



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 29, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-33

Carol A. Laham, Esq.
D. Mark Renaud, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

Dear Ms. Laham and Mr. Renaud:

We are responding to your advisory opinion request on behalf of Club for Growth PAC asking if, under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations, its ten- and fifteen-second television advertisements must carry the full spoken "stand-by-your-ad" disclaimer.

The Commission concludes that the ten- and fifteen-second television advertisements that Club for Growth PAC plans to air must carry the full spoken "stand-by-your-ad" disclaimer required by the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on November 15, 2007 and your e-mail received on November 28, 2007.

Club for Growth PAC is the separate segregated fund of the Club for Growth, an incorporated nonprofit membership organization. Club for Growth PAC has qualified as a multicandidate committee under the Act and Commission regulations.

Club for Growth PAC plans to purchase television time in 2008 for ten- and fifteen-second advertisements that expressly advocate the election or defeat of a clearly identified Federal candidate. For example, you indicate that it plans to run a television

advertisement in support of Representative Jeff Flake. These advertisements will not be coordinated with, or authorized by, any candidate, candidate's committee, political party, or their agents.

Each of these advertisements will include the following two written statements:

- "Paid for by Club for Growth PAC, www.clubforgrowth.org, and not authorized by any candidate or candidate's committee."
- "Club for Growth PAC is responsible for the content of this advertising" (the written, "stand-by-your-ad" disclaimer).

The written stand-by-your-ad disclaimer will be aired for four seconds at the end of each ten- or fifteen-second advertisement in letters equal to or greater than four percent of the vertical picture height. Due to the brevity of the ten- and fifteen-second advertisements, however, Club for Growth PAC wishes to dispense with, or truncate, the spoken, stand-by-your-ad disclaimer required by the Act and Commission regulations.

Question Presented

Must the ten- and fifteen-second television advertisements that Club for Growth PAC plans to air during 2008 carry the full spoken stand-by-your-ad disclaimer required by the Act and Commission regulations?

Legal Analysis and Conclusions

Yes, the ten- and fifteen-second television advertisements that Club for Growth PAC plans to air during 2008 must carry the full spoken stand-by-your-ad disclaimer required by the Act and Commission regulations. *See* 2 U.S.C. 441d and 11 CFR 110.11.

All public communications made by a political committee must include certain disclaimers. *See* 2 U.S.C. 441d(a)(1); 11 CFR 110.11(a)(1). In addition, all public communications made by any person, including a political committee, that expressly advocate the election or defeat of a clearly identified Federal candidate must include disclaimers. *See* 2 U.S.C. 441d(a); 11 CFR 110.11(a)(2). Club for Growth PAC has qualified as a multicandidate committee, which is a type of political committee under the Act and Commission regulations. *See* 2 U.S.C. 431(4); 11 CFR 100.5(e)(3). In addition, because the advertisements that Club for Growth PAC plans to air will be broadcast via television, such communications will constitute "public communications." *See* 2 U.S.C. 431(22); 11 CFR 100.26. Moreover, Club for Growth PAC has indicated that the proposed advertisements will expressly advocate the election or defeat of a clearly identified Federal candidate. Accordingly, the ten- and fifteen-second television advertisements that Club for Growth PAC intends to air during the 2008 election cycle must carry disclaimers under both 11 CFR 110.11(a)(1) and (a)(2). *See also* 2 U.S.C. 441d(a).

Because the advertisements would be paid for by Club for Growth PAC but would not be authorized by any candidate, authorized committee of a candidate, or agent of either, they must contain a written disclaimer that clearly states the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and indicates that the communication is not authorized by any candidate or candidate's committee. *See* 2 U.S.C. 441d(a)(3); 11 CFR 110.11(b)(3). The written disclaimer must be presented in a clear and conspicuous manner to give the viewer adequate notice of the identity of the person or political committee that paid for and/or authorized the communication. 11 CFR 110.11(c)(1). Club for Growth PAC intends to comply with these requirements.

In addition, because the advertisements will be television communications not authorized by a candidate they must also include an audio statement that identifies the person paying for the communication. *See* 2 U.S.C. 441d(d)(2); 11 CFR 110.11(c)(4)(i). An example of a statement that would satisfy this requirement is: "Club for Growth PAC is responsible for the content of this advertising."

Club for Growth PAC's request to dispense with, or truncate, the spoken, stand-by-your-ad requirement relies on two previous advisory opinions applying Commission regulations establishing exceptions to the disclaimer requirements. 11 CFR 110.11(f)(1). First, in Advisory Opinion 2004-10 (Metro Networks), the Commission concluded that specific physical and technological limitations made it "impracticable" to require that the candidate himself deliver the spoken stand-by-your-ad disclaimer for the candidate's radio communication. *See* 11 CFR 110.11(f)(1)(ii). Due to the live nature of the reports broadcast from aboard a helicopter and the limitations of the broadcasting equipment used, it was "physically impossible" for Metro Networks to include any statements spoken by the candidate who paid for the advertisement. *See* Advisory Opinion 2004-10 (Metro Networks). However, the Commission neither dispensed with, nor truncated, the spoken stand-by-your-ad requirement but merely permitted someone other than the candidate to deliver the spoken statement. Thus, Advisory Opinion 2004-10 (Metro Networks) does not support dispensing with, or truncating, the spoken stand-by-your-ad disclaimer for the advertisements proposed in this request. Nor are there physical or technological limitations that would make it "impracticable" to include the full spoken stand-by-your-ad disclaimer in a television advertisement. *See* 11 CFR 110.11(f)(1)(ii).

Second, the facts presented in Advisory Opinion 2002-09 (Target Wireless) also differed materially from those presented in Club for Growth PAC's request. In Advisory Opinion 2002-09 (Target Wireless), the portion of each candidate-sponsored text message devoted to the candidate's entire message (including the stand-by-your-ad disclaimer) was severely limited. It was subject not only to an overall limit on the number of characters but also to an internal limit, as well, because the candidate was including other content within the message, such as sports scores or information about news events. The Commission concluded that the technological limitations on both the size and the length of information that the text messages were able to contain made the

proposed communications eligible for the “small items” exception at 11 CFR 110.11(f)(1)(i). Because the “small items” exception applies only to “bumper stickers, pins, buttons, pens, and similar items upon which the disclaimer cannot be conveniently printed,” it does not justify dispensing with, or truncating, the spoken stand-by-your-ad disclaimer for the television advertisements that Club for Growth PAC plans to sponsor. 11 CFR 110.11(f)(1)(i).

The Commission notes that when Congress amended the Act to add the spoken stand-by-your-ad disclaimer requirement for television and radio advertisements, it did not create an exception for television communications of ten or fifteen seconds or any other duration, even though it was aware of the Commission’s already-existing regulatory exceptions for “impracticability” and “small items.” *See* Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002). Therefore, the Commission concludes that Club for Growth PAC’s ten- and fifteen-second television advertisements do not qualify for the “small items” exception at 11 CFR 110.11(f)(i). Accordingly, Club for Growth PAC must include the full spoken stand-by-your-ad disclaimer in its ten- and fifteen-second television communications.

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 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. All cited advisory opinions are available on the Commission’s website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Donald F. McGahn II
Chairman