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Client Matter No.: 20306-00002

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AOR 2010-08

March 29, 2010

Ms. Thomasenia P. Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: *Advisory Opinion Request*

Dear Ms. Duncan:

I write on behalf of Citizens United to respectfully request an advisory opinion from the Federal Election Commission (the "Commission") pursuant to the Federal Election Campaign Act ("FECA"). See 2 U.S.C. § 437f(a); 11 C.F.R. § 112.1. Citizens United seeks an advisory opinion as to whether its production and distribution of documentary films, along with related marketing activities, qualify for the media exception to FECA's disclosure, disclaimer, and reporting requirements for "expenditures" and "electioneering communications." 2 U.S.C. §§ 431(9)(B)(i), 434(f)(3)(B)(i). Additionally, Citizens United seeks an opinion as to whether those activities qualify for FECA's exception for commercial transactions. See, e.g., Advisory Opinion 2008-10.

Because Citizens United is a press entity that regularly produces and distributes documentary films that offer political information and commentary—and because it commercially distributes those films for sale to the public—the Commission should conclude that Citizens United's documentary film activities are covered by both the media and commercial transaction exceptions.

**I. FACTUAL BACKGROUND**

Citizens United is a civic organization committed to informing and educating the public on conservative ideas and issues. Formed in 1988, Citizens United is incorporated as a Virginia non-stock corporation, and is exempt from federal taxes under Section 501(c)(4) of the Internal Revenue Code. Citizens United's principal purpose is "to promote social

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welfare through informing and educating the public on conservative ideas and positions on issues, including national defense, the free enterprise system, belief in God, and the family as the basic unit of society.” Citizens United Articles of Incorporation, art. II, § A. In furtherance of its mission, Citizens United regularly disseminates political information and commentary to the public through documentary films, newsletters, and books.

In 2004, Citizens United requested an Advisory Opinion from the Commission as to whether the media exception to FECA’s electioneering communications provisions applied to its planned broadcast of a documentary film about presidential candidate John Kerry. Advisory Opinion Request 2004-30. The Commission concluded that the media exception would not apply because, at that time, Citizens United did “not regularly produce documentaries or pay to broadcast them on television.” Advisory Opinion 2004-30, at 7; *see also id.* (emphasizing that Citizens United had “produced only two documentaries since its founding”).

Since 2004, Citizens United has produced and distributed twelve documentary films on a variety of political topics. Those films are: *Celsius 41.11: The Temperature at Which the Brain Begins to Die* (2004), *Broken Promises: The United Nations at 60* (2005), *Border War* (2006), *ACLU at War with America* (2006), *Rediscovering God in America* (2007), *Hillary The Movie* (2008), *Hype: The Obama Effect* (2008), *Blocking “The Path to 9/11”: The Anatomy of a Smear* (2008), *Ronald Reagan: Rendezvous with Destiny* (2009), *We Have the Power* (2009), *Perfect Valor* (2009), and *Rediscovering God in America II: Our Heritage* (2009). Citizens United recently completed production on two additional films, *Nine Days that Changed the World* and *Generation Zero*. *Nine Days that Changed the World* will premier on April 9, and *Generation Zero* will be in theaters beginning in mid-April. Citizens United also has four other films currently in production.<sup>1</sup>

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<sup>1</sup> Citizens United has produced and distributed all but one of its documentary films through an in-house production and distribution unit known as “Citizens United Productions.” To produce and distribute the soon-to-be-released documentary film *Generation Zero*, Citizens United and an investor formed a separate limited liability company called Citizens United Productions No. 1, LLC. Citizens United has a 75% ownership interest in the limited liability company and, under the terms of the company’s operating agreement, Citizens United controls its day-to-day operations and Citizens United’s president, David N. Bossie, serves as the company’s manager.

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Citizens United's film crews and production personnel have been credentialed as "press" when covering events for possible inclusion in the organization's films.

For each of the past six years, Citizens United has spent approximately 25% of its annual budget on documentary film production and distribution. In 2009, for example, Citizens United spent approximately \$3.4 million on film production and distribution. It anticipates spending a similar proportion of its budget on those activities for the foreseeable future.

Citizens United's films are generally distributed for retail sale in DVD format. Some of its films have had (or will have, in the near future) limited theatrical releases, including *Celsius 41.11*, *Border War*, and *Generation Zero*. Two of Citizens United's films—*Ronald Reagan: Rendezvous with Destiny* and *We Have the Power*—have been televised, and the organization is currently in negotiations with The Military Channel for the broadcast of *Perfect Valor* in the second quarter of 2010. Citizens United also sells wholesale bulk orders of its DVDs to other organizations and retail businesses, and runs radio and television advertisements promoting the sale of its films. In 2008, Citizens United sought to broadcast *Hillary The Movie* on a video-on-demand channel during the Democratic presidential primaries, but was unconstitutionally prohibited from doing so on the basis of FECA's (now -invalid) prohibition on corporate electioneering communications. See *Citizens United v. FEC*, 558 U.S. \_\_\_, 130 S. Ct. 876 (2010). The firm that offered the video-on-demand opportunity for *Hillary The Movie* is currently negotiating with Citizens United for the rights to broadcast numerous other Citizens United films in video-on-demand format.

