MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan, General Counsel
       Rosemary C. Smith, Associate General Counsel
       Robert M. Knop, Assistant General Counsel
       David C. Adkins, Attorney

Subject: AO 2010-09 (Club for Growth, Inc.) – Drafts

Attached are proposed drafts of the subject advisory opinion. We have been asked to place these drafts on the agenda for July 22, 2010.

Attachment
Dear Ms. Laham and Mr. Renaud:

We are responding to your advisory opinion request on behalf of Club for Growth, Inc. (the "Club") concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to its plans to establish, administer, and pay the solicitation costs of a new independent expenditure-only political committee (the "Committee"). The Committee plans to make only independent expenditures, and to solicit unlimited contributions solely from individuals in the general public, including contributions given for specific independent expenditures. The Committee does not intend to coordinate its communications or expenditures with any candidate, candidate committee, or political party committee.

Based on the representations in the request and the analysis below, the Commission concludes that the Club may establish and administer the Committee, and the Committee may solicit and accept unlimited contributions from individuals in the general public, including contributions given for specific independent expenditures.

Background

The facts presented in this advisory opinion are based on your letter received on May 21, 2010.

The Club is an incorporated non-profit social welfare organization exempt from Federal taxes under section 501(c)(4) of the Internal Revenue Code. It has a separate
segregated fund ("SSF"), Club for Growth PAC ("Club PAC"). The Club plans to establish, administer, and pay the solicitation costs of the Committee, which would be organized as a tax-exempt organization under section 527 of the Internal Revenue Code and would be incorporated under the laws of the District of Columbia. The Club intends to register the Committee with the Commission, and the Committee will file regular reports and independent expenditure reports. The President of the Club will serve as the Treasurer of the Committee.

The Committee intends to make only independent expenditures, which will include all the disclaimers and notices required by the Act and Commission regulations. It plans to solicit contributions solely from individuals that may be unlimited in amount and solicited or given for specific independent expenditures. The Club states that such solicitations will also include all disclaimers and notices required by the Act and Commission regulations. The costs of the solicitations would be paid by the Club if permissible, or otherwise would be paid by the Committee.

The Committee will not accept contributions from any political committee (including any separate segregated fund, authorized committee, or political party committee), candidate, labor organization, foreign national, government contractor, or corporation, except that the Club will pay for some or all of the Committee’s establishment, administrative, and solicitation costs.

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1 The Commission notes that this advisory opinion implicates issues that will be the subject of forthcoming rulemakings in light of the Citizens United, EMILY’s List, and SpeechNow decisions. The results of that rulemaking may require the Commission to update its registration and reporting forms to facilitate public disclosure. In the meantime, the Committee may include a letter with its Form 1 Statement of Organization clarifying that it intends to accept unlimited contributions for the purpose of making independent expenditures. See Attachment A. Electronic filers may include such a letter as a Form 99.

The Club states that the Committee will not, itself, make any contributions or
transfer any funds to any political committee if the amount of a contribution to the
recipient committee is governed by the Act, nor will the Committee make any
coordinated communications or coordinate any expenditures with any candidate,
authorized committee, political party committee, or agent of such persons. Finally, the
Committee will not accept contributions from Club PAC, nor will it make any
contributions or transfer any funds to Club PAC.

Questions Presented

1. If the Club pays the Committee's establishment, administrative, and solicitation
   expenses, may the Committee solicit and accept contributions from the general
   public?

2. If the Club pays the Committee's establishment, administrative, and solicitation
   expenses, may the Committee solicit and accept funds earmarked for specific
   independent expenditures?

3. Are the answers to Questions 1 or 2 different if the Committee pays all of its own
   establishment, administrative, and solicitation expenses?

Legal Analysis and Conclusions

1. If the Club pays the Committee's establishment, administrative, and solicitation
   expenses, may the Committee solicit and accept contributions from the general
   public?

   Yes, based on the representations in the request and consistent with the analysis
   below, the Committee may solicit and accept contributions from the general public.

