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FEDERAL ELECTION COMMISSION  
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**AGENDA DOCUMENT NO. 18-22-B  
AGENDA ITEM  
For meeting of May 10, 2018  
SUBMITTED LATE**

May 9, 2018

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
Acting General Counsel

Erin Chlopak *ERC*  
Acting Associate General Counsel

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Assistant General Counsel

Joanna S. Waldstreicher *JSW*  
Attorney

Subject: AO 2018-04 (Conservative Primary LLC) Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on May 10, 2018.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

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

Attachment

1 ADVISORY OPINION 2018-04

2

3 Petra A. Mangini, Esq.  
4 political.law  
5 203 South Union St.  
6 Suite 300  
7 Alexandria, VA 22314

**DRAFT B**

8

9 Dear Ms. Mangini:

10 We are responding to your advisory opinion request on behalf of Conservative Primary  
11 LLC (“Conservative Primary” or the “Company”) concerning the application of the Federal  
12 Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to  
13 Conservative Primary’s proposed business plan to create and administer a website to conduct  
14 straw polls and advertise the site and the poll results. The Commission concludes that the  
15 proposed website and ads are permissible under the Act and Commission regulations, provided  
16 that Conservative Primary adheres to relevant statutory and regulatory requirements described  
17 below. The Commission further concludes that payments from customers to Conservative  
18 Primary will constitute contributions, and that Conservative Primary will be a political  
19 committee.

20 **Background**

21 The facts presented in this advisory opinion are based on your letter received on February  
22 20, 2018, and your e-mail received on March 13, 2018 (collectively “advisory opinion request”  
23 or “AOR”).

24 Conservative Primary states that it is a for-profit limited liability company.<sup>1</sup> AOR001.  
25 The request states that Conservative Primary’s primary purpose and proposed business model is  
26 to create and administer a website to conduct straw polls in certain congressional elections. *Id.*

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<sup>1</sup> Although Conservative Primary is an LLC, it asks the Commission to consider it as a corporation for the purposes of this advisory opinion. *See* AOR012.

1 Specifically, the request states that Conservative Primary plans to conduct straw polls in primary  
2 elections where there are at least two Republican candidates, not including a Republican  
3 incumbent. *Id.* According to the request, straw polls will not be conducted in all races; the races  
4 will be selected based on criteria such as statistics about the congressional districts. AOR012.  
5 Conservative Primary states that it has not yet determined how many races it will select for polls,  
6 nor has it determined whether it will conduct straw polls in races where the incumbent is not a  
7 Republican. *Id.*

8 Conservative Primary says it plans to advertise its website to individuals in congressional  
9 districts in which it is conducting polls. AOR001. The request states that Conservative Primary  
10 intends to target politically conservative individuals through email, social media, television, and  
11 conservative talk and radio shows. *Id.* According to the request, an example of such an ad  
12 would read:

13 **Ad #1:** Let's go RINO hunting. Congressman Doe in District 8 does not  
14 represent the conservatives in this district. Conservative Primary gives you a tool  
15 to help elect someone who better represents conservatives like you. Join  
16 Conservative Primary, pool your conservative vote, and help nominate a real  
17 conservative to the general election.

18 *Id.*

19 Conservative Primary states that it will be a public website, but will require users to  
20 register and pay a fee, potentially \$10, to cast a vote in each straw poll. *Id.* According to the  
21 request, this fee will cover Conservative Primary's costs associated with developing and  
22 maintaining the site, credit card fees, and advertising for the company and the poll results, as  
23 well as provide a commercially reasonable profit. AOR002. The request states that website  
24 visitors may donate money to support the company itself, if they wish, without having to also

1 register or vote in a poll. AOR001. According to the request, all funds received from registered  
2 users (“Customers”) and from non-voting visitors’ donations will be placed in Conservative  
3 Primary’s general corporate account. AOR003.