Many of Citizens United's films include interviews, voiceovers, and visuals of private individuals and elected officials who at various times have been (and may in the future be) candidates for federal elected office. Examples include:

- Fred Thompson, a former U.S. Senator from Tennessee and a candidate for the presidency in 2008, is the narrator of *Perfect Valor*.
- Former congressman J.D. Hayworth, currently a candidate for the U.S. Senate in Arizona, is prominently featured in *Border War*.
- President Barack Obama is the subject of *Hype: The Obama Effect*.

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- Congressman Thaddeus McCotter was interviewed for and appears in *Generation Zero*.

Similarly, many of Citizens United's advertisements for its films have included images of or references to one or more political candidates. The television advertisements for *Celsius 41.11*, for example, included images and audio of President George W. Bush and Senator John Kerry. The trailer for *Hype: The Obama Effect* included images and audio of then-Senator Obama and Governor Mike Huckabee, both of whom were presidential candidates in 2008. And the proposed broadcast advertisements for *Hillary The Movie* mentioned Senator Clinton by name and included images of her.

Based on this content, some of Citizens United's films and advertisements might be classified as "express advocacy" and thus fall within the Commission's definition of an "expenditure." 2 U.S.C. § 431(9). Similarly, some of Citizens United's films and advertisements could be characterized as "electioneering communications" if aired during the period immediately preceding a federal primary or general election. *Id.* § 434(f)(3)(A)(i).<sup>2</sup>

## II. LEGAL ANALYSIS

Citizens United's documentary filmmaking and related marketing activities qualify for the media exception to FECA's disclosure, disclaimer, and reporting requirements because Citizens United regularly produces and distributes films that disseminate political commentary and information to the public and is not owned or controlled by a political party, political committee, or candidate. *See* 2 U.S.C. §§ 431(9)(B)(i), 434(f)(3)(B)(i). The Commission's contrary conclusion in its 2004 Advisory Opinion, even if it might have been correct at the time, is no longer factually tenable because Citizens United *does* now "regularly produce documentaries." Advisory Opinion 2004-30, at 7. The 2004 Opinion also cannot be reconciled with the Supreme Court's recent decision in *Citizens United v. FEC*, which emphasizes that, in light of the increasingly "blurred" line between the traditional media and other political commentators, heightened protections for political

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<sup>2</sup> Additionally, it might potentially be argued that some of Citizens United's film content meets the Commission's definition of a "coordinated communication" because any interviewee who appears in a film would have some level of material involvement regarding the content of his or her interview. *See* 11 C.F.R. § 109.21.

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speech cannot be limited to “traditional” media corporations. Citizens United’s filmmaking and related advertising also qualify for FECA’s commercial transaction exception because they are commercial, revenue-generating enterprises.

**A. Citizens United’s Documentary Filmmaking And Related Advertising Qualify For FECA’s Media Exception.**

FECA imposes disclosure, disclaimer, and reporting requirements in connection with funds spent on “expenditures” and “electioneering communications.” 2 U.S.C. §§ 434(c), 434(f), 441d(a)(3), 441d(d)(2). However, the statute includes parallel media exceptions for both “expenditures” and “electioneering communications” (which are collectively referred to herein as the “media exception”).

FECA’s media exception for “expenditures” encompasses:

[A]ny news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. § 431(9)(B)(i); *see also* 11 C.F.R. § 100.132 (“Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate . . .”).

FECA’s media exception for “electioneering communications” reaches:

[A] communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. § 434(f)(3)(B)(i); *see also* 11 C.F.R. § 100.29(c)(2) (exempting from the definition of an “electioneering communication” any communication that “[a]ppears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite

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television or radio station, unless such facilities are owned or controlled by any political party, political committee, or candidate”).

In determining the applicability of the media exception, the Commission traditionally inquires (1) whether the speaker is a press entity, (2) whether the speaker is acting as a press entity in conducting the activity at issue, and (3) whether the speaker is owned by a political party, political committee, or candidate. *See* Advisory Opinion 2008-14, at 4; Advisory Opinion 2007-20, at 3-4; Advisory Opinion 2005-16, at 4; Explanation and Justification for the Regulations on Internet Communications, 71 Fed. Reg. 18,589, 18,607 (Apr. 12, 2006) (citing *Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC v. Phillips Publ’g, Inc.*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981)).

Citizens United’s documentary filmmaking and related marketing activities qualify for FECA’s media exception because Citizens United is a press entity, it is acting as a press entity when it disseminates political commentary and information to the public through the production and distribution of documentary films, and Citizens United is not owned or controlled by a political party, political committee, or candidate.

**1. Citizens United Is A Press Entity.**

The Commission determines whether a speaker is a “press entity” by inquiring whether the speaker is in the “business of producing on a regular basis a program that disseminates news stories, commentary, and/or editorials.” Advisory Opinion 2007-20, at 4.

