communication subject to the
6 disclaimer requirements of 11 C.F.R. § 110.11, would including the committee’s Twitter handle
7 in the disclaimer, when either written or spoken, in lieu of the committee’s actual name satisfy
8 the requirement that the committee include its “full name” in the disclaimer?

9 2. When The Committee to Defend the President pays for and disseminates a
10 communication subject to the disclaimer requirements of 11 C.F.R. § 110.11, may it satisfy the
11 requirement to include its “full name” in disclaimers by including both its full name and Twitter
12 handle?

13 3. When Great America PAC or the Committee to Defend the President pays for and
14 disseminates a communication subject to the disclaimer requirements of 11 C.F.R. § 110.11,
15 would including the committee’s Twitter handle in the disclaimer satisfy the requirement that the
16 committee include its “permanent street address, telephone number, or World Wide Web
17 address” in the disclaimer?

18 4. If the answer to Question 3 is no, would including Great America PAC’s or The
19 Committee to Defend the President’s Twitter handle in the disclaimer satisfy the requirement
20 that the committee include its “permanent street address, telephone number, or World Wide Web
21 address” in the disclaimer if its Twitter profile page included the committee’s website address
22 and a hypertext link to the committee’s website, which contained the committee’s permanent
23 street address, telephone number, or World Wide Web address?

1 5. *May Great America PAC and The Committee to Defend the President use Twitter without*
2 *including a disclaimer on their respective profile pages?*

3 6. *If the answer to Question 5 is no, may Great America PAC and The Committee to Defend*
4 *the President satisfy the Act and Commission regulations by ensuring that their Twitter profile*
5 *pages specify, in locations permitted by Twitter, the respective committee's name, the*
6 *committee's Twitter handle, the web address of the committee's traditional homepage which*
7 *contains a standard disclaimer, and a hypertext link to that homepage?*

8 7. *If the answer to Question 5 is no, may Great America PAC and The Committee to Defend*
9 *the President satisfy the Act and Commission regulations by ensuring that their Twitter profile*
10 *pages contain a graphic bearing a standard disclaimer, even if the disclaimer may not be visible*
11 *when the profile page is viewed on certain mobile devices?*

12 ***Legal Analysis and Conclusions***

13 1. *When Great America PAC pays for and disseminates a communication subject to the*
14 *disclaimer requirements of 11 C.F.R. § 110.11, would including the committee's Twitter handle*
15 *in the disclaimer, when either written or spoken, in lieu of the committee's actual name satisfy*
16 *the requirement that the committee include its "full name" in the disclaimer?*

17 Yes, Great America PAC may use its Twitter handle in lieu of its actual name, in both
18 written and spoken disclaimers, because the Twitter handle unambiguously identifies the
19 political committee.

20 Any "public communication," *see* 11 C.F.R. § 100.26,⁴ made by a political committee,
21 electronic mail of more than 500 substantially similar communications sent by a political

⁴ Commission regulations define "public communication" as "a communication by means of any broadcast,

1 committee, and all websites of political committees available to the general public must contain a
2 disclaimer to identify who paid for the communication. 52 U.S.C. § 30120(a); 11 C.F.R.
3 § 110.11(a). When a communication is not authorized by a candidate, an authorized committee
4 of a candidate, or an agent of either, the disclaimer must “clearly state the full name . . . of the
5 person who paid for the communication, and that the communication is not authorized by any
6 candidate or candidate’s committee.” 11 C.F.R. § 110.11(b)(3). In such communications
7 transmitted through radio, television, broadcast, cable, or satellite, the disclaimer must include an
8 audio statement with “the name of the political committee” immediately followed by “is
9 responsible for the content of this advertising.” *Id.* § 110.11(c)(4). Disclaimers “must be
10 presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate
11 notice of the identity of the person or political committee that paid for the communication.” 11
12 C.F.R. § 110.11(c)(1).

13 Here, Great America PAC proposes to use its Twitter handle — @GreatAmericaPAC —
14 as its name in both written and spoken disclaimers. Where written, the disclaimer would read
15 “Paid for by @GreatAmericaPAC,” and the addition of the “@” symbol would not obscure the
16 name of the entity paying for the communication, which would be unambiguously identified as
17 Great America PAC. *See* Advisory Opinion 1995-09 (NewtWatch PAC) at 1-2 (permitting
18 “NewtWatch PAC” to use “NewtWatch” as its full name in its disclaimers). Likewise, the
19 spoken disclaimer would be “@GreatAmericaPAC is responsible for the content of this
20 advertising,” and again the reading of “at” in front of the political committee’s name would not

cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 11 C.F.R. § 100.26. Moreover, the “term *general public political advertising* shall not include communications over the Internet, except for communications placed for a fee on another person’s Web site.” *Id.*

1 obscure the name of the payor. Because the use of Great America PAC's Twitter handle would
2 give adequate notice of the identity of the political committee paying for the communication, it
3 may use its Twitter handle as its name in its disclaimers.