   The United States Supreme Court recently held that corporations may make
   FEC*, 558 U.S. ___, 130 S. Ct. 876 (2010). In addition, the U.S. Court of Appeals for the

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3 Even before *Citizens United*, incorporated membership organizations like the Club could spend unlimited amounts from their general treasury on the administrative and overhead costs associated with a separate
District of Columbia Circuit recently held that “the contribution limits of 2 U.S.C. 441a(a)(1)(C) and 441a(a)(3) are unconstitutional as applied to individuals’ contributions to SpeechNow,” an independent expenditure group.4 SpeechNow v. FEC, 599 F.3d 686, 689 (D.C. Cir. 2010); see also EMILY’s List v. FEC, 581 F. 3d 1, 10 (D.C. Cir. 2009) (“... individual citizens may spend money without limit (apart from the limit on their own contributions to candidates or parties) in support of the election of particular candidates”). The decision in SpeechNow was predicated on the Supreme Court’s holding in Citizens United “that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.” Citizens United, 130 S. Ct. at 909; see SpeechNow, 599 F.3d at 693.

The court made clear, though, that it was “only decid[ing] these questions as applied to contributions to SpeechNow, an independent expenditure-only group.” SpeechNow, 599 F.3d at 696. Its holding did not affect limits on direct contributions to candidates or political party committees, including in-kind contributions in the form of coordinated communications” Id. In addition, the court held that the “reporting requirements of 2 U.S.C. 432, 433, and 434(a) and the organizational requirements of 2 U.S.C. 431(4) and 431(8) can constitutionally be applied to SpeechNow.” Id. at 689.

Relying on these two cases, the Club asks whether it may solicit and accept contributions from the general public if the Club pays the Committee’s establishment, segregated fund, even if that SSF made independent expenditures. See 2 U.S.C. § 441b(b)(2)(C) (exempting corporate payment of administrative and fundraising costs from definitions of contribution and expenditure); 11 CFR114.1(a)(2)(iii) (same).

4 On May 27, 2010, in accordance with the circuit court’s order, the United States District Court of the District of Columbia entered an order that the Act’s contribution limits (2 U.S.C. 441a(a)(1)(C) and 441a(a)(3)) and implementing regulations could not be constitutionally applied against SpeechNow or the individuals who contribute to it.
administrative and solicitation expenses. In *Citizens United*, the Supreme Court held that independent corporate political spending cannot be limited. Therefore, a corporation may establish and administer a political committee that makes only independent expenditures. Moreover, because the Committee, like SpeechNow, intends to make only independent expenditures, there is no basis to impose contribution limits on the Committee.\(^5\)

As noted above, the President of the Club, who currently serves as Club PAC’s Treasurer, will also serve as the Treasurer of the Committee. Because a corporation, through its restricted class events\(^6\) or its SSF, may lawfully coordinate with Federal candidates and party committees under certain circumstances, the overlap of duties could potentially compromise the independence of communications made by the Committee. However, the Club represents that the Committee will not engage in coordinated activity, and will comply with the requirements of 11 CFR109.21(d).\(^7\) Specifically, the Commission assumes that candidates or authorized committees will not request or suggest communications to agents of the Committee, nor will candidates or their agents assent to communications suggested by the Committee or any of its agents. See 11 CFR 109.21(d)(1). Candidates or authorized committees will not be materially involved in communications made by the Committee and will not substantially discuss communications or the candidate’s plans, projects, activities, or needs with the

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\(^5\) See SpeechNow, 599 F.3d at 693 (the court’s holding was predicated on the “independence of independent expenditures”).

\(^6\) See 11 CFR 114.2(c).

\(^7\) The request states that the Committee “will not, per the regulations of the FEC or applicable Federal law, coordinate any communications or other expenditure with any candidate, candidate committee, political party committee, or their agents.” Request at 2. Moreover, the Committee will not accept contributions from Club PAC, nor will it make any contributions or transfer any funds to Club PAC. *Id.*
Committee or its agents. See 11 CFR 109.21(d)(2) - (3). In sum, the Commission assumes that the President will manage the Corporation and his responsibilities as Treasurer of the Committee and Club PAC without causing the Committee to engage in coordinated activities. Therefore, based on the representations in the request and the analysis above, the Committee may solicit and accept unlimited contributions from the general public even if the Club pays the Committee’s establishment, administrative and solicitation expenses.

2. If the Club pays the Committee’s establishment, administrative, and solicitation expenses, may the Committee solicit and accept funds earmarked for specific independent expenditures?