Most recently, the Commission found that Melothé, Inc.—a corporation that planned to launch “Internet TV stations” that would feature federal candidates—qualified as a press entity because it would regularly be providing reporting and commentary on political campaigns. Advisory Opinion 2008-14, at 4. Similarly, the Commission concluded that XM Radio was a press entity because one of its radio stations featured presidential election coverage and commentary. Advisory Opinion 2007-20, at 4. The Commission also determined that Fired Up! LLC—an organization that operated progressive political websites—was a “press entity” because “[i]ts websites are both available to the general public” and “are the online equivalent of a newspaper, magazine, or other periodical publication.” Advisory Opinion 2005-16, at 4-5; *see also* Advisory Opinion 2003-34 (applying the media exception to the websites of Viacom, Inc., and Showtime Networks, Inc., which depicted federal candidates).

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As these advisory opinions reflect—and as the Supreme Court’s recent *Citizens United* decision underscores—in determining whether a speaker is a “press entity,” it is neither appropriate nor rational to draw a rigid distinction between “traditional” media outlets and other speakers regularly engaged in the dissemination of political commentary and information to the public. As the Supreme Court held in *Citizens United*, “the line between the media and others who wish to comment on political and social issues [has] become[ ] far more blurred” than in the past. 130 S. Ct. at 905-06. Formalistic distinctions between the institutional press and other political speakers are therefore an inappropriate basis for defining the scope of a person’s rights to engage in political speech. *Id.*; *see also id.* at 905 (rejecting “the proposition that the institutional press has any constitutional privilege beyond that of other speakers”) (internal quotation marks omitted).

*Citizens United* falls squarely within the definition of a “press entity.” Since 2004, *Citizens United* has produced more than a dozen documentary films that publicly disseminate information and commentary relating to federal elections and other political topics. For that reason, the Commission can no longer rely on the conclusion set forth in its 2004 Advisory Opinion that the media exception did not apply to *Citizens United* because, at that time, *Citizens United* did “not regularly produce documentaries or pay to broadcast them on television.” Advisory Opinion 2004-30, at 7. Even if this were a legitimate basis for limiting the scope of the media exception—which it is not—it is no longer factually supportable (assuming it ever was).

Moreover, although *Citizens United* arguably may not be a “traditional” news media organization, it serves the same function as more traditional media outlets because it uses documentary films to disseminate political information and commentary to the public on a regular and ongoing basis. The in-depth analyses of political issues provided by *Citizens United*’s documentary films are ultimately no different from the political commentary offered by editorials printed in magazines and newspapers and broadcast on television news programs. Indeed, the Commission has explicitly recognized that documentaries can fall within the media exception (*see* Explanation and Justification for the Regulations on Electioneering Communications, 67 Fed. Reg. 65,190, 65,197 (Oct. 23, 2002)), and, even before the Supreme Court’s recent decision in *Citizens United*, recognized that the media exception is not limited to traditional publishing functions, but instead extends to “news stories, commentaries, and editorials *no matter in what medium they are published.*”

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Advisory Opinion 2008-14, at 3 (quoting Explanation and Justification for the Regulations on Internet Communications, 71 Fed. Reg. at 18,608-09).<sup>3</sup>

**2. Citizens United Is Acting As A Press Entity When Producing And Distributing Its Documentary Films And Is Not Owned By A Political Party, Political Committee, Or Candidate.**

Citizens United is entitled to the media exception for its documentary filmmaking and related marketing activities because, when producing and distributing its documentary films, Citizens United is acting as a press entity. Moreover, Citizens United is not owned by a political party, political committee, or candidate.

To determine whether a press entity was acting *as a press entity* when undertaking a particular activity, the Commission applies the test articulated by the Southern District of New York in *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210 (S.D.N.Y. 1981), which inquires whether the speech at issue was part of the speaker's legitimate press function or for an unrelated purpose. *Id.* at 1215; *see also FEC v. Mass. Citizens for Life, Inc. ("MCFL")*, 479 U.S. 238, 250-51 (1986) (distinguishing between a speaker's regularly published newsletter, which was entitled to the media exception, and a "Special Edition" flyer, which was not protected by the exception because, based on various "considerations of form," the "Special Edition" flyer was unlike the regular and ongoing newsletter); Advisory Opinion 2005-16, at 4-6.

For the reasons discussed above, Citizens United's documentary filmmaking activities are part of the organization's legitimate press function. In producing and

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<sup>3</sup> Although the Commission has identified a profit motive (as evidenced by paid subscribers or advertisers) as relevant to whether a speaker is a press entity, a showing of profit motive is not—and could not constitutionally be—essential to press entity status. *See* Advisory Opinion 2000-13, at 3 n.3. In any event, Citizens United does derive revenue from its documentary films, which are sold to the public in DVD format. Moreover, Citizens United's conservative viewpoint cannot disqualify its activities from the media exception because "the Commission does not investigate an entity's viewpoints in determining whether it qualifies as a 'press entity' under the press exemption." Advisory Opinion 2008-14, at 4-5 (citing Advisory Opinion 2005-16).

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distributing these films, Citizens United is acting as a media organization by gathering information, formulating commentary and analysis, and disseminating facts and opinions to the public. *See* 67 Fed. Reg. at 65,197. Accordingly, Citizens United's political activities are in no way comparable to those at issue in *MCFL*, where the speech was made outside the normal course of the speaker's press function. Citizens United's documentary films are the *core* of its press activities.