4 2. *When The Committee to Defend the President pays for and disseminates a*
5 *communication subject to the disclaimer requirements of 11 C.F.R. § 110.11, may it satisfy the*
6 *requirement to include its "full name" in disclaimers by including both its full name and Twitter*
7 *handle?*

8 Yes, The Committee to Defend the President may use both its full name and Twitter
9 handle in disclaimers, as long as the disclaimer contains language making clear that the
10 committee is paying for the communication.⁵

11 As discussed in the answer to Question 1 above, where the Act and Commission
12 regulations require communications to "clearly state the full name" of a political committee, 11
13 C.F.R. § 110.11(b)(3); *see* 52 U.S.C. § 30120(a)(3), that name "must be presented in a clear and
14 conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of
15 the person or political committee that paid for the communication," 11 C.F.R. § 110.11(c)(1).
16 Here, The Committee to Defend the President could use both its full name and Twitter handle
17 without confusing the reader about the identity of the entity paying for the communication, as

⁵ The Commission notes that The Committee to Defend the President's Twitter handle — @Defend_Trump — appears to be inconsistent with 11 C.F.R. § 102.14(a), which provides that, with certain exceptions, "no unauthorized committee shall include the name of any candidate in its name," including in any "special project" name. *See also* Advisory Opinion 2015-04 (Collective Actions PAC) (concluding that unauthorized committee could not use "@Bernie_Run" as its Twitter handle). The U.S. Court of Appeals for the D.C. Circuit, however, recently held that there was a "substantial likelihood" this regulation was unconstitutional as applied to the conduct of a certain unauthorized political committee and remanded to the district court with an order to enter a preliminary injunction enjoining enforcement of the rule as applied to that committee. *See Pursuing America's Greatness v. FEC*, 831 F.3d 500 (2016). Because this litigation is pending and the requestor does not ask whether it may use the name of a federal candidate in its Twitter handle, the Commission is not answering that question here.

1 long as it is clear who is paying for the communication. *See* Advisory Opinion 2011-14 (Utah
2 Bankers Association and Utah Bankers Association Action PAC) at 9 (“The requestors may
3 retain a reference to the [p]roject in [their] disclaimer should they wish to do so, as long as the
4 identity of the payor is clear.”).

5 For example, it would be sufficient for the committee to have a disclaimer stating, “Paid
6 for by The Committee to Defend the President, @Defend_Trump,
7 committeetodefendthepresident.com. Not authorized by any candidate or candidate’s
8 committee.” *See id.* (approving disclaimer including different name of fundraising project
9 because disclaimer contained language that communication “paid for by” political committee).
10 Thus, the Committee to Defend the President may use its full name and Twitter handle in
11 disclaimers because it is clear who is paying for the communication.

12 3. *When Great America PAC or the Committee to Defend the President pays for and*
13 *disseminates a communication subject to the disclaimer requirements of 11 C.F.R. § 110.11,*
14 *would including the committee’s Twitter handle in the disclaimer satisfy the requirement that the*
15 *committee include its “permanent street address, telephone number, or World Wide Web*
16 *address” in the disclaimer?*

17 No, neither Great America PAC nor The Committee to Defend the President may use its
18 Twitter handle in its disclaimers in lieu of its permanent street address, telephone number, or
19 World Wide Web address, because the Act specifically requires certain identifying information
20 that a Twitter handle alone cannot satisfy.

21 In addition to the requirement that communications not authorized by a candidate,
22 candidate’s committee, or its agents must include a disclaimer with the name of who paid for the
23 communication, such disclaimers must also include the “permanent street address, telephone

1 number, or World Wide address” of the payor. 52 U.S.C. § 30120(a)(3); 11 C.F.R.
2 § 110.11(b)(3). The requestors assert that a “Twitter handle plays the same role as a
3 conventional World Wide Web address in directing viewers to a freely accessible internet
4 resource containing information about the PAC sponsoring a communication.” AOR005.

5 Under the specific statutory requirements of the Act, however, a political committee may
6 not substitute alternative identifying information in place of a World Wide Web address. Even if
7 it could, a Twitter handle is different from a World Wide Web address in material respects. The
8 latter includes a “domain name” (for example, greatamericapac.com) that corresponds to a
9 unique “location on the Internet” that a user (particularly one that may be unfamiliar to Twitter)
10 may find by entering it into a web browser.⁶ By contrast, a Twitter handle does not refer directly
11 to a specific place on the internet — it makes no reference to Twitter.com — and the “@”
12 symbol, which is not unique to Twitter, may easily be confused with other social media
13 platforms.⁷ Moreover, a Twitter handle, unlike a domain name, gives no information about what
14 type of organization it references (for example, “.com,” “.org,” or “.gov.”).