Yes, consistent with the analysis in Question 1, the Committee may solicit and accept funds earmarked for specific independent expenditures.

The Commission’s current regulation at 11 CFR 110.1(h) limits a person that has already contributed to a specific candidate from also contributing to an unauthorized political committee if the contributor “give[s] with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election.” Section 110.1(h) “governs the circumstances under which contributions to a candidate and his or her authorized campaign committee(s) must be aggregated with contributions to other political committees for the purposes of the contribution limits of § 110.1.” Explanation and Justification, Contribution and Expenditure Limitations and

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8 Although the firewall provided for in the Commission’s regulations is not mandatory, establishing such effective prophylactic measures would be one sufficient way to address potential concerns with respect to the conduct standards of the Commission’s coordination rule. See 11 CFR 109.21(h) (Safe harbor for establishment and use of a firewall); see also MUR 5506 (EMILY’s List), First General Counsel’s Report at 5-8 (concluding that there was no reason to believe that the organization made excessive contributions in the form of coordinated communications, based in large part on the organization’s establishment of “firewall” measures).
Prohibitions, 52 F.R 760, 765 (Jan. 9, 1987). In other words, the Commission’s earmarking regulation is designed to prevent the circumvention of contribution limits.

However, the Club has represented that the Committee will not, itself, make any contributions or transfer any funds to any political committee if the amount of a contribution to the recipient committee is governed by the Act, nor will the Committee make any coordinated communications or coordinate any expenditures with any candidate, authorized committee, political party committee, or agent of such persons.

Thus, because there is no possibility of circumvention of any contribution limit, section 110.1(h) and its rationale do not apply to the Committee’s solicitations or any contributions it receives that are earmarked for specific independent expenditures.

3. Do the answers to Questions 1 or 2 change if the Committee pays its own establishment, administrative, and solicitation expenses?

No, the answers to Questions 1 and 2 do not change if the Committee pays its own establishment, administrative, and solicitation expenses.

The Club’s proposed payment of the Committee’s establishment, administrative, and solicitation expenses are not exempt from the definition of “contribution” or “expenditure” because the Committee is not an SSF. Therefore, any establishment, administrative, or solicitation expenses paid by the Club must be reported by the Committee as contributions from the Club. Alternatively, the proposed political committee may pay its own establishment, administrative, and solicitation expenses.

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9 Under the Act and Commission regulations, a corporation may use its general treasury funds to pay the costs of establishing, administering, or soliciting contributions to its SSF, without a resultant contribution or expenditure. See 2 U.S.C. 441b(b)(2)(C); see also 2 U.S.C. 431(8)(B)(vi).

10 See 2 U.S.C. 431(8), 434(b); 11 CFR 104.3(a).
The Commission expresses no opinion regarding the possible applicability of any Federal or State tax laws or other laws to the matters presented in your request, as those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. See 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.

On behalf of the Commission,

Matthew S. Petersen
Chairman
[COMMITTEE NAME]

[DATE]

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Form 1, Statement of Organization—Unlimited Contributions

To Whom It May Concern:

This committee intends to make independent expenditures, and consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in SpeechNow v. FEC, it therefore intends to raise funds in unlimited amounts. This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees.

Respectfully submitted,

Treasurer
Dear Ms. Laham and Mr. Renaud:

We are responding to your advisory opinion request on behalf of Club for Growth, an incorporated non-profit social welfare organization exempt from Federal taxes under section 501(c)(4) of the Internal Revenue Code (the “Corporation”), concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the Corporation’s plans to establish, administer, and financially support a new political committee (the “Committee”). The Corporation has represented that it plans (a) for the Committee to make only independent expenditures and (b) for the Committee to solicit and accept contributions only from individuals in the general public, including contributions given for specific independent expenditures.¹

The principal rationale underlying your request for an advisory opinion is that “the campaign finance regime administered by the FEC has changed” as a result of the recent decision by the Court of Appeals for the District of Columbia Circuit in SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir. 2010) (en banc) (“SpeechNow”). In SpeechNow, the court held that the Act’s contribution limits were unconstitutional as applied to funds from individuals received by SpeechNow.org, a