4         The Conservative Primary website says it plans to have a password-protected section for  
5 Customers to participate in its straw polls. AOR001. According to the request, the public part of  
6 the site will contain general information about the Company, including information on how  
7 visitors may register and participate in the straw polls. *Id.* The public part of the site, according  
8 to the request, will also include a notice that the Company intends to spend a portion of the  
9 revenue it generates on each poll to advertise the winner of that poll. *Id.* The request states that  
10 the public section of the site will also provide information about ongoing polls that may be of  
11 particular public interest, including the district, slate of candidates, polling period, and current  
12 vote breakdown. *Id.*

13         When a given poll closes, the request states that Conservative Primary will tally the votes  
14 and announce the winner, both to its Customers and to the general public in the relevant  
15 congressional district, AOR002, and communicate the poll results to its Customers by email. *Id.*  
16 The request states that Conservative Primary will communicate the results to the general public  
17 on its website, and also through advertisements it produces and distributes online and through  
18 conservative talk and radio shows, and possibly on television and through other media. *Id.*  
19 According to the request, the Company will incur all costs of creating and distributing the emails  
20 and advertisements and may provide funding itself, if necessary, in addition to relying on  
21 revenue generated from registered users and donors. AOR003. The request states that

1 Conservative Primary will maintain full control over the Company's funds used for producing  
2 and distributing the emails and advertisements. *Id.*

3 According to the request, in its emails to its Customers and on its website, Conservative  
4 Primary will announce the results of a poll and encourage Customers and viewers of the site to  
5 support the winner using the following text, with a link to the winning candidate's campaign  
6 website:

7 **Ad #2:** Please join your friends in supporting the winners of the Conservative  
8 Primary. Vote for these winners and support their campaign with your time and  
9 money.<sup>2</sup>

10 AOR002.

11 Conservative Primary says it plans to use three formats for ads communicating the  
12 winner of a straw poll to the general public online and on radio, and possibly also on television:

13 **Ad #3:** Your friends and neighbors have participated in a Conservative Primary in  
14 District 8. They have chosen Sally Smith as the best pick to challenge incumbent  
15 John Doe. Please join your friends in voting for the winner of the Conservative  
16 Primary.

17 **Ad #4:** Your friends and neighbors have participated in a Conservative Primary in  
18 District 8. They have chosen Sally Smith as the winner.

19 **Ad #5:** Sally Smith has won the Conservative Primary in District 8. Will you  
20 support her in the Primary?

21 *Id.*

22 According to the request, if any of these ads constitute independent expenditures or  
23 electioneering communications due to their content, timing, or geographic distribution,  
24 Conservative Primary will submit the required independent expenditure or electioneering

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<sup>2</sup> Conservative Primary states that the text of Ad #2 will be "part of the display," AOR002, but acknowledges that because the website and ads are still in development, it does not yet know the full content of the proposed ads, other than the text indicated, and that Ad #2 will include a link to the winning candidate's website. AOR012.

1 communication reports as required by the Act and Commission regulations. *Id.* Conservative  
2 Primary states that it will also include any required disclaimers in the ads. *Id.*

3 According to the request, Conservative Primary is not established, financed, maintained,  
4 or controlled by any candidate or political party, and it will not conduct its proposed activities in  
5 cooperation, consultation or concert with, or at the request or suggestion of, any candidate or  
6 party. AOR001.

### 7 **Questions Presented**

8 1. *How should funds Conservative Primary spends on advertising the straw poll*  
9 *results be characterized and reported?*

10 a. *Do the advertisements constitute “expenditures” by Conservative*  
11 *Primary?*

12 b. *If the advertisements constitute “expenditures,” do they qualify as*  
13 *“independent expenditures” by Conservative Primary?*

14 c. *Do the advertisements constitute “electioneering communications” by*  
15 *Conservative Primary?*

16 2. *May Conservative Primary, in its emails to Customers, and on its webpage,*  
17 *include a message calling on the reader to support and donate to the winning candidate? If so,*  
18 *may Conservative Primary include a link to the candidate or candidate committee’s webpage in*  
19 *its email and on the Conservative Primary website?*

20 3. *Are payments from Customers to Conservative Primary partly or entirely*  
21 *“contributions”?*

1           4.     *Does Conservative Primary’s planned arrangement require the formation of one*  
2 *or more political committees?*

3           a.     *Does Conservative Primary qualify as a political committee?*

4           b.     *In the alternative, do the Customers who collectively participate in a*  
5 *particular straw poll, which funds the purchase of one or more advertisements*  
6 *relaying the results of that poll, constitute a political committee?*

7 **Legal Analysis and Conclusions**

8           1.     *How should funds Conservative Primary spends on advertising the straw poll*  
9 *results be characterized and reported?*

10           a.     *Do the advertisements constitute “expenditures” by Conservative*  
11 *Primary?*

12           The Act defines an expenditure as “any purchase, payment, distribution, loan, advance,  
13 deposit, or gift of money or anything of value, made by any person for the purpose of influencing  
14 any election for [f]ederal office.” 52 U.S.C. § 30101(9)(A)(i); *see also* 11 C.F.R. § 100.111(a).

