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November 28, 2005

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General Counsel  
Federal Election Commission  
999 E Street, NW - 6<sup>th</sup> Floor  
Washington, DC 20463

AOR 2006-02

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FEDERAL ELECTION  
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OFFICE OF GENERAL  
COUNSEL

**Re: Advisory Opinion Request**

Dear Mr. Norton:

Robert Titley requests an Advisory Opinion from the Commission on issues presented by the establishment of a limited liability company that would provide web-based issue content and related benefits, including access to a political action committee, to two classes of membership.

One class, the Founders, will consist of those individuals who developed the plan for the LLC, committing both management expertise and capital to the project (the "Founding Members"). Another class will include individuals who will pay annual dues and direct collectively the political content of the site and the disposition of the funds raised for the PAC (the "Participating Members"). Only the Founding Members' class will control the business affairs of the LLC, also participating exclusively in the profits generated from its operation.

The specific issue on which advice is sought is whether the Participating Members meet the requirements for "membership" for purposes of the Act and may be solicited for contributions to the LLC's political action committee.

### Background

Robert Titley is a music producer who was instrumental in the organization of a political committee, Music Row Democrats, which communicated through an active website with those who supported its goals. The site, [www.musicrowdemocrats.com](http://www.musicrowdemocrats.com), achieved considerable success. It attracted broad interest in the music community from executives, artists, songwriters, producers and managers as well as the general public. It

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also drew extensive free press coverage, financed advertising, and organized concerts for the benefit of candidates, featuring major country-western musical talent.

Mr. Titley's success and experience with Music Row Democrats, particularly its demonstrated ability to attract and hold interest through web-based communications, inspired him to conceive of the venture, separate and distinct from Music Row Democrats, set out in this Request.

### **The Proposed LLC and the Founding Members**

Building on this experience, Mr. Titley now proposes to establish a limited liability company under the laws of the State of Delaware (the "Company") for the purpose of engaging in a venture where dues-paying Participating Members obtain access to issue themed content and merchandise, and, as an incident of membership, participate in the development of issue and political content and in the use of funds raised for a political action committee of the LLC. The goal is for the organization to provide a vehicle for civic expression that is independent of the partisan political environment. By providing a dependable stream of information about issues that are important to the Participating Members, the LLC will create an environment in which such members will feel more thoroughly engaged and empowered.

Mr. Titley and the other Founding Members will be admitted as one category of members of the Company in exchange for capital contributions of cash, assets or services. The Founding Members' initial capital contributions will provide the necessary start-up capital and other resources to establish a Company website, to implement the Company's marketing plan, to pay the legal and accounting expenses associated with formation of a new enterprise, and to obtain the initial inventory of content and goods that will be provided by the Company. The Company will elect to be taxed as a corporation for federal income tax purposes.

The Company will be managed by one or more managers (the "Manager(s)") who will have complete authority to manage the affairs of the Company, with the exception of certain specified transactions (such as a sale of substantially all the Company's assets or a merger involving the Company) that may require Founding Member approval.

The Company's profits and losses and distributions of the Company's distributable cash will be allocated among the Founding Members in proportion to their ownership interest in the Company. The Company's Operating Agreement will set forth the rights of

each Founding Member with respect to allocations of profits and losses and participation in distributions. The Operating Agreement may also contain transfer restrictions, covenants with respect to future capital contributions by Founding Members, and a description of each Founding Member's right to participate in management decisions.

### **The Policy Board Members**

It is anticipated that the Company's revenue will be generated through the payment of annually assessed dues received from a second class of members, the Participating Members. These Participating Members would not have rights under state law to manage the business affairs of the Company, and they will not participate in any allocation of profits, losses or distributions. They will, however, share these rights:

- The right to access to the site, to view issue content, polling and commentary accessible only to dues-paying members.
- The right to purchase merchandise reflecting the issue-based commitments of the LLC.
- The right to participate in special events (such as concerts) for members only.
- The right to participate in the Policy Board, which is empowered to help shape the positions on issues expressed through the site to the general public, including the endorsement of candidates who share the Policy Board's views on key issues, regardless of party affiliation.
- The right, as Policy Board members, to influence the approval or disapproval of contributions that are proposed to be made from the LLC's political action committee.