¹ Under the Act, an “independent expenditure” is an expenditure by a person that expressly advocates the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate’s authorized political committee, a political party committee or the agents of any of the foregoing. 2 U.S.C. § 431(17).
political committee that (1) only makes independent expenditures; (2) is not connected to any corporation; and (3) is not affiliated with any other political committee. In SpeechNow, the court granted SpeechNow.org’s as-applied challenge to the Act’s contribution limits precisely because SpeechNow.org only makes independent expenditures and therefore the Act’s contribution limits advanced no “anti-corruption interest.” The holding in the SpeechNow decision was expressly limited to the “as-applied” challenge brought before the court by an entity that (a) is not connected to any corporation and (b) operates wholly independently of all other political committees, and the court’s decision does not have force beyond the facts presented by SpeechNow.org to the court.2

The Committee, as proposed by the Corporation, would be materially distinguishable from SpeechNow.org because (a) the Committee would be connected to the Corporation3 and (b) the Committee would be affiliated with Club for Growth PAC, the Corporation’s already existing separate segregated fund (“SSF”) that itself makes contributions to Federal candidates. Nevertheless, the Corporation is asking the Commission to issue an advisory opinion that would apply the holding in SpeechNow to the Committee and its activities.

Because of its connections to the Corporation and to Club for Growth PAC, and because the Corporation plans to have its President, who already currently serves as

2 “We should be clear ... that we only decide these questions [regarding the constitutionality of the Act] as applied to contributions to SpeechNow, an independent expenditure-only group.” SpeechNow, 599 F.3d at 696; “In an as-applied challenge, there is a narrow focus on the particular plaintiff’s behavior and whether the statute is constitutional as applied to her.” Roulette v. City of Seattle, 97 F.3d 300 (9th Cir. 1996) (citing Broadrick v. Oklahoma, 413 U.S. 601, 612, 93 S.Ct. 2908 (1973)).

3 In fact, the Corporation represent that the President of the Corporation will also serve as the Committee’s Treasurer. See Advisory Opinion Request at 2.
Treasurer of the Club for Growth PAC, also serve as Treasurer of the proposed Committee, the Committee and its activities would be materially distinguishable from SpeechNow.org precisely in a way that would not insulate the Committee and its activities from the possibility of corruption, or the appearance of corruption, in the same way that SpeechNow.org was insulated from these concerns.

Accordingly, the Commission concludes that the Corporation's proposal would require the Commission to broaden the reach of the DC Circuit Court's holding in SpeechNow to the Committee and therefore would require modification of the applicability of the Commission's regulations, which can only be properly achieved though a notice-and-comment rulemaking conducted pursuant to the requirements of the Administrative Procedure Act ("APA"), 5 U.S.C. 551 et seq. Specifically, the APA requires that the Commission publish a Notice of Proposed Rulemaking in the Federal Register and that "interested persons" be afforded "an opportunity to participate in the rulemaking through submission of written data, views, or arguments" in response to such a Notice. 5 U.S.C. 553(b)-(c).

The Commission's advisory opinion process is one in which the Commission interprets existing law and is limited to requests "concerning the application of th[e] Act . . . or a rule or regulation prescribed by the Commission" and therefore cannot be used to

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4 See www.clubforgrowth.org/aboutus/?id=96 (Chris Chacola serves as President and Chief Executive Officer of the Corporation); http://query.nictusa.com/ pdf/913/2999190913/2999190913.pdf#navpanes=0 (Club for Growth PAC's Statement of Organization filed with the Commission lists Chris Chacola as the Treasurer) (both last visited July 16, 2010).

5 "The APA's general rulemaking section, 5 U.S.C. § 553, sets down certain procedural requirements with which agencies must comply in promulgating legislative rules: there must be publication of a notice of proposed rulemaking; opportunity for public comment on the proposal; and publication of a final rule accompanied by a statement of the rule's basis and purpose." Utility Solid Waste Group v. EPA, 236 F.3d 749, 752 (D.C. Cir. 2001). See generally Jeffrey S. Lubbers, A Guide to Federal Agency Rulemaking (American Bar Association, 4th ed. 2006).
modify the Commission’s regulations. 2 U.S.C. 437f(a); 11 CFR 112.1. See also 2 U.S.C. 437f(b) (“Any rule of law not stated in th[e] Act must be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in [2 U.S.C. 438(d)]. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section.”).

