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For meeting of Dec. 14, 2023

December 7, 2023

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
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Subject: Draft AO 2023-08 (Cowboy Analytics LLC) Draft A

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 p.m. (Eastern Time) on December 13, 2023.

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 2023-08

2

3 Eric Wang
4 The Gober Group
5 1501 Wilson Boulevard
6 Suite 1050
7 Arlington, VA 22209

DRAFT A

8

9 Dear Mr. Wang:

10

11 We are responding to your advisory opinion request on behalf of Cowboy
12 Analytics, LLC (“Cowboy Analytics”), concerning the application of the Federal Election
13 Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to a
14 proposal by Cowboy Analytics to form a nonconnected political committee to solicit
15 funds for itself and for certain federal candidates that the PAC supports. The
16 Commission concludes that Cowboy Analytics may form the proposed political
17 committee and determines that (1) funds deducted from earmarked contributions by the
18 committee to cover its costs would be contributions to the committee and not
19 contributions to the designated candidate; (2) the initial payment for the production and
20 distribution of merchandise would not constitute an in-kind contribution from the
21 committee to the candidates receiving the earmarked contributions; (3) the committee
22 would not have to report the costs of producing and distributing political merchandise
23 that includes express advocacy as independent expenditures; and (4) the committee
24 would not have to report its costs of solicitations for earmarked contributions that contain
25 express advocacy as independent expenditures. The Commission reaches the same
26 conclusions to each of these questions regarding the second scenario posed in Question 5

1 of the advisory opinion request, where the purchase of the committee’s political
2 merchandise is “decoupled from making an earmarked contribution.”¹

3 ***Background***

4 The facts presented in this advisory opinion are based on your letter received on
5 October 25, 2023, and email received October 31, 2023.

6 Cowboy Analytics is a limited liability company that provides voter and
7 consumer data to political campaigns, businesses, and media organizations. Cowboy
8 Analytics proposes to form a nonconnected political committee (“PAC”) that will solicit
9 small-dollar earmarked contributions to federal candidates that the PAC supports. The
10 PAC will target potential contributors nationwide through email, text messaging, and
11 digital advertising, using data provided by Cowboy Analytics.² In addition to raising
12 funds for candidates, Cowboy Analytics intends the PAC’s solicitations to raise funds for
13 the PAC itself.

14 The PAC will solicit contributions in specific amounts, and each person who
15 makes a contribution in that amount will receive merchandise (such as a t-shirt or hat)
16 imprinted with a message supporting the PAC’s endorsed candidates (such as “John Doe
17 for President” or “Jane Roe 2024,” where Roe is a U.S. Senate candidate running in
18 2024), or the messages may relate to broader political themes (such as “Impeach Biden”).

19 The PAC’s solicitations will say, for example:

¹ Advisory Opinion Request (“AOR”) at 009.

² The PAC will pay fair market value to Cowboy Analytics for the data. AOR001.

1 (1) Get your John Doe for President T-shirt by making a \$50 contribution
2 now! Go to [URL for PAC's website].³

3 (2) Show your support for Jane Roe for Senate with this water bottle. Get
4 it for only \$10 at [URL for PAC's website].

5 Each solicitation will include an image of the imprinted merchandise as described
6 in the solicitation.

7 The PAC will deposit into its bank account all funds received in response to its
8 solicitations. After deducting sufficient funds to cover: (1) its costs to purchase and ship
9 the merchandise to the contributor; (2) its costs to process the contribution⁴; and (3) a
10 percentage of its administrative and solicitation costs,⁵ the PAC will forward the
11 contribution to the designated candidate. For example:

12 The PAC will offer to provide an imprinted T-shirt to each person who
13 makes a \$50 contribution earmarked to a specific presidential candidate.

14 From that amount the PAC will deduct a total of \$19.25: \$10 to cover its
15 cost to produce and ship the T-shirt; \$1.75 for payment processing (*i.e.*, 2.9%
16 of \$50 plus 30 cents); and \$7.50 for its administrative and solicitation costs

³ AOR002. The PAC's website will inform contributors of federal contribution limits and source prohibitions, and collect the information required to comply with the Commission's earmarked contribution rules, 11 C.F.R. § 110.6. *Id.*

⁴ The PAC will pay its payment processor, Rally Piryx, LLC, the standard processing fee of 2.9% plus 30 cents per transaction. *Id.*

⁵ Cowboy Analytics estimates that 10-15% of each contribution will be deducted to pay the PAC's administrative and solicitation costs. The PAC's administrative and solicitation costs will include costs incurred to: establish and operate the PAC; comply with the Commission's reporting and recordkeeping requirements; develop and maintain the PAC's website; communicate with and advertise to prospective contributors (including the fee for data provided by Cowboy Analytics); and pay other compliance, accounting, and operational expenses. AOR003.