15           To determine whether a particular advertisement constitutes an expenditure, the content  
16 of the advertisement must be analyzed to determine if it was made for the purpose of influencing  
17 an election for federal office. The text of each of proposed Ads #2, 3, and 5 unambiguously  
18 encourages support for a federal candidate, and thus the costs of creating and distributing each of  
19 those ads constitute expenditures.<sup>3</sup> The text of proposed Ad #4, by contrast, merely presents

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<sup>3</sup> Although the request also describes an “Ad #1,” Conservative Primary does not ask any questions about that advertisement. *See* AOR002 n.1 (defining “Ads” for purposes of this request as proposed Ads ##2-5). The Commission accordingly does not opine on whether Ad #1 would constitute an expenditure, independent expenditure, or electioneering communication.

1 factual information and does not contain any language encouraging support or defeat of a federal  
2 candidate, or any other action relating to the election. As proposed, and assuming no additional  
3 content or context that would otherwise indicate a purpose of influencing a federal election, Ad  
4 #4 would not constitute an expenditure.<sup>4</sup>

5 As to those proposed ads that constitute expenditures, such expenditures will be made by  
6 Conservative Primary because it, not any Customers or donors, will make all decisions about  
7 creating and distributing the ads and will provide all funds for the ads from its corporate account.

8 *b. If the advertisements constitute “expenditures,” do they qualify as*  
9 *“independent expenditures” by Conservative Primary?*

10 The Act and Commission regulations distinguish between “independent expenditures”  
11 and expenditures that are coordinated with a candidate or a candidate’s authorized political  
12 committee. An independent expenditure “expressly advocat[es] the election or defeat of a  
13 clearly identified candidate,” and is “not made in concert or cooperation with or at the request or  
14 suggestion of such candidate, the candidate’s authorized committee, or their agents, or a political  
15 party committee or its agents.” 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.16. By  
16 contrast, “expenditures made by any person in cooperation, consultation, or concert with, or at  
17 the request or suggestion of, a candidate, his authorized political committees, or their agents” are  
18 treated under the Act and Commission regulations as contributions to that candidate. 52 U.S.C.  
19 § 30116(a)(7)(B)(i); *see also* 11 C.F.R. §§ 109.20, 109.21 (defining “coordinated

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<sup>4</sup> This conclusion is limited to the text proposed in the request. To the extent the final content or form of Conservative Primary’s proposed advertisements is materially different from the proposals described in the request (*see* AOR012 (indicating that Conservative Primary has not yet determined the final content or form of its ads)), the conclusions in this Advisory Opinion may not apply to such advertisements.



1 communication” and explaining the applicable standards for determining whether an expenditure  
2 is a “coordinated communication”).

3 Corporations are generally prohibited from making contributions and certain types of  
4 expenditures (including financing coordinated communications), however, corporations may  
5 make independent expenditures and electioneering communications. *Citizens United v. FEC*,  
6 558 U.S. 310, 365 (2010); Independent Expenditures and Electioneering Communications by  
7 Corporations and Labor Organizations, 79 Fed. Reg. 62,797 (Oct. 21, 2014).

8 In its request, Conservative Primary states that it is not established, financed, maintained,  
9 or controlled by any candidate or political party, and that it “will not conduct its activities in  
10 cooperation, consultation or concert with, or at the request or suggestion of, any candidate or  
11 party.” AOR001. Moreover, nothing in its description of the proposed ads indicates that  
12 Conservative Primary will interact with any candidates or political party committees in creating,  
13 producing, or distributing the proposed ads. Assuming such conditions continue to apply to  
14 Conservative Primary’s proposed activities, its proposed expenditures that expressly advocate  
15 the election or defeat of a federal candidate, such as Ads ##2, 3, and 5, would not meet the  
16 criteria for coordinated communications and would accordingly be treated as independent  
17 expenditures. Independent expenditures must be reported in accordance with the requirements at  
18 11 C.F.R. § 109.10(b)-(d), disclosing the information required under 11 C.F.R. § 109.10(e).