Failure to remain current on the payment of annual membership dues will result in the delinquent Participating Member (a) losing access to the Company's content and merchandise and (b) being removed from the Policy Board.

The Company's Founders and Manager(s) may also elect, upon payment of dues, to be Participating Members eligible to participate in Policy Board deliberations on the same basis as other dues-paying Participating Members.

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Under this structure, the very purposes of the LLC require that it communicate on issues with the Participating Members. These communications will necessarily also include information on candidates and their positions on issues – communications that may qualify as partisan communications under the Commission's rules. Further, the LLC would want to be able to solicit those Participating Members for contributions to the LLC PAC, given their role in creating the endorsements of candidates sharing their views on issues. The question raised here with the Commission is whether the membership structure described here and proposed for this venture satisfies the criteria specified by the regulation.

#### **Commission "Membership" Criteria**

Those criteria look to an enduring financial or organizational attachment, and that the members acknowledge, while the membership organization affirms, the attachment constituting formal membership. These criteria are satisfied here.

Each Participating Member for FECA purposes would pay no less than \$50.00 per year for a membership. This fee would be payable on-line, and would require that, with payment, each Participating Member affirm the wish to exercise the rights of membership. The on-line form would also advise Participating Members of the rights attendant upon the payment of dues and the acceptance of membership, including the right to direct policy through membership on the Policy Board and to determine the use of PAC funds. Participating Members would be informed that these rights would be conditioned on remaining in good standing, including maintaining currency in the payment of annual dues.

All of these formal requirements for membership satisfy the Commission's standards. 11 C.F.R. §§ 100.134(c)(1)-(6). Membership would be affirmed and membership rolls would be maintained, and the rights and obligations of this class of membership would be reflected in the Company's organizational documents. Individual Participating Members would also qualify under FEC criteria. They would pay "membership dues at least annually" in an amount predetermined by the LLC, 11 C.F.R. § 100.34(f)(2), and they would also have a "significant organizational attachment," which in this instance would be "the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results." 11 C.F.R. § 100.134(f)(3). *See also* FEC Advisory Opinion 1997-5 (May 16, 1997) (organizational attachment demonstrated by service on "policy formulating committees").

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The Commission has recognized that participation in the management of the business affairs of a membership organization is not a requirement of "membership" for purposes of the FECA. Organizational attachment may assume other forms, such as a professional affiliation that entails commitment to a code of professional conduct and submission to sanctions in the event of breach. *See, e.g.* Advisory Opinion 2003-13 (June 13, 2003). Moreover, in this instance, the Participating Members would direct the policy and political affairs of the LLC, which is structured as a venture to encourage the active engagement by its members with issue politics, including participation in a PAC.

Even if the Commission were to conclude that the organizational attachment here does not "precisely meet the requirements of the general rule," 11 C.F.R. § 100.34(g), it would still qualify as one that is "relatively enduring and independently significant" and thus appropriately approved by the FEC on the basis of a case-specific review. The attachment of Participating Members to the LLC venture presented in this request is not merely significant; it is central to the purposes of the organization.

### **Conclusion**

Mr. Titley requests therefore a Commission opinion on whether the LLC may treat Participating Members as satisfying all Commission requirements, so that it may make partisan communications with them and solicit them for contributions to a separate segregated fund.