1 (*i.e.*, 15% of \$50). The PAC will forward the remaining \$30.75 to the
2 designated candidate’s campaign.

3 The PAC will provide each contributor with a breakdown of the amount deducted by the
4 PAC for its own costs and the amount forwarded to the designated candidate’s
5 committee.

6 Cowboy Analytics also proposes for the PAC to solicit the purchase of its
7 political merchandise “decoupled from making an earmarked contribution.”⁶ “[A]fter a
8 donor completes a purchase of merchandise on the PAC’s website, the PAC would
9 suggest that the donor make an optional earmarked contribution.”⁷ The PAC would treat
10 the entire amount paid for the merchandise as a contribution from the purchaser to the
11 PAC, with the PAC paying all costs (including payment processing, administrative, and
12 solicitation costs) associated with the transaction. For each earmarked contribution,
13 Cowboy Analytics plans for the PAC to deduct the standard payment processing fee
14 (2.9% plus 30 cents) and forward the remaining amount to the designated candidate. The
15 PAC will treat the amount deducted for payment processing costs as a contribution to the
16 PAC. Before an earmarked contribution is made, the PAC will provide each contributor
17 of an earmarked contribution with a breakdown of the amount deducted by the PAC for
18 payment processing costs and the amount forwarded to the designated candidate’s
19 committee.

⁶ AOR009.

⁷ AOR009.

1 Cowboy Analytics stated that the PAC will “operate independently of any
2 candidates and their campaigns.”⁸ Cowboy Analytics asserts that the PAC will not
3 coordinate regarding its merchandise or solicitations with candidates, their campaigns, or
4 agents, nor will the PAC enter into any contract or other legal agreement with candidates
5 or their campaigns.

6 ***Questions Presented***

7 1. *Would all the costs the PAC proposes to deduct from each contribution be*
8 *considered contributions to the PAC and not contributions to the designated candidate?*

9 2. *Would the PAC’s initial payment for the production and distribution of the*
10 *political merchandise as described in this request qualify as in-kind contributions from*
11 *the PAC to the candidates receiving the earmarked contributions?*

12 3. *Would the PAC have to report the costs of producing and distributing*
13 *political merchandise that includes express advocacy language as independent*
14 *expenditures?*

15 4. *Would the PAC have to report its costs of soliciting contributors to make*
16 *earmarked contributions as independent expenditures?*

17 5. *Would the Commission’s analysis for Questions 1-4 change if the PAC*
18 *were to separate the sale of political merchandise from the making of earmarked*
19 *contributions?*

⁸ AOR003.

1 6. *Would the PAC’s proposed activities violate the Federal Election*
2 *Campaign Act of 1971, as amended (“FECA”) or the Commission’s implementing*
3 *regulations in any way?*

4 ***Legal Analysis***

5 1. *Would all the costs the PAC proposes to deduct from each contribution be*
6 *considered contributions to the PAC and not contributions to the designated candidate?*

7 Yes, the costs the PAC proposes to deduct from an earmarked contribution would
8 be contributions to the PAC and not contributions to the designated candidate.

9 Under the Act, a contribution is “any gift, subscription, loan, advance or deposit
10 of money or anything of value made by any person for the purpose of influencing any
11 election for Federal office.”⁹ Commission regulations state that the “entire amount paid
12 as the purchase price for a fundraising item sold by a political committee is a
13 contribution.”¹⁰

14 Further, “all contributions made by a person, either directly or indirectly, on
15 behalf of a particular candidate, including contributions which are in any way earmarked
16 or otherwise directed through an intermediary or conduit to such candidate, shall be
17 treated as contributions from such person to such candidate.”¹¹ Any “person who
18 receives and forwards an earmarked contribution to a candidate or a candidate’s

⁹ 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

¹⁰ 11 C.F.R. § 110.53.

¹¹ 52 U.S.C. § 30116(a)(8); *see also* 11 C.F.R. § 110.6(a). The term “earmarked” means “a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution...being made to...a clearly identified candidate or a candidate’s authorized committee.” 11 C.F.R. § 110.6(b)(1).