Although the Commission concludes that, after considering all the facts, the better course of action at this time is to not broaden the reach of the DC Circuit Court’s holding in SpeechNow to the Committee through the advisory opinion process, these issues can, and will be, appropriately considered in the Commission’s upcoming rulemaking proceedings. Additionally, the Corporation may use the Commission’s procedures for filing a petition for rulemaking to seek modifications of the Commission’s regulations. See 11 CFR 200.2.

Background

The facts presented in this advisory opinion are based on your letter received on May 21, 2010.

As indicated above, the Corporation is an incorporated non-profit social welfare organization exempt from Federal taxes under section 501(c)(4) of the Internal Revenue Code. The Corporation has already established, and currently supports and controls an SSF, Club for Growth PAC, which makes contributions to Federal candidates, as well as

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Although 2 U.S.C. 438(d) was invalidated as a result of the Supreme Court’s decision in *INS v. Chadha*, 462 U.S. 919 (1983), the subsequently enacted Congressional Review Act, 5 U.S.C. 801 et seq., requires the Commission to submit similar reports to Congress prior to promulgating any new or revised regulations.

The Commission has posted a proposed rulemaking schedule, which contemplates completion of the Commission’s *EMILY’s List* and *SpeechNow* rulemakings by the end of the calendar year (available at [http://www.fec.gov/agenda/2010/mtgdoc1020.pdf](http://www.fec.gov/agenda/2010/mtgdoc1020.pdf)).
independent expenditures. The Corporation now plans to establish, administer, and financially support the proposed Committee, a second “connected” political committee, which would be organized as a tax-exempt organization under section 527 of the Internal Revenue Code and would be incorporated under the laws of the District of Columbia. The President of the Corporation currently serves as the Treasurer of Club for Growth PAC and would also serve as the Treasurer of the Committee. The Corporation intends to have the Committee register with the Commission, and the Corporation represents that the Committee will file regular reports and independent expenditure reports as required by law.

Although Club for Growth PAC currently makes contributions to Federal candidates, the Corporation represents that the Committee will only make independent expenditures, which will include all the disclaimers and notices required by the Act and Commission regulations. The Corporation indicates that it plans for the Committee to solicit and accept contributions only from individuals, which may be unlimited in amount, and which may be solicited or given for specific independent expenditures. Such solicitations will also include all disclaimers and notices required by the Act and Commission regulations. The costs of the solicitations would be paid by the Corporation if permissible, or otherwise would be paid by the Committee.

The Corporation represents that the Committee will not accept contributions from any political committee (including Club for Growth PAC or any other SSF, authorized committee, or political party committee), candidate, labor organization, foreign national,

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8 Information related to Club for Growth PAC's contributions and expenditures is available through the FEC Disclosure Database at www.fec.gov/finance/disclosure/imaging_info.shtml.

9 See notes 3-4, above,
government contractor, or corporation, except that the Corporation will pay for some or all of the Committee’s establishment, administrative, and solicitation costs.

The Committee will not, itself, make any contributions or transfer any funds to any political committee if the amount of a contribution to the recipient committee is governed by the Act, nor will the Committee make any coordinated communications or coordinate any expenditures with any candidate, authorized committee, political party committee, or agent of such persons.

**Legal Background**

On March 26, 2010, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *SpeechNow*. *Id.* As discussed above, the court held that the Act’s contribution limits were unconstitutional as applied to contributions from individuals given to, and received by, SpeechNow.org, a nonconnected political committee making only independent expenditures, because the Act’s contribution limits, as applied to SpeechNow.org, advanced no “anti-corruption interest.”*Id.* at 696; see also *Citizens United v. FEC*, 130 S. Ct. 876, 909 (2010) (finding that “independent expenditures . . . do not give rise to corruption or the appearance of corruption”). The court made clear, however, that it was “only decid[ing] these questions as applied to SpeechNow, an independent expenditure-only group.”*SpeechNow*, 599 F.3d at 696.

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*10 The court also upheld the Act’s “organizational and reporting requirements” as applied to SpeechNow.org. Upon meeting the applicable thresholds, the group would be required to register with the Commission as a political committee and abide by the disclosure and reporting requirements applicable to political committees. *SpeechNow*, 599 F.3d at 696-98.