Moreover, the media exception applies with equal force to Citizens United's advertisements promoting its documentary films. These marketing activities are an integral component of Citizens United's overall press function because they facilitate the dissemination of Citizens United's political message to the public. *See FEC v. Phillips Publ'g, Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981) (holding that a newsletter publisher's mailings soliciting further subscriptions were part of its legitimate press activities).

Finally, Citizens United is not owned or controlled by a political party, political committee, or candidate. It is an unaffiliated organization committed to disseminating its political views to the public. As an independent press entity engaged in a press function, Citizens United is entitled to the protections of the media exception when producing and distributing its political documentaries, and is therefore exempt from FECA's disclaimer, disclosure, and reporting requirements.

**B. Citizens United's Documentary Filmmaking And Related Advertising Qualify For FECA's Commercial Transaction Exception.**

Citizens United's production and distribution of its documentary films are also exempt from FECA's disclaimer, disclosure, and reporting requirements under the Commission's commercial transaction exception.

The Commission has repeatedly recognized an exception for "*bona fide* commercial activity." Advisory Opinion 2008-10, at 6. Relevant factors in applying the exception include whether the sales involved fundraising, whether the purpose was genuinely commercial, whether the items were sold at the usual and normal charge, and whether the purchases were made for individuals' personal use in political expression. Advisory Opinion 1989-21, at 4; *see, e.g.*, Advisory Opinion 2008-10, at 6 (recognizing an exemption for a corporation's website that hosted political advertisements and allowed users to purchase television airtime).

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The Commission has suggested that the commercial transaction exception is applicable to commercial activity undertaken “by an entity organized and maintained for commercial purposes *only* and not for the purpose of influencing any elections.” Advisory Opinion 2008-10, at 6 (emphasis added). Although Citizens United acknowledges that its documentary filmmaking activities are not *purely* commercial—in that they are undertaken for the purpose of disseminating Citizens United’s political views to the public—the Commission’s focus on speakers’ motive in applying the exception cannot be reconciled with the Supreme Court’s decision in *FEC v. Wisconsin Right to Life, Inc.* (“*WRTL II*”), 551 U.S. 449 (2007), which rejected motive as a valid factor in determining whether it was constitutional to prohibit corporate political advertising. *Id.* at 468 (plurality op. of Roberts, C.J.). “A test focused on the speaker’s intent,” the Court explained, “could lead to the bizarre result that identical ads aired at the same time could be protected speech for one speaker, while leading to criminal penalties for another.” *Id.*

In light of *WRTL II*, a more appropriate standard for applying the commercial transaction exception would be whether the speech in question has a substantial commercial component. As described above, Citizens United regularly produces documentary films in its ordinary course of business, and commercially markets those films by selling DVDs to the public and making bulk sales of DVDs to commercial vendors. In light of this significant commercial element, Citizens United’s filmmaking activities should not be subject to FECA’s disclaimer, disclosure, and reporting requirements.<sup>4</sup>

### III. CONCLUSION

Several factual and legal developments have undermined whatever validity the Commission’s Advisory Opinion 2004-30 rejecting Citizens United’s invocation of the

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<sup>4</sup> Citizens United’s filmmaking activities involve the use of interviews with individuals who are or may become candidates for federal office. Candidate interviews should not be treated as “coordination” for purposes of the commercial transaction exception. Indeed, a limitation based on such a ubiquitous feature of the political process would gut the exception. Because the available guidance on this issue is sparse, however, Citizens United respectfully requests that the Commission’s advisory opinion specifically address the extent to which a documentary film would be disqualified from the commercial transaction exception on the basis of this form of purported “coordination.”

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media exception might have had. First, Citizens United has dramatically increased the frequency and regularity with which it produces and distributes political documentaries to the public, and has produced more than a dozen such films since the 2004 Opinion. Second, the Commission's recent advisory opinions have recognized that the exception is broadly applicable to entities that, while not part of the "traditional" news media, use documentary films and similar media formats to disseminate political information and commentary to the public. Third, the Supreme Court's *Citizens United* decision explicitly rejected formalistic and outdated distinctions between the "traditional" media and speakers that use more novel formats to disseminate their political views. For each of those reasons, the Commission should conclude that Citizens United's filmmaking activities and related advertising are not subject to FECA's disclaimer, disclosure, and reporting requirements.

Respectfully submitted,



Theodore B. Olson



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

April 16, 2010

Theodore B. Olson, Esq.  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-8500

Dear Mr. Olson:

As discussed in our phone conversation on Tuesday, April 6, we are providing you with a written summary of our requests concerning the Advisory Opinion Request submitted to the Federal Election Commission (the "Commission") on behalf of Citizens United ("CU") on March 29.

The Federal Election Campaign Act of 1971, as amended (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 C.F.R. § 112.1(c). The Office of General Counsel shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. See 11 C.F.R. § 112.1(d).

In view of the above requirements, this Office seeks the following additional information:

1. Please provide copies of the Articles of Incorporation and Bylaws (or equivalent) of Citizens United Production No. 1, LLC ("CUP No. 1"), and CU, to the extent such CU documents have been amended since CU's 2004 advisory opinion request (AO 2004-30). Please also provide documentation indicating ownership structure of CUP No. 1, and any other documents that may establish CU or CUP No. 1 as a "press entity." To the extent CU currently has (or has specific plans to create) affiliates other than CUP No.1 which are (or will be) engaged in the production and/or distribution of one or more CU films, please provide copies of the Articles of Incorporation and Bylaws (or equivalent), documentation

indicating ownership structure, and any other documents that may establish such affiliate(s) as a "press entity."