1 authorized committee” is a “conduit or intermediary.”¹² An earmarked contribution does
2 not count against the conduit’s contribution limits unless the conduit exercises “direction
3 or control over the choice of the recipient candidate;” if that occurs, then the entire
4 earmarked contribution is treated as a contribution to the recipient from both the original
5 contributor and the conduit.¹³

6 As proposed here, the PAC will solicit contributions earmarked for certain
7 candidate committees. Before forwarding an earmarked contribution to the designated
8 candidate committee, the PAC will deduct funds to pay its own: (1) merchandise and
9 shipping costs, (2) payment processing costs, and (3) administration and solicitation
10 costs.¹⁴

11 The Commission has previously considered how to treat fees deducted from
12 earmarked contributions by a conduit committee in circumstances similar to those
13 proposed here. In Advisory Opinion 2019-15 (NORPAC), NORPAC, a nonconnected
14 committee, proposed to serve as a conduit for contributions earmarked to candidate
15 committees. NORPAC proposed to deduct a “convenience fee” from each earmarked
16 contribution to pay its own processing, solicitation, and administrative costs before
17 forwarding the remaining amount to the designated candidate committee. The
18 Commission concluded that the entire amount of the convenience fee deducted by

¹² 11 C.F.R. § 110.6(b)(2).

¹³ 11 C.F.R. § 110.6(d).

¹⁴ AOR002.

1 NORPAC “would constitute a contribution from the original contributor to NORPAC,”¹⁵
2 and that NORPAC should report the amount forwarded to the designated candidate as a
3 receipt and disbursement.

4 Similarly, here, each solicitation by the PAC will contemplate two separate
5 contributions. The amount of each earmarked contribution withheld by the PAC to pay
6 its own costs will be a contribution from the original contributor to the PAC.¹⁶ The PAC
7 must then forward the remaining amount of each earmarked contribution to the
8 designated candidate committee and disclose it in reports to the Commission pursuant to
9 11 C.F.R. §§ 102.8 and 110.6.

10 2. *Would the PAC’s initial payment for the production and distribution of the*
11 *political merchandise as described in this request qualify as in-kind contributions from*
12 *the PAC to the candidates receiving the earmarked contributions?*

13 No, the PAC’s initial payment for the production and distribution of the political
14 merchandise as proposed would not qualify as in-kind contributions from the PAC to the
15 candidates receiving the earmarked contributions, because the expenditure would not be
16 coordinated with any candidate or candidate’s authorized committee.

¹⁵ Advisory Opinion 2019-15 (NORPAC) at 5. The Commission also concluded that NORPAC must forward the portion of each earmarked contribution allocated to the designated candidate committee pursuant to 11 C.F.R. §§ 102.8 and 110.6 and, “[b]ecause there is no indication that NORPAC would exercise any direction or control concerning the choice of the recipient candidate,” the forwarded amount “would constitute a contribution from the original contributor to the candidate committee and not from NORPAC.” *Id.*

¹⁶ The Commission assumes that the PAC will inform each potential contributor before they make the solicited contribution that they will be making contributions to both Cowboy Analytics and the designated candidate committee.

1 Under the Act, a contribution is “any gift, subscription, loan, advance or deposit
2 of money or anything of value made by any person for the purpose of influencing any
3 election for Federal office.”¹⁷ “[T]he term ‘anything of value’ includes all in-kind
4 contributions.”¹⁸

5 Under Commission regulations, expenditures for coordinated communications are
6 those that meet all three prongs of the test at 11 C.F.R. § 109.21. First, the
7 communication must be paid for, in whole or in part, by a person other than the candidate
8 or the candidate’s authorized committee.¹⁹ Second, the communication must satisfy one
9 of five content standards (the “content prong”).²⁰ Finally, the communication must
10 satisfy one of five conduct standards (the “conduct prong”).²¹ The political merchandise
11 in this case will not be a coordinated communication because it will not satisfy the
12 conduct prong of the three-prong test.

13 Here, Cowboy Analytics states that the PAC “does not intend to coordinate its
14 production and distribution of political merchandise, its advertisements, or its
15 solicitations of earmarked contributions with the benefitting candidates, their campaign
16 committees, or any agents.”²² Nor will the PAC republish candidates’ campaign

¹⁸ 11 C.F.R. § 100.52(d)(1).

¹⁹ 11 C.F.R. § 109.21(a)(1).

²⁰ 11 C.F.R. §§ 109.21(a)(2), (c).