11 On May 27, 2010, in compliance with the D.C. Circuit’s opinion, the United States District Court of the District of Columbia issued an order that the Act’s contribution limits (2 U.S.C. 441a(a)(1)(C) and 441a(a)(3)) and implementing regulations could not be constitutionally applied against SpeechNow.org or those who contribute to it. On June 11, 2010, the Commission filed a Motion to Alter or Amend the Judgment to reflect that the organizational, administrative, and reporting provisions of the Act are constitutional as applied to the plaintiffs. The Commission’s motion remains pending. These, as well as*
Any issues regarding contributions to candidates, for example, were not before the court and therefore were not reached in the *SpeechNow* opinion. *See id.* Likewise, the *SpeechNow* opinion did not reach the issue of contributions to independent expenditure-only groups made by persons other than individuals. *See id.*

Unlike the proposed Committee, SpeechNow.org has no “connected” corporation. *Memorandum and Findings in SpeechNow.org v. FEC*, Civ. No. 08-0248 (2009 WL 3101036) (D.D.C. Sept. 28, 2009) at 20 (“If SpeechNow were deemed to be a political committee, it would be classified as a ‘non-connected’ committee,” citing Scott Dep. at 17:14-18:2) (*hereinafter “Findings”*). Under its bylaws, SpeechNow.org could accept donations solely from individuals and could not “accept, directly or indirectly, any donations or anything of value from business corporations, labor organizations, national banks, federal government contractors, foreign nationals, political parties, or political committees. *Id.* at 5 (emphasis added). Its bylaws further require SpeechNow.org to operate wholly independently of all political committees. *Id.* at 6. Accordingly, SpeechNow.org was required to pay its establishment, administrative, and solicitation costs from the contributions it received from individuals.

These Findings are in sharp contrast to the representations made by the Corporation regarding the planned Committee. Specifically, the planned Committee will (a) be “connected” to the Corporation and (b) will be affiliated with Club for Growth PAC, a political committee established, supported and controlled by the Corporation that makes contributions directly to candidates.

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other documents related to the *SpeechNow* litigation, are available at www.fec.gov/law/litigation/speechnow.shtml. The Solicitor General is not petitioning the Supreme Court to review the court’s decision, but SpeechNow.org has requested and received an extension of time to file a Petition for a Writ of Certiorari on the questions addressing registration, disclosure, and reporting.
Questions Presented

1. May the Committee solicit and accept donations from the general public if the Corporation pays the costs of the solicitations?

2. May the Committee solicit and accept funds for specific independent expenditures if the Corporation pays for the costs of the solicitations?

3. Are the answers to Questions 1 or 2 different if the Committee pays all of its own establishment, administrative, and solicitation expenses?

Legal Analysis and Conclusions

As indicated above, SpeechNow.org was organized (indeed, is required by its own bylaws) to operate wholly independently of any candidate or other political committees, including political party committees. Findings at 6. Its operations are funded solely by contributions from individuals; it could not – per its bylaws – accept “directly or indirectly, any donation or anything of value” from, among others, corporations. Id. at 5. Further, SpeechNow.org is prohibited under its bylaws from making “contributions or donations of any kind directly or indirectly to any FEC-regulated candidate or political committee . . . .” Id. at 6.

The Committee, unlike SpeechNow.org, will not operate independently. Instead, the Corporation – serving as the Committee’s connected organization – will establish and administer the Committee, see 11 CFR 100.6(a), and the Committee will receive financial support (payment of its establishment, administrative, and solicitation expenses) from the Corporation – thereby providing a significant corporate subsidy to the Committee.

The Corporation, like any connected organization, will enjoy the inherent right to control the Committee. See 11 CFR 114.5(d); see also Pipefitters Local Union No. 562 v. U.S., 407 U.S. 385, 426 (1972) (“In these circumstances, it is difficult to conceive how a
valid political fund can be meaningfully ‘separate’ from the sponsoring union in any way
other than ‘segregated.’”), *Bread Political Action Committee v. Federal Election
Commission*, 635 F.2d 621, 624, n.3 (7th Cir. 1980) (en banc), *rev’d on jurisdictional
grounds*, 455 U.S. 577 (1982) (stating that “separate segregated funds are simply political
arms of the parent organizations”). Moreover, the Committee will be affiliated with the
Corporation’s SSF, Club for Growth PAC, which regularly makes contributions to
Federal candidates as well as contributions to other political committees, and may receive
contributions from persons other than individuals. 12

SpeechNow.org was established to aggregate the contributions of individuals for
the purpose of making independent expenditures independently. The Committee, by
contrast, proposes engaging in this activity, with the aid of a corporate subsidy, while
controlled by a corporation, that also establishes, administers, and financially supports a
separate, contribution-making political committee.