2. You stated in our phone conversation that this request concerns CU's past documentary films, those CU documentary films currently in production, and those documentary films to be produced by CU in the future, as well as the costs and marketing efforts associated with such films. Please confirm that you are seeking to exempt from the definitions of expenditure (2 U.S.C. § 431(9)(B)(i)) and electioneering communications (2 U.S.C. § 434(f)(3)) all such costs and communications that would otherwise constitute expenditures or electioneering communications. Please also identify which such documentary films and marketing efforts refer (or will refer) to a clearly identified candidate for Federal office.
3. You stated that CU "has spent approximately 25% of its annual budget on documentary film production and distribution," amounting, for example, to approximately \$3.4 million in 2009. Please describe in greater detail the types of production- and distribution-related activities to which such funds are allocated. Please describe the activities supported by the portion of CU's annual budget that is not devoted to the production and distribution of films.
4. Please describe whether CU films are (or will be) shown, or copies of such films distributed, free of charge, the approximate value of those free showings and distributions, and to what extent the costs to CU associated with such free showings and distributions constitute part of the approximately 25% of CU's budget devoted to documentary film production and distribution. Please specify whether CU charges a usual and normal rate for those copies and screenings of such films that are provided for a charge. Please explain the extent to which the information requested in this paragraph differs according to whether such film or films refer (or will refer) to a clearly identified candidate for Federal office.
5. In order to assist the Commission in determining whether the exception that has been applied to "*bona fide* commercial activity" by commercial entities applies in the context of your request, please describe the terms of any agreements relating to the production, distribution, marketing, sale, theatrical release and/or broadcast (whether via cable, satellite, video-on-demand, or other) of the four upcoming CU films. Please also describe the terms of any agreements to produce, distribute, market, sell, release and/or broadcast (whether via cable, satellite, video-on-demand, or other) any other existing or future CU films. Please explain the extent to which the terms of such agreements differ according to whether such film or films refer (or will refer) to a clearly identified candidate for Federal office.
6. If CU (or an affiliated entity) plans to broadcast one or more CU films, please specify whether such broadcast will entail the payment of a fee either by a broadcasting entity to CU (or an affiliated entity) or to a broadcasting entity by

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CU (or an affiliated entity). Please also specify whether CU plans to sell third-party advertising space during the broadcast of any such films. Please explain the extent to which the information requested in this paragraph differs according to whether such film or films refer (or will refer) to a clearly identified candidate for Federal office.

Upon receipt of your responses, this Office and the Commission will give further consideration to your inquiry. If you have any questions about the advisory opinion process or this letter, please contact me or Peter Reynolds, an attorney in this Office, at 202-694-1650.

Sincerely,

A handwritten signature in black ink that reads "Robert M. Knop". The signature is written in a cursive style with a large, sweeping initial "R".

Robert M. Knop  
Assistant General Counsel

Client Matter No.: 20306-00002

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April 26, 2010

Mr. Robert M. Knop, Esq.  
Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: *Request for Additional Information*

Dear Mr. Knop:

I write on behalf of Citizens United to provide supplemental information to the Federal Election Commission (the "Commission") in relation to Citizens United's March 29, 2010 Advisory Opinion Request. In a telephone conversation on April 6, 2010, and a subsequent letter dated April 16, 2010, the Commission sought additional information on six topics related to Citizens United and its documentary filmmaking activities. Citizens United respectfully submits this letter in response to that request, and asks that the Commission proceed to a prompt resolution of its Advisory Opinion Request.

Citizens United addresses each of the Commission's six questions in turn:

1. *Please provide copies of the Articles of Incorporation and Bylaws (or equivalent) of Citizens United Production No. 1, LLC ("CUP No. 1"), and CU, to the extent such CU documents have been amended since CU's 2004 advisory opinion request (AO 2004-30). Please also provide documentation indicating ownership structure of CUP No. 1, and any other documents that may establish CU or CUP No. 1 as a "press entity." To the extent CU currently has (or has specific plans to create) affiliates other than CUP No. 1 which are (or will be) engaged in the production and/or distribution of one or more CU films, please provide copies of the Articles of Incorporation and Bylaws (or equivalent), documentation indicating ownership structure, and any other documents that may establish such affiliate(s) as a "press entity."*

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Citizens United's Articles of Incorporation and Bylaws have not been amended since the submission of Citizens United's Advisory Opinion Request 2004-30.

The Articles of Organization, Certificate of Organization, and Operating Agreement for Citizens United Productions No. 1, LLC, are attached as Exhibits A, B, and C. Attached as Exhibit D is a copy of the press credentials issued to a Citizens United Productions staff member filming an April 7, 2010, event for use in an upcoming documentary film.