²¹ 11 C.F.R. §§ 109.21(a)(3), (d)(1)-(5).

²² AOR006, *see* note 11. Cowboy Analytics indicates that the PAC may determine that it is necessary to communicate with candidates or their campaign committees to avoid legal conflict over trademark or other trade usage and asserts that such communication should not be considered coordination. The Commission does not make a determination regarding these hypothetical communications because

1 materials.²³ Because the PAC will engage in the proposed activity independently of any
2 candidates, candidate committees, political party committees, or their agents, the
3 proposed activity will not satisfy the conduct prong and thus will not be a coordinated
4 communication. Therefore, the PAC’s costs to produce and distribute the merchandise
5 will not be an in-kind contribution from the PAC to the candidates receiving the
6 earmarked contributions.

7 3. *Would the PAC have to report the costs of producing and distributing*
8 *political merchandise that includes express advocacy language as independent*
9 *expenditures?*²⁴

10 No, the PAC would not have to report the costs of producing and distributing
11 political merchandise that includes express advocacy as independent expenditures,
12 because the costs of the merchandise, which the PAC will distribute only to donors who
13 make earmarked contributions, are fundraising expenses incurred in connection with
14 solicitations that are not themselves independent expenditure communications.²⁵

15 Under the Act, an “expenditure” is “any purchase, payment, distribution, loan,
16 advance, deposit or gift of money or anything of value made by any person for the

questions posing a hypothetical situation do not qualify as advisory opinion requests. *See* 11 C.F.R. § 112.1(b).

²³ AOR003.

²⁴ For purposes of this advisory opinion, the Commission accepts the requestor’s representation that the merchandise identified in the PAC’s solicitations will bear messages containing “express advocacy” under 11 C.F.R. § 100.22. The requestor has not asked, and the Commission does not determine, whether the specific messages in the examples provided in the AOR are express advocacy under the Act and Commission regulations.

²⁵ *See infra* pp. 14-15.

1 purpose of influencing any election for Federal office.”²⁶ An “independent expenditure”
2 is an expenditure by a person for a communication expressly advocating the election or
3 defeat of a clearly identified candidate that is not made in cooperation or consultation
4 with a candidate, a candidate’s authorized committee, a party committee, or their agent.²⁷

5 The Act and Commission regulations do not define a “communication” for
6 purposes of independent expenditure reporting requirements or specify whether the
7 independent expenditure regime encompasses the costs of solicitations for earmarked
8 contributions. Previously, in Advisory Opinion 1994-30 (Conservative Concepts), the
9 Commission considered whether costs incurred by a corporate vendor of political
10 merchandise to advertise and market T-shirts bearing express advocacy messages would
11 be independent expenditures.²⁸ The Commission noted that, even though the T-shirts
12 “undoubtedly display messages that ‘expressly advocate’ the election or defeat of a
13 candidate,” absent coordination or consultation with political committees resulting in

²⁶ 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111(a)

²⁷ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.16(a). Although the Act and Commission regulations do not define a “communication” for purposes of independent expenditure reporting, merchandise does not appear to fall under the related definition of “public communication,” which the Act and regulations define as “a communication by means of any broadcast, 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.” 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26. Merchandise is neither one of the communication categories enumerated in the “public communication” definition, nor is merchandise clearly covered by the catch-all category of “general public political advertising,” which the Commission has interpreted to “typically require the person making the communication to pay to use a third party’s platform to gain access to the third party’s audience.” Advisory Opinion 2022-20 (Maggie for New Hampshire) at 4. As outlined in the request, the PAC proposes to distribute merchandise only to donors who have made earmarked contributions in response to its targeted solicitation messages, which are distinct from “traditional forms of paid advertising,” “where a speaker pays to disseminate a message through a medium controlled, and to an audience established, by a third party.” *Id.* at 5.

²⁸ Advisory Opinion 1994-30 (Conservative Concepts, Inc.) at 5.