19 *c. Do the advertisements constitute “electioneering communications” by*  
20 *Conservative Primary?*

21 The Act defines an electioneering communication as any broadcast, cable, or satellite  
22 communication that refers to a clearly identified candidate for federal office, is made within 30

1 days before a primary election or 60 days before a general, special, or runoff election, and in the  
2 case of a candidate for office other than President or Vice-President, is targeted to the relevant  
3 electorate. 52 U.S.C. § 30104(f)(3)(A); *see also* 11 C.F.R. § 100.29(a). A communication that  
4 constitutes an expenditure or independent expenditure is exempted from the definition of  
5 electioneering communication. 11 C.F.R. § 100.29(c)(3).

6 Conservative Primary's proposed ads all refer to clearly identified federal candidates, and  
7 Conservative Primary states that it will distribute the ads to "the general public within the  
8 Congressional district in which the Poll is focused." AOR002. If the ads are distributed within  
9 the 30 days before the relevant election and are distributed via broadcast, cable, or satellite, they  
10 will meet all the criteria for electioneering communications. However, proposed Ads ##2, 3, and  
11 5 will constitute independent expenditures, so they would not be electioneering communications  
12 pursuant to the exemption in section 100.29(c)(3). Ad #4, as proposed, is not an independent  
13 expenditure and thus would be an electioneering communication if distributed via broadcast,  
14 cable, or satellite within the 30 days before the relevant election.<sup>5</sup> Electioneering  
15 communications must be reported as set forth at 11 C.F.R. § 104.20(b), disclosing the  
16 information required under 11 C.F.R. § 104.20(c).

17 2. *May Conservative Primary, in its emails to Customers, and on its webpage,*  
18 *include a message calling on the reader to support and donate to the winning candidate? If so,*  
19 *may Conservative Primary include a link to the candidate or candidate committee's webpage in*  
20 *its email and on the Conservative Primary website?*

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<sup>5</sup> The Commission assumes, based on the activities proposed in this request, that Conservative Primary will be distributing ads referring to candidates in primary elections only. The Commission notes, however, that these ads would also meet the criteria for electioneering communications if they are distributed via broadcast, cable, or satellite, within the 60 days before a general election and refer to a candidate in that election.

1           Yes, Conservative Primary may, in its emails to its Customers and on its webpage, call on  
2 readers to support and contribute to the candidates who win its straw polls, and it may include a  
3 link to the candidate’s or candidate committee’s webpage in those messages.

4           As discussed above, corporations are generally prohibited from making contributions and  
5 certain expenditures (including expenditures for coordinated communications). Under the Act, a  
6 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of  
7 value made by any person for the purpose of influencing any election for [f]ederal office.” 52  
8 U.S.C. § 30101(8)(A); *see also* 11 C.F.R. § 100.52. The Act treats an expenditure for the  
9 dissemination, distribution, or republication of campaign materials prepared by a candidate or a  
10 candidate’s authorized committee as a contribution to the candidate by the person making the  
11 expenditure. 11 C.F.R. § 109.23. Corporations are thus prohibited from making expenditures for  
12 both coordinated communications and the republication of campaign materials. 52 U.S.C.  
13 § 30118(a); 11 C.F.R. § 114.2.

14           The request indicates that the proposed email and website messages would not be  
15 coordinated with a candidate or political party. In particular, the requestor states categorically  
16 that it “will not act in cooperation, consultation, or concert with, or at the request or suggestion  
17 of any candidate,” AOR006, and none of the facts described in the request indicate that  
18 Conservative Primary will interact in any way with any candidate in creating, producing, or  
19 distributing its proposed ads. Assuming such conditions continue to apply to Conservative  
20 Primary’s proposed activities, its proposed email and website messages would not constitute  
21 prohibited coordinated expenditures.