Citizens United does not currently have any other affiliates that produce or distribute its films. Citizens United is in the process, however, of establishing a new limited liability company with a private investor. This company, Citizens United Productions No. 2, LLC, will produce a documentary film for release this fall featuring Dick Morris that bears the working title *Saving America*. Citizens United Productions No. 2, LLC, and any other future companies established for film productions involving private investors, will be structured and operated in a manner similar to Citizens United Productions No. 1, LLC, in order to comply with IRS regulations governing ancillary joint ventures between tax-exempt organizations and private investors. Citizens United will hold majority ownership in each such entity and maintain control over its day-to-day operations.

2. *You stated in our phone conversation that this request concerns CU's past documentary films, those CU documentary films currently in production, and those documentary films to be produced by CU in the future, as well as the costs and marketing efforts associated with such films. Please confirm that you are seeking to exempt from the definitions of expenditure (2 U.S.C. § 431(9)(B)(i)) and electioneering communications (2 U.S.C. § 434(f)(3)) all such costs and communications that would otherwise constitute expenditures or electioneering communications. Please also identify which such documentary films and marketing efforts refer (or will refer) to a clearly identified candidate for Federal office.*

Citizens United confirms that it is seeking exemption from the definitions of "expenditure" in 2 U.S.C. § 431(9)(B)(i) and "electioneering communication" in 2 U.S.C. § 434(f)(3)(B)(i) for all costs and communications related to its documentary film production and distribution activities that would otherwise constitute expenditures or electioneering communications. Citizens United does not seek exemption for costs and communications related to its other activities.

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The Commission requests that Citizens United "identify which such documentary films and marketing efforts refer (or will refer) to a clearly identified candidate for Federal office." Because Citizens United's documentary films focus on topical political, social, cultural, and economic issues and personalities associated with those issues, it is possible that each film or film advertisement that Citizens United has produced (or will in the future produce) might at one time or another refer to an individual who is a candidate for Federal office.

Citizens United's March 29, 2010 Advisory Opinion Request lists several individuals appearing in its films who have been candidates for Federal office. Specific examples of films that reference individuals who are currently candidates for Federal office include *Generation Zero*, which features House Speaker Nancy Pelosi and Representatives Paul Kanjorski and Thaddeus McCotter; *Blocking "The Path to 9/11,"* which features Senate Majority Leader Harry Reid; and *We Have the Power*, which features Representatives Michele Bachmann, John Boehner, Mike Conaway, Mary Fallin, Devin Nunes, and Mike Rogers. These Members of Congress are all candidates for reelection to their respective Federal offices in November 2010. Moreover, Representative Michele Bachmann is hosting and narrating a Citizens United film to be released this fall.

Ultimately, whether a Citizens United film or film advertisement refers to a candidate for Federal office will vary depending on timing and circumstances. For example, J.D. Hayworth is prominently featured in the film *Border War*. In 2006, when that film was produced, Mr. Hayworth was a Member of Congress representing Arizona's Fifth Congressional District. Mr. Hayworth also ran for reelection to that office in 2006. Mr. Hayworth was not a candidate for Federal office from 2007 to early 2010, but announced his candidacy for the U.S. Senate in February 2010. Thus, while *Border War* did not refer to a candidate for federal office during the period between 2007 and early 2010, Mr. Hayworth's Senate candidacy means that the film now refers to a Federal candidate.

3. *You stated that CU "has spent approximately 25% of its annual budget on documentary film production and distribution," amounting, for example, to approximately \$3.4 million in 2009. Please describe in greater detail the types of production- and distribution-related activities to which such funds are allocated. Please describe the activities supported by the portion of CU's annual budget that is not devoted to the production and the distribution of films.*

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As stated in its March 29, 2010 Advisory Opinion Request, Citizens United spends approximately 25% of its annual budget on documentary film production and distribution. These funds are allocated to various activities related to the production and distribution of documentary films.

As to production activities, such expenses include: writer and director fees; talent fees (*i.e.*, fees paid to persons appearing in a film); temporary production staff and film crews; travel, meals, and lodging; insurance; licensing fees for film footage and still photographs; music composition and licensing fees; research materials; graphics; digitizing; sound design; conversion; dubbing; site permits; special equipment; and overhead (*i.e.*, use of office facilities, permanent production staff, and studio equipment).

Typical marketing and distribution expenses include: website design; advertising expenses (internet, print, and broadcast ads); royalties and commissions; venue fees for film screenings and promotional activities; insurance; travel; fulfillment expenses (*e.g.*, DVD replication, postage, shipping, and handling fees); in-bound telemarketing; and overhead (*i.e.*, use of office facilities, staff, and equipment).

Citizens United's non-filmmaking activities include membership recruitment, issue advocacy, information dissemination, and grassroots lobbying. These activities are carried out primarily through direct mail efforts, telemarketing, conferences, publications, print and broadcast advertising, internet activities, and litigation. Citizens United also engages in political activities, which are carried out through Citizens United Political Victory Fund (a segregated political fund) and The Presidential Coalition, LLC (a political affiliate of Citizens United). Citizens United Political Victory Fund and The Presidential Coalition, LLC, make direct contributions to candidates for elective office, as well as independent expenditures.