1 contributions by the vendor, the Commission would recognize “an alternative” to treating
2 the activity as independent expenditures if it “fall[s] within the category of commercial,
3 rather than political, activity.”²⁹ However, the Commission did not decide whether the
4 vendor’s expenses for “manufacturing and offering a shirt with a message of express
5 advocacy,” standing alone, were reportable as independent expenditures, nor did it
6 address circumstances similar to this request, where a committee intends to provide the
7 merchandise only to donors who make earmarked contributions in response to targeted
8 solicitations.³⁰

9 Unlike the entity in Advisory Opinion 1994-30 (Conservative Concepts), the
10 proposed PAC here “is not a vendor.”³¹ Instead, it will be a political committee whose
11 major purpose is the nomination or election of a candidate to federal office.³² As such,
12 the costs the PAC incurs to raise funds to further this purpose and to support its preferred
13 candidates cannot reasonably be viewed as “merely entrepreneurial or commercial
14 activity unlimited by the Act.”³³ However, in several advisory opinions the Commission
15 has addressed how political committees should value and disclose the costs of fundraising
16 items and related solicitation expenses.³⁴ These opinions, along with other guidance from
17 the Commission, make clear that committees should report production and fundraising

²⁹ *Id.* at 5.

³⁰ *Id.* at 6.

³¹ AOR006.

³² *See Buckley v. Valeo*, 424 U.S. 1, 80 (1976).

³³ Advisory Opinion 1994-30 (Conservative Concepts, Inc.) at 4.

³⁴ *See* Advisory Opinion 2009-32 (Jorgensen); Advisory Opinion 1989-21 (Create-a-Craft);
Advisory Opinion 1988-17 (Election Concepts).

1 costs in connection with solicitations as operating expenditures, and that they must
2 disclose proceeds from their solicitation efforts as contributions.³⁵

3 Here, as discussed above, the proposed PAC will incur the costs of producing and
4 distributing fundraising items, which will bear messages that expressly advocate the
5 election or defeat of clearly identified federal candidates, as part of a broader effort to
6 “target solicitations to individuals who, based on the data, are likely to make small-dollar
7 contributions to the candidates the PAC supports.”³⁶ As described by the requestor, those
8 targeted solicitations will not include express advocacy communications.³⁷ The requestor
9 also represents that the PAC will not coordinate with candidates regarding its
10 merchandise or solicitations and will “operate independently of any candidates and their
11 campaigns.”³⁸ Based on these representations, the Commission concludes that the costs
12 incurred by the PAC to produce and distribute the merchandise, as described in the
13 request, will be fundraising expenses reportable by the PAC as operating expenditures,
14 not as independent expenditures.³⁹ This approach is consistent with the Commission’s
15 prior guidance on how committees should report fundraising expenses and other costs
16 associated with solicitations, as well as with Commission decisions concluding that

³⁵ *Id.*; *see also* 11 C.F.R. § 100.53 (“The entire amount paid to attend a fundraiser or other political event and the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution.”).

³⁶ AOR002; *see also infra* pp. 14-15.

³⁷ AOR002.

³⁸ AOR003.

³⁹ *See* 11 C.F.R. § 104.3(b)(1)(i).

1 solicitations containing words of express advocacy are not reportable as independent
2 expenditures.⁴⁰

3 4. *Would the PAC have to report its costs of soliciting contributors to make*
4 *earmarked contributions as independent expenditures?*

5 No, the PAC would not have to report its costs of soliciting earmarked
6 contributions as independent expenditures because the solicitations, as proposed in the
7 request, do not constitute express advocacy.

8 An “independent expenditure” is an expenditure by a person for a communication
9 expressly advocating the election or defeat of a clearly identified candidate that is not
10 made in cooperation or consultation with a candidate, an authorized committee, a
11 political party committee, or their agent.⁴¹ Express advocacy occurs when the
12 communication uses phrases like “vote for the President,” “Smith for Congress,” or
13 “defeat,” accompanied by a listing or picture of one or more candidates, and “which in
14 context can have no other reasonable meaning than to urge the election or defeat of one
15 or more clearly identified candidate(s).”⁴²

16 The two examples of solicitation messages presented in Cowboy Analytics’
17 request⁴³ do not contain any “express words of advocacy of election or defeat,”⁴⁴ and in
18 context the messages could have a reasonable meaning other than to urge the election or

⁴⁰ See *supra* note 34; Advisory Opinion 2019-15 (NORPAC) at 6.

⁴¹ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.16(a).

⁴² 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22.

⁴³ See AOR003.

⁴⁴ *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).