1           A third party's republication of campaign materials may constitute a contribution by that  
2 person even in the absence of coordination with the candidate or committee that prepared the  
3 materials. 11 C.F.R. § 109.23; Coordinated and Independent Expenditures, 68 Fed. Reg. 421,  
4 441 (Jan. 3, 2003).<sup>6</sup> Here, Conservative Primary proposes to create its own advertisement urging  
5 its customers and website visitors to support each winner of its straw polls, and to include in that  
6 advertisement a link to the winner's website. AOR002, AOR012. The request does not indicate  
7 any intention to forward or post on its website the candidate's advertisement or other campaign  
8 materials. *See generally* AOR002, AOR006, AOR012. So long as Conservative Primary's  
9 activities are limited to those described in the request, its proposed inclusion of links to a  
10 candidate's or candidate committee's webpages in its emails to its Customers and on its own  
11 webpage would not constitute an impermissible republication of campaign materials.

12           3.       *Are payments from Customers to Conservative Primary partly or entirely*  
13 *"contributions"?*

14           Yes, Customers' payments to Conservative Primary will be contributions to Conservative  
15 Primary because such payments will be made for the purpose of influencing an election. *See* 52  
16 U.S.C. § 30101(8)(A); *see also* 11 C.F.R. § 100.52.<sup>7</sup>

17           Conservative Primary proposes to charge its customers a fee that will cover *both*  
18 participation in an online poll and other costs that include Conservative Primary's creation,

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<sup>6</sup> Although Conservative Primary correctly notes that there are exceptions to certain parts of the coordinated communications definition for publicly available information, *see* 11 C.F.R. § 109.21(d)(2)-(3), the Commission expressly declined to adopt such an exception for the provision concerning republication of campaign materials. Coordinated and Independent Expenditures, 68 Fed. Reg. at 442-43.

<sup>7</sup> Although the request also suggests that visitors to Conservative Primary's website may *donate* money to support the company itself, without having to register or vote in a poll, AOR001, the request does not ask whether such donations from persons who are not registered Customers would be contributions, and the Commission accordingly does not address that hypothetical question here.

1 production, and distribution of political advertisements expressly advocating the election of the  
2 winner of that poll. Indeed, Conservative Primary states that a purpose of its website is “to  
3 provide conservative voters . . . with a mechanism to engage in political speech.” AOR009.  
4 Conservative Primary, therefore, is proposing to accept payments from individuals to use for the  
5 purpose of influencing federal elections. Such payments are, by definition, contributions.

6 While Conservative Primary argues that its Customers’ payments are not contributions  
7 because “[t]he Customer has no discretion or involvement in how their payment is subsequently  
8 used by [Conservative Primary],” AOR007, this does not distinguish the relationship from that of  
9 an ordinary contributor and a political committee to which he or she makes contributions. Nor  
10 does the fact that Customers may participate in a poll in return for their contribution distinguish  
11 the proposal from a contributor receiving a shirt or pin when they contribute to a candidate’s  
12 campaign committee; in both instances the purpose of the transaction is the opportunity to  
13 express support for a candidate and advocate for their election.

14 Accordingly, the Commission concludes that Customers’ payments to Conservative  
15 Primary will be contributions because they will be made for the purpose of influencing an  
16 election.

17 4. *Does Conservative Primary’s planned arrangement require the formation of one*  
18 *or more political committees?*

19 a. *Does Conservative Primary qualify as a political committee?*

20 Yes, Conservative Primary will be a political committee once it receives more than  
21 \$1,000 in contributions or makes more than \$1,000 in expenditures.

1           The Act and Commission regulations define a political committee as “any committee,  
2 club, association, or other group of persons which received contributions aggregating in excess  
3 of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000  
4 during a calendar year.” 52 U.S.C. § 30101(4)(A); *see also* 11 C.F.R. § 100.5. The Supreme  
5 Court construed the term “political committee” to encompass only organizations that are under  
6 the control of a candidate or whose major purpose is the nomination or election of a candidate.  
7 *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238,  
8 262 (1986) (“*MCFL*”). The Commission determines whether an entity’s major purpose is the  
9 election or nomination of a candidate on a case-by-case basis, using a “fact-intensive analysis of  
10 a group’s campaign activities compared to its activities unrelated to campaigns.” Political  
11 Committee Status, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007); *see, e.g., Citizens for Responsibility*  
12 *and Ethics in Washington v. FEC*, 209 F. Supp. 3d 77, 93 (D.D.C. 2016) (recognizing the “the  
13 FEC’s judicially approved case-by-case approach to adjudicating political committee status”).