Very truly yours,



Robert F. Bauer  
Judith L. Corley



**FEDERAL ELECTION COMMISSION**

Washington, DC 20463

December 9, 2005

Robert F. Bauer, Esquire  
Judith L. Corley, Esquire  
Perkins Coie  
607 14<sup>th</sup> Street, N.W.  
Washington, DC 20005

Dear Mr. Bauer and Ms. Corley:

This refers to your letter dated November 28, 2005, on behalf of Robert Titley, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the establishment of a limited liability company ("the Company") that will express views on candidates and issues to the general public, and to the establishment by the Company of a separate segregated fund ("SSF") that will solicit contributions from the Company's members.

You indicate that the Company will principally provide web-based content. You state that the Company will have two classes of "members." One class, the "Founding Members," will consist of the Company's owners. Another class will consist of dues-paying non-owner "Participating Members" who will have the right to: (i) view content and purchase merchandise on a restricted portion of the website, (ii) participate in special events, and (iii) participate in the Company's Policy Board decisions, including decisions as to issue positions and candidate endorsements expressed on the website and as to recipients of contributions from the Company's SSF.

You describe various attributes of the Company, as well as the rights and obligations of the Participating Members. You ask whether the Participating Members meet the definition of "member" for the purposes of the Act and Commission regulations, and, hence, whether the Company may solicit them for contributions to the SSF.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. 437f(a). Such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). Commission regulations further explain that the Office of General Counsel shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

In order for Mr. Titley's request to be complete, further facts are required as to the nature of the website and the Company itself. In view of the requirements of 11 CFR 112.1(c), please respond to the following questions and requests for information:

- (1) Please provide a further description of the public and members-only portions of the proposed website, and specifically identify the differences between the two portions.
- (2) State whether the Company will discuss any of its communications on either portion of the website with candidates, political parties, or 527 organizations, or the agents of such entities. Describe the nature of such discussions.
- (3) Describe the kinds of activities the Company will engage in, other than operation of the website and the SSF, so that the Commission may determine whether the Company is "organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office." See 11 CFR 114.1(e)(1)(vi).
- (4) Describe what the Company's governing documents will state as to the purposes of the Company. If governing documents for the Company, including the articles of organization, the operating agreement, or bylaws, have already been approved, please submit copies in lieu of a description.
- (5) What are the qualifications for becoming and remaining a Participating Member, other than the payment of dues?
- (6) Describe how the Company will recruit individuals to become Participating Members. For example, please describe: (i) whether the Company's recruitment activity will consist solely of an invitation on the public portion of the website; (ii) whether the Company will obtain lists of names from political committees, 527 organizations, and/or issue groups to invite individuals by mail or e-mail; and (iii) what the invitation to join would say, including whether the invitation will refer to the SSF and/or a member's opportunity to participate in the SSF.
- (7) You have stated the consequences of a failure of a Participating Member to "remain current on dues." Please confirm whether a delinquent Participating Member will be barred from access to the members-only portion of the website? What event, if any, will cause that individual to cease being a Participating Member?

Upon receipt of your responses, this Office will give further consideration to your inquiry. If you have any questions about the advisory opinion process or this letter, please contact Jonathan Levin, a senior attorney in this Office, at 202-694-1650.

Sincerely,

  
Rosemary C. Smith  
Associate General Counsel



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January 18, 2006

Jonathan Levin  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: Advisory Opinion Request by Robert Titley**

Dear Mr. Levin:

This is in response to your letter requesting additional information for your use in considering the advisory opinion request submitted on behalf of Robert Titley. The answers to your questions are listed below in turn.

- 1. Please provide a further description of the public and members-only portion of the website, and specifically designate the differences between the two portions*

The actual website has not yet been designed. Once designed, it will be routinely modified and changed to reflect current issues identified by the members. In general, however, the public portion of the website will have two components: a) information about the purpose of the Company and the benefits of membership and b) merchandise sales. The public portion of the website may also include general information about the issues identified by the members as important to them.

The members-only portion of the website will be more expansive: it will include the types of materials and information described in response to Question 3 below. In addition to the interactive features allowing members to be polled and to express their opinions, more extensive information will be provided to the members than will be available to the public. The members-only portion of the website will also include information about the SSF, and how to participate in it, as well as information about the candidates it supports and why.