4. *Please describe whether CU films are (or will be) shown, or copies of such films distributed, free of charge, the approximate value of those free showings and distributions, and to what extent the costs to CU associated with such free showings and distributions constitute part of the approximately 25% of CU's budget devoted to documentary film production and distribution. Please specify whether CU charges a usual and normal rate for those copies and screenings of such films that are provided for a charge. Please explain the extent to which the information requested in this paragraph differs according to whether such film or films refer (or will refer) to a clearly identified candidate for Federal office.*

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Citizens United uses a variety of means to market and distribute its films. In conformity with motion picture industry standards, Citizens United routinely hosts one or more screenings in conjunction with the release of its films. For these screenings, select members of the public and news media are invited to view the film free of charge. The typical cost of a screening varies depending on the venue and audience size, ranging from \$5,000 to as much as \$75,000 for a venue such as The John F. Kennedy Center for the Performing Arts. Additionally, on one occasion, Citizens United attempted to stimulate sales of a film by providing a free DVD insert in newspapers in select markets. Further, Citizens United generally allows students and faculty at high schools, colleges, and universities to show its films in educational settings free of charge, provided no admission fee is charged. Also, as do many filmmakers, Citizens United frequently promotes its films by entering them in various film festivals across the country. Citizens United does not receive a fee from the film festival sponsors when it enters a film; instead, as do other entrants, it often pays an entry fee to the film festival sponsors. Citizens United's films have won a number of awards over the years, some of which were documented in the record of *Citizens United v. FEC*. More recent awards include Remi Awards at the 2009 Houston International Film Festival for *We Have the Power* and *Ronald Reagan: Rendezvous with Destiny*. *Perfect Valor* won top feature documentary awards at the GI Film Festival last spring and the Marine Corps Heritage Foundation film festival on April 24 of this year. Additionally, *Rediscovering God in America II* won top honors for best feature-length documentary at the Garden State Film Festival in March of this year. To the extent that Citizens United incurs costs associated with these activities, those costs constitute a portion of the 25% of the budget devoted to documentary film production and distribution. The circumstances in which Citizens United distributes its films free of charge do not vary depending on whether a film refers to a candidate for Federal office.

Except for the limited promotional and marketing activities discussed above, Citizens United charges a usual and normal rate for all sponsored showings of its films (as opposed to theatrical releases, which are discussed further in response to Question 5). Those rates vary depending on the size of the anticipated audience and the volume of DVDs ordered. For a newly released film, Citizens United charges a standard licensing fee. For a single show, this fee ranges from \$350 for an audience of 100 or less, to \$1,500 for an audience of 1,000 or more. The licensing fee is subject to a discount if the sponsoring group makes a bulk purchase of DVDs in connection with its event. The licensing fee structure remains the same regardless of whether a film refers to a candidate for Federal office.

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5. *In order to assist the Commission in determining whether the exception that has been applied to "bona fide commercial activity" by commercial entities applies in the context of your request, please describe the terms of any agreements relating to the production, distribution, marketing, sale, theatrical release and/or broadcast (whether via cable, satellite, video-on-demand, or other) of the four upcoming CU films. Please also describe the terms of any agreements to produce, distribute, market, sell, release and/or broadcast (whether via cable, satellite, video-on-demand, or other) any other existing or future CU films. Please explain the extent to which the terms of such agreements differ according to whether such film or films refer (or will refer) to a clearly identified candidate for Federal office.*

There are currently no formal agreements in place with respect to the production and distribution of the four upcoming Citizens United films referred to in the March 29, 2010 Advisory Opinion Request. At this time, it is expected that each of those films will be produced and distributed in a manner similar to Citizens United's current and prior films—either directly through the organization's in-house unit, Citizens United Productions, or through a separately organized limited liability company if one or more private investors becomes involved, as was the case with *Generation Zero*.

Citizens United recently signed a letter of agreement with a major film distribution company in Poland for the marketing and distribution of *Nine Days that Changed the World* in that country. Although the specific terms of the agreement are confidential, the distribution company will bear all promotional and replication costs associated with the marketing and distribution of the DVD in Poland, and Citizens United will receive a substantial royalty for each DVD that is sold there over the next five years.

In the past, Citizens United has signed distribution agreements with Genius Products for the distribution of *Border War*, BCD Music Group for the distribution of *Celsius 41.11* and *Rediscovering God in America*, and Solid Entertainment, Inc., for the distribution of *Broken Promises*. Although the specific terms of those agreements are confidential, one included the payment of a substantial royalty advance to Citizens United, and all provided for the payment of royalties and/or licensing fees to Citizens United. In addition, Citizens United is in negotiations with Provident Films, a division of Sony Entertainment, for the distribution of *Rediscovering God in America II*.

*Celsius 41.11* and *Border War* had limited theatrical releases, and a limited theatrical release is planned for *Generation Zero*. In accordance with film industry standards, the

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terms under which Citizens United's films have been shown in theaters varied from theater to theater and market to market. In some markets and theaters, Citizens United licensed its films for a percentage of box office ticket sales, generally 35%. In other markets and theaters, Citizens United paid a fee to the theater for making its films available on certain dates and received 100% of the box office ticket sales. Any theatrical release of *Generation Zero* or any future film would be similarly modeled.

The terms of Citizens United's past distribution and production agreements did not vary based on whether a film referred to a candidate for Federal office, and Citizens United's future agreements will not vary on that basis.