14           Assuming that Conservative Primary’s contributions or expenditures will at some point  
15 exceed \$1000 per year, the question whether it would be a political committee at that point  
16 depends on whether its major purpose is the nomination or election of one or more federal  
17 candidates.<sup>8</sup> The Commission determines whether an entity’s major purpose is the election or  
18 nomination of a federal candidate by examining its public and other statements about its purpose,  
19 as well as analyzing its “overall conduct,” and comparing the entity’s spending on campaign-  
20 related activity relative to its other spending. Political Committee Status, 72 Fed. Reg. at 5601.

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<sup>8</sup> To date, Conservative Primary has neither received any contributions nor made any expenditures, and therefore it has not reached the \$1,000 per-year statutory threshold to qualify as a political committee.

1           Here, the request states that Conservative Primary’s “primary purpose and business  
2 model is to create and administer a website platform providing straw poll functionality in  
3 congressional races,” AOR001, and that Conservative Primary will advertise the results of such  
4 polls, encouraging its users and the general public to support and contribute to the winners of the  
5 polls. AOR002. The request also states that Conservative Primary is a for-profit company,  
6 operated for commercial purposes and not for the purpose of influencing any federal election,  
7 and that it will set its fees to generate a commercially reasonable profit. AOR009, AOR002.  
8 Such statements could support a conclusion that Conservative Primary does not have the major  
9 purpose of nominating or electing federal candidates.

10           Nevertheless, in addition to consideration of an organization’s stated purpose, the  
11 Commission’s major purpose analysis also entails an examination of an entity’s overall conduct,  
12 and evaluation of its spending on campaign-related activity relative to its other spending.  
13 Political Committee Status, 72 Fed. Reg. at 5601; *see MCFL*, 479 U.S. at 262 (holding that an  
14 organization may be a political committee if its “independent spending become[s] so extensive  
15 that the organization’s major purpose may be regarded as campaign activity”). Here, the request  
16 expressly acknowledges that Conservative Primary will engage in “spending related to campaign  
17 activity,” AOR010, and, indeed, describes its specific plans to distribute ads that expressly  
18 advocate for candidates. AOR002.

19           As Conservative Primary itself acknowledges, the Commission has previously concluded  
20 that “the commercial nature of an activity might be compromised” by messages of express  
21 advocacy, or by targeting customers who ““wish to support or express support for a particular  
22 candidate’ or in this case defeat an incumbent.” AOR008 (citing Advisory Opinion 1994-30

1 (Creative Concepts/Pence)). In this instance, although Conservative Primary’s business model  
2 may have a commercial component, the majority of its proposed ads will advocate the election or  
3 defeat of a candidate along with, and in some cases without, advertising the business itself.  
4 Indeed, Conservative Primary plans to distribute Ad #2 to its existing customers and persons  
5 who are already visiting its website, which belies the notion that its proposed ads containing  
6 express advocacy are a part of “commercial considerations to target customers, and . . . the best  
7 way to market its services to attract conservative users.” AOR008. The Commission concludes  
8 that the content of the proposed ads, on balance, “compromises” the purported commercial  
9 nature of the business.

10 Finally, Conservative Primary correctly observes that the Commission has previously  
11 concluded that a company’s decision “to direct their business activities toward one type of  
12 political orientation . . . does not, by itself, negate the merely commercial nature of an activity.”  
13 Advisory Opinion 1994-30 (Creative Concepts/Pence) at 6; *see also* Advisory Opinion 2017-06  
14 (Stein-Gottlieb) at 6. Conservative Primary’s decision to target conservative voters, by itself,  
15 does not require the Commission to conclude that Conservative Primary will be a political  
16 committee, as the Commission did not conclude that payments to a proposed contribution-  
17 processing company would be contributions on the basis of the company’s targeting Democratic  
18 voters, Advisory Opinion 2017-06 (Stein-Gottlieb), nor that a proposed business selling and  
19 advertising shirts would be prohibited solely on the basis of the company’s targeting  
20 conservative voters. Advisory Opinion 1994-30 (Creative Concepts/Pence). However,  
21 Conservative Primary’s proposal differs significantly from the activities at issue in those  
22 advisory opinions, inasmuch as a substantial part of Conservative Primary’s proposal includes