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The merchandise section of the members-only portion of the website may also include special items not available to the public or available to members at discounted prices.

2. *State whether the Company will discuss any of its communications on either portion of the website with candidates, political parties or 527 organizations, or the agents of such entities. Describe the nature of such discussions.*

The Company will have discussions with candidates, political parties and 527 organizations (or their agents) to gather information about their positions on issues of concern to the membership of the Company. The Company will not coordinate with any of these entities the ultimate content of either the public or members-only portion of the website .

3. *Describe the kinds of activities the Company will engage in, other than the operation of website and the SSF, so that the Commission may determine whether the Company is "organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office." 11 C.F.R. § 114.1(e)(1)(vi).*

At a minimum, the operation of the site will include the following types of activities:

- On-line polling and voting of the Participating Members to help define the issues important to them;
- Development of a platform of issues important to the members, which will include white papers, talking points and other background materials to educate them in more detail on these issues;
- Provision of news resources and editorial comment on these issues;
- Entertainment-driven events, merchandise and music content;
- Interviews of and commentary by music celebrities on issues of importance to the members;
- Development of on-line educational tools for civics educators and their students;

- Fundraising for member and artist selected charities.

4. *Describe what the Company's governing documents will state as to the purposes of the Company. If governing documents for the Company, including the articles of organization, the operating agreement or the bylaws, have already been approved, please submit copies in lieu of a description.*

The governing documents for the Company have not yet been approved. The mission statement of the Company expected to be incorporated in final form in these documents will be similar to the following:

To provide an organization for civic expression that is independent of the partisan political environment.

To aggregate a large number of politically engaged individuals through a content-rich website and special events. To provide a dependable and interactive content stream that makes the website a regular destination.

To engage in issue education and polling to create a virtual platform of issues of importance to the membership. To create an environment in which members will feel more thoroughly engaged and empowered in their civic expressions, by engaging the membership in active discussions that will help to define national issues.

To provide a vehicle for individuals to endorse and support political candidates, regardless of party affiliation, who share their views on key issues.

5. *What are the qualifications for becoming and remaining a Participating Member, other than the payment of dues?*

The only requirement to become and remain a Participating Member is the payment of dues.

6. *Describe how the company will recruit individuals to become Participating Members. For example, please describe (i) whether the Company's recruitment activity will consist solely of an invitation on the public portion of the website; (ii)*

Jonathan Levin  
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*whether the Company will obtain lists or names from political committees, 527 organizations, and/or issue groups to invite individuals by mail or e-mail; and (iii) what the invitation to join would say, including whether the invitation will refer to the SSF and/or a member's opportunity to participate in the SSF.*

The Company will use multiple methods to recruit Participating Members, including those described in (i) and (ii) above, except that it will not "obtain" lists from the described entities but purchase them if available on the market. In addition, the Company will include viral and personal marketing, special events, celebrity spokespersons, and conventional advertising. In particular, the Company will use celebrities and the tools of the entertainment industry to drive awareness and publicize the websites and its goals.

With respect to the SSF, invitations to become a Participating Member will note, as one of the numerous benefits of members, the ability to participate in a PAC that contributes to candidates supporting the issues important to the membership.

7. *You have stated the consequences of a failure of a Participating Member to "remain current on dues." Please confirm whether a delinquent Participating Member will be barred from access to the members-only portion of the website? What event, if any, will cause that individual to cease being a Participating Member?*

A delinquent Participating Member, after an appropriate grace period, will be barred from access to the members-only portion of the website. The Company, of course, also reserves the right to expel any member who becomes disruptive or fails to conduct themselves according to the "etiquette guidelines" of the website (which will be part of the terms of use of the site, agreed to by all members).

Thank you for your consideration of this information. If you have any additional questions, please contact the undersigned.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel to Robert Titley