1 defeat of a federal candidate: namely, to request contributions on behalf of the
2 hypothetical candidates named in the messages, as well as to advertise the PAC's
3 merchandise (images of which would accompany the solicitation text). Indeed, the
4 example solicitations do not qualify as express advocacy under either the Commission's
5 regulatory definition or the Supreme Court's construction of the phrase, as announced in
6 *Buckley v. Valeo*. While the PAC intends for its solicitations to include images of
7 merchandise potentially featuring express advocacy language, the proposed solicitations
8 would not amount to "an exhortation to vote for or against a specific candidate" on that
9 basis alone.⁴⁵ Rather, the overall message of the solicitations would be straightforward
10 requests for funds, as their "clear plea for action" is not to vote for or against the
11 identified candidates at an upcoming election, but to give contributions in support of their
12 campaigns.⁴⁶ Therefore, if the proposed PAC's solicitations essentially replicate the text
13 of the request's examples, the costs of those solicitations will not constitute independent
14 expenditures.

15 5. *Would the Commission's analysis for Questions 1-4 change if the PAC*
16 *were to separate the sale of political merchandise from the making of earmarked*
17 *contributions?*

⁴⁵ *FEC v. Furgatch*, 807 F.2d 857, 864 (9th Cir. 1987).

⁴⁶ *Id.*

1 No, the Commission’s analysis for Questions 1-4 would not change if the PAC
2 were to separate the sale of political merchandise from the making of an earmarked
3 contribution.⁴⁷

4 First, regarding Question 1, the payment processing fee that the requestor
5 proposes to deduct from each earmarked contribution would still be a contribution to the
6 PAC and not to the designated candidate for the reasons provided in response to Question
7 1, above.

8 Regarding question 2, the PAC’s initial payment for the production and
9 distribution of political merchandise would not constitute an in-kind contribution to the
10 candidates receiving the earmarked contributions for the reasons provided in response to
11 Question 2, above.

12 Regarding Question 3, the PAC’s expenses to produce and distribute the
13 merchandise as described in the request will still not constitute independent expenditures
14 reportable by the PAC for the same reasons provided in the response to Question 3,
15 above.

16 Finally, concerning Question 4, the PAC would not have to report as independent
17 expenditures its costs of soliciting earmarked contributions when the solicitations contain
18 express advocacy for the same reasons provided in response to Question 4, above.

⁴⁷ Although the AOR posed Question 5 in the conditional tense, Cowboy Analytics subsequently confirmed that the question is not hypothetical or moot. *See* AOR013. As such, it is appropriate for an advisory opinion request. *See* 11 C.F.R. 112.1(b).

1 6. *Would the PAC's proposed activities violate the Federal Election*
2 *Campaign Act of 1971, as amended ("FECA") or the Commission's implementing*
3 *regulations in any way?*

4 The PAC's proposed activities would be subject to all applicable disclaimer
5 requirements,⁴⁸ source prohibitions,⁴⁹ amount limitations,⁵⁰ and reporting requirements⁵¹
6 of the Act and Commission regulations. In addition, the PAC must comply with all
7 contribution forwarding requirements, including forwarding contributions within the
8 required time periods, and collecting contribution information and forwarding it to the
9 recipient candidate committees.⁵²

10 This response constitutes an advisory opinion concerning the application of the
11 Act and Commission regulations to the specific transaction or activity set forth in your
12 request.⁵³ The Commission emphasizes that, if there is a change in any of the facts or
13 assumptions presented, and such facts or assumptions are material to a conclusion
14 presented in this advisory opinion, then the requestor may not rely on that conclusion as
15 support for its proposed activity. Any person involved in any specific transaction or
16 activity which is indistinguishable in all its material aspects from the transaction or
17 activity with respect to which this advisory opinion is rendered may rely on this advisory

⁴⁸ 52 U.S.C. § 30120; *see also* 11 C.F.R. § 110.11.

⁴⁹ 52 U.S.C. §§ 30118, 30119, 30121, 30122; *see also* 11 C.F.R. §§ 110.4(b), 110.20, 114.2, 115.2.

⁵⁰ 52 U.S.C. § 30116; *see also* 11 C.F.R. § 110.1.

⁵¹ 52 U.S.C. § 30104; *see also* 11 C.F.R. Part 104.

⁵² 52 U.S.C. § 30116(a)(8); *see also* 11 C.F.R. § 110.6.

⁵³ *See* 52 U.S.C. § 30108.

1 opinion.⁵⁴ Please note that the analysis or conclusions in this advisory opinion may be
2 affected by subsequent developments in the law including, but not limited to, statutes,
3 regulations, advisory opinions, and case law. Any advisory opinions cited herein are
4 available on the Commission's website.

5 On behalf of the Commission,

6

7 Dara Lindenbaum,

8 Chair

⁵⁴ See *id.* § 30108(c)(1)(B).