15 Thus, neither Great America PAC nor The Committee to Defend the President may use
16 its Twitter handle in disclaimers in lieu of its permanent street address, telephone number, or
17 World Wide Web address, because a Twitter handle does not provide the identifying information
18 required by the Act.

⁶ Internet Corporation for Assigned Names and Numbers (“ICANN”), Beginner’s Guide to Domain Names at 3, <https://www.icann.org/en/system/files/files/domain-names-beginners-guide-06dec10-en.pdf> (last visited June 22, 2017).

⁷ See, e.g., Instagram Help Center, https://help.instagram.com/1660923094227526/?helpref=hc_fnav (noting that user may “mention” another user in “story” by “[t]yp[ing] @ followed immediately by their username) (last visited June 22, 2017).

1 4. *If the answer to Question 3 is no, would including Great America PAC's or The*
2 *Committee to Defend the President's Twitter handle in the disclaimer satisfy the requirement*
3 *that the committee include its "permanent street address, telephone number, or World Wide Web*
4 *address" in the disclaimer if its Twitter profile page included the committee's website address*
5 *and a hypertext link to the committee's website, which contained the committee's permanent*
6 *street address, telephone number, or World Wide Web address?*

7 No, neither Great America PAC nor The Committee to Defend the President may use its
8 Twitter handle in lieu of the identifying information required by the Act, even if its Twitter
9 profile includes the address of, and a hypertext link to, its website containing the committee's
10 permanent street address, telephone number, or World Wide Web address because the Act
11 requires such identifying information to be placed on the communication.

12 As discussed above, the Act is specific that the "*communication* [requiring a
13 disclaimer] . . . shall clearly state the name and permanent street address, telephone number, or
14 World Wide Web address of the person who paid for the communication." 52 U.S.C.
15 § 30120(a)(3) (emphasis added). Though the Commission has recognized "the Internet as a
16 unique and evolving mode of mass communication and political speech that is distinct from other
17 media in a manner that warrants a restrained regulatory approach,"⁸ Internet Communications, 71
18 Fed. Reg. 18589, 18589 (Apr. 12, 2006), here the issue involves all of Great America PAC or
19 The Committee to Defend the President's public communications (including broadcast, cable,
20 newspaper, magazine, and mass mailings), emails of more than 500 substantially similar

⁸ For example, in Advisory Opinion 2010-19 (Google), the Commission permitted political committees to pay for small Google text advertisements that on their face did not contain a disclaimer, but included a link to a "landing page" that did. That advisory opinion, however, applied only to small text ads on the internet, rather than to all of a political committee's public communications, emails, or websites.

1 communications, and websites available to the general public. Additionally, there is no
2 suggestion of a new and unique burden or impracticability in continuing to place World Wide
3 Web addresses in disclaimers.

4 Therefore, neither Great America PAC nor The Committee to Defend the President may
5 use its Twitter handle instead of its permanent street address, telephone number, or World Wide
6 Web address, even if its Twitter profile contains a link to its political committee's website,
7 because the Act specifically requires certain identifying information to be placed on the
8 communication requiring a disclaimer.

9 5. *May Great America PAC and The Committee to Defend the President use Twitter without*
10 *including a disclaimer on their respective profile pages?*

11 The Commission could not approve a response to this question by the required four
12 affirmative votes. *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

13 6. *If the answer to Question 5 is no, may Great America PAC and The Committee to Defend*
14 *the President satisfy the Act and Commission regulations by ensuring that their Twitter profile*
15 *pages specify, in locations permitted by Twitter, the respective committee's name, the*
16 *committee's Twitter handle, the web address of the committee's traditional homepage which*
17 *contains a standard disclaimer, and a hypertext link to that homepage?*

18 The Commission could not approve a response to this question by the required four
19 affirmative votes. *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

20 7. *If the answer to Question 5 is no, may Great America PAC and The Committee to Defend*
21 *the President satisfy the Act and Commission regulations by ensuring that their Twitter profile*

1 *pages contain a graphic bearing a standard disclaimer, even if the disclaimer may not be visible*
2 *when the profile page is viewed on certain mobile devices?*

3 The Commission could not approve a response to this question by the required four
4 affirmative votes. *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

5 This response constitutes an advisory opinion concerning the application of the Act and
6 Commission regulations to the specific transaction or activity set forth in your request.
7 *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts
8 or assumptions presented, and such facts or assumptions are material to a conclusion presented in
9 this advisory opinion, then the requestors may not rely on that conclusion as support for their
10 proposed activity. Any person involved in any specific transaction or activity which is
11 indistinguishable in all its material aspects from the transaction or activity with respect to which
12 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
13 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
14 affected by subsequent developments in the law including, but not limited to, statutes,
15 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
16 on the Commission's website.

17 On behalf of the Commission,

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19
20
21 Steven T. Walther
22 Chairman