1 engaging in express advocacy, which was not part of the proposed activities in either of those  
2 previous advisory opinions. Taken together with the considerations outlined above concerning  
3 Conservative Primary’s plans to engage in express advocacy, the decision to target conservative  
4 voters in its advertising weighs in favor of the conclusion that Conservative Primary will be a  
5 political committee.

6 Accordingly, based on an analysis of Conservative Primary’s overall planned conduct,  
7 the Commission concludes that Conservative Primary will be a political committee once it has  
8 received \$1000 in contributions or made \$1000 in expenditures.

9 *b. In the alternative, do the Customers who collectively participate in a*  
10 *particular straw poll, which funds the purchase of one or more advertisements*  
11 *relaying the results of that poll, constitute a political committee?*

12 No, the Customers who participate in a straw poll do not constitute a political committee  
13 by virtue of their participation in a particular poll that will fund advertisements relaying the  
14 results of that poll.

15 In Advisory Opinion 2008-10 (VoterVoter.com), the Commission considered a proposed  
16 business plan whereby individuals could visit the requestor’s website to view and purchase  
17 airtime for ads that the requestor or others had created, which expressly advocated the election or  
18 defeat of candidates for federal office. The requestor did not establish or facilitate any  
19 communication between purchasers, or between the purchasers and the creators of the ads.

20 Advisory Opinion 2008-10 (VoterVoter.com) at 5. The Commission concluded in that matter  
21 that website users who purchased airtime to distribute the same candidate ad did not constitute a  
22 “group of persons” for purposes of the definition of a political committee because there was no

1 communication between those purchasers and the requestor did not communicate to the  
2 purchasers about other purchasers. *Id.* at 9-10. The mere fact that multiple persons spent money  
3 to support the same candidate did not render them a political committee in the absence of a  
4 means to collectively manage their activities. *See also* Advisory Opinion 2009-13 (The Black  
5 Rock Group) (concluding that a consulting company could provide services to multiple single-  
6 member LLCs relating to independent expenditures without triggering political committee status,  
7 where the consulting company did not facilitate communications between the LLCs).

8         Here, Conservative Primary Customers who participate in the same poll and thereby fund  
9 the same ads supporting the winning candidate do not constitute a “group of persons” for  
10 purposes of the statutory definition of “political committee,” 52 U.S.C. § 30101(4)(A). Although  
11 the Customers will participate in the straw polls with the knowledge that their fees will be used  
12 to finance ads announcing the winner of the poll, they will not know who that winner will be or  
13 have any control over the funds, the content of the ads, or their distribution, nor will there be any  
14 collaboration among the Customers, or between the Customers and Conservative Primary,  
15 regarding any of the “plans, strategies, or activities” Conservative Primary will employ in  
16 providing its services. AOR003, AOR010-11. Any collaboration among Customers would be  
17 outside of the scope of the activities described in the request and may result in the formation of a  
18 political committee. *See* Advisory Opinion 2008-10 (VoterVoter.com) at 9-10 (concluding that  
19 purchasers’ interactions with a website did not result in the purchasers forming a political  
20 committee, but declining to “address whether any communications or collaboration between  
21 purchasers would result in the formation of a ‘group of persons’ that could be considered a  
22 political committee”).

1           This response constitutes an advisory opinion concerning the application of the Act and  
2 Commission regulations to the specific transaction or activity set forth in your request. *See*  
3 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or  
4 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
5 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
6 proposed activity. Any person involved in any specific transaction or activity which is  
7 indistinguishable in all its material aspects from the transaction or activity with respect to which  
8 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
9 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
10 affected by subsequent developments in the law including, but not limited to, statutes,  
11 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
12 on the Commission's website.

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On behalf of the Commission,

Caroline C. Hunter,  
Chair