The Commission concludes that the Committee, as well as its activities, are
materially different from SpeechNow.org and its activities and it would not be
appropriate for the Commission to broaden the reach of the jurisdiction of the *SpeechNow
court, and the scope of its decision, especially when the court itself made clear that its
holding was limited to the as-applied challenge before it.

Accordingly, the Commission concludes that it will not issue an advisory opinion
broadening the reach of the holding in *SpeechNow* to the Committee and its proposed

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12 According to Commission regulations, “[a]ll committees (including a separate segregated fund . . .
established, maintained or controlled by the same corporation . . . are affiliated.”). 11 CFR 100.5(g)(2); see
also 11 CFR 102.6(a) (“Transfers of funds may be made without limit on amount between affiliated
committees . . .’”).
activities and therefore the answers that follow are based on the Act and Commission
regulations as they currently exist. See 2 U.S.C. 437f(b). However, as indicated above,
these issues can, and will, be appropriately considered in the Commission’s upcoming
rulemakings.

1. May the Committee solicit and accept donations from the general public if the
Corporation pays the costs of the solicitations?

The Commission concludes that the Corporation’s proposal to fund the
Committee’s solicitations is prohibited by the Act and Commission regulations. As set
forth in the request, the Corporation will serve as the Committee’s connected
organization thereby making it an SSF of the Corporation. See 2 U.S.C. 431(7), 11 CFR
100.6. As an SSF, the Committee may solicit voluntary contributions at any time only
from its “restricted class,” which consists of the connected corporation’s executive and
administrative personnel, its stockholders, and the families of such persons. 2 U.S.C.
441b(b)(4)(A)(i), 11 CFR 114.1(c) and 114.5(g)(1); see also 2 U.S.C. 441b(b)(4)(B), 11
CFR 114.6 (prescribing conditions under which other employees may be solicited twice
yearly in writing).

Therefore the Commission concludes that neither the Corporation nor the
Committee – as the Corporation’s SSF – may solicit contributions for its independent
expenditures (or any other purpose) from the general public.

2. May the Committee solicit and accept funds for specific independent expenditures
if the Corporation pays the costs of the solicitations?

Section 110.1(h) of the Commission regulations states that a person may
contribute both to a candidate (or his or her authorized committee) and a political
committee which has supported or anticipates supporting that same candidate only if
(among other things) that person "does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election." 11 CFR 110.1(h). See also Advisory Opinion 1984-02 (Gramm).

Accordingly, if the Committee solicits contributions to fund specific independent expenditures that benefit clearly identified Federal candidates, the amount of any contribution would be attributable to a contributor's maximum allowable contribution to that same candidate. See 11 CFR 110.1(h).

For the reasons set forth above, the Commission concludes that a rulemaking proceeding, properly conducted pursuant to the APA, is required in order to broaden the reach of the holding in SpeechNow to the Corporation’s plans to have the Committee accept contributions for specific independent expenditures that expressly advocate the election or defeat of a clearly identified Federal candidate without regard for a contributor’s previous contributions to that same Federal candidate.

3. Do the answers to Questions 1 or 2 change if the proposed political committee pays its own establishment, administrative, and solicitation expenses?

No. Even if the Corporation does not use its own treasury funds to finance the Committee's establishment, administrative, and solicitation expenses, the Corporation would still be the Committee's connected organization and, thus, would still control the Committee. Accordingly, the Commission concludes that even if the Corporation does not finance the Committee's expenses, as a connected organization, the Committee would still be materially different from SpeechNow.org and the Commission will not broaden the reach of the holding in SpeechNow to the Committee in an advisory opinion.

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13 See note 5, above.
This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. See 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinion is available on the Commission’s Web site at http://saos.nictusa.com/saos/searchao.

On behalf of the Commission,

Matthew S. Petersen
Chairman