6. *If CU (or an affiliated entity) plans to broadcast one or more CU films, please specify whether such broadcast will entail the payment of a fee either by a broadcasting entity to CU (or an affiliated entity) or to a broadcasting entity by CU (or an affiliated entity). Please also specify whether CU plans to sell third-party advertising space during the broadcast of any such films. Please explain the extent to which the information requested in this paragraph differs according to whether such film or films refer (or will refer) to a clearly identified candidate for Federal office.*

Citizens United and its affiliated entities plan to broadcast one or more of their films in the near future. As mentioned in the March 29, 2010 Advisory Opinion Request, Citizens United is currently in negotiations with The Military Channel for the rights to broadcast *Perfect Valor* on cable television. Although the parties have not finalized a formal agreement, the preliminary discussions indicate that Citizens United will receive advertising time for its own use during the broadcast as compensation from The Military Channel. Such an arrangement would be similar to the terms under which Citizens United authorized *Ronald Reagan: Rendezvous with Destiny* to be broadcast on 13 ABC and NBC affiliates in various markets across the country in primetime on July 4, 2009.

Citizens United is also in discussions with NCC Media and other companies regarding the licensing of its films for cable and satellite broadcast in a video-on-demand format. In contrast to the film that was the subject of the *Citizens United v. FEC* litigation, Citizens United will not be paying a fee to the broadcast company; rather, Citizens United or its affiliated entities will receive a royalty, commission, or other fee from the broadcasters each time one of its films is ordered for viewing.

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Because Citizens United does not own any of the broadcast facilities that will be used to broadcast its films, it does not anticipate that it will have the option of selling advertising space to third parties during the broadcast of its films.

The terms on which Citizens United will distribute its films for broadcast will not vary based on whether a film refers to a Federal candidate.

\* \* \*

Thank you for your prompt attention to our Advisory Opinion Request. Please do not hesitate to contact me if the Commission would like any additional information.

Respectfully submitted,

  
Theodore B. Olson

# **EXHIBIT A**

**ARTICLES OF ORGANIZATION**

**OF**

**CITIZENS UNITED PRODUCTIONS NO. 1, LLC**

The undersigned organizer hereby adopts the following Articles of Organization to form a limited liability company under the provisions of Chapter 12 of Title 13.1 of the Code of Virginia, and to that end sets forth the following:

**ARTICLE I**

**NAME**

The name of the limited liability company is **CITIZENS UNITED PRODUCTIONS NO. 1, LLC**.

**ARTICLE II**

**PURPOSES AND POWERS**

A. Purposes: The limited liability company is organized for the primary purpose of furthering the tax-exempt purposes of Citizens United by producing and distributing a documentary film tentatively titled "Generation Zero: A Tragedy in Three Acts." The documentary film will explore how the lack of character and moral fiber underlying the ethics of the "Baby Boomer" has brought America to the point of economic collapse and financial ruin. The foregoing notwithstanding, the limited liability company shall not engage in any activities that would cause Citizens United's to lose its exempt status under Section 501(c)(4) of the Federal Internal Revenue Code.

B. Powers: In addition to the foregoing purposes, the limited liability company shall have each of the specific, general and incidental powers granted to it under Chapter 12 of Title 13.1 of the Code of Virginia and other laws of the Commonwealth of Virginia,

and the limited liability company is empowered to do all and everything necessary, suitable and proper for the accomplishment, attainment or furtherance of its purposes.

### **ARTICLE III**

#### **MEMBERS**

**A. The limited liability company shall have two members:**

- 1. Citizens United, a Virginia non-stock corporation that is exempt from Federal income taxes under Section 501(c)(4) of the Internal Revenue Code and having its principal place of business at 1006 Pennsylvania Ave., SE, Washington, DC 20003, and**
- 2. Lawrence C. Kadish, an individual, residing at 135 Jericho Turnpike, Old Westbury, New York 15568.**

**B. Powers: The day to day affairs of the limited liability company shall be managed by one or more managers selected exclusively by Citizens United. Except as otherwise provided herein or in the Operating Agreement, Citizens United shall have two votes and Lawrence C. Kadish shall have one vote on all matters falling outside the manager's scope of authority that touch on the management and conduct of the affairs of the limited liability company. The members voting powers shall be exercised by Directors, two of whom shall be selected by Citizens United and one of whom shall be selected by Lawrence C. Kadish.**

**C. Contributions: Member initial contributions shall be as follows:**

**Citizens United:       \$375,000.00**

**Lawrence Kadish:       \$125,000.00**

**If the Members unanimously determine that further contributions are required to meet the reasonable demands of the limited liability company's business, said**

contributions shall be made by each Member in proportion to his or her ownership interest in the limited liability company. Member contributions shall be paid in accordance with the terms of the Operating Agreement.

D. Ownership Interest: Citizens United shall have a seventy-five percent (75%) ownership interest in the limited liability company and Lawrence C. Kadish shall have a twenty-five percent (25%) ownership interest in the limited liability company.

E. Assignment of Membership. Members of the limited liability company may not assign their membership or any part thereof.

#### **ARTICLE IV**

##### **MANAGERS**

Citizens United shall designate one or more individuals to serve as the manager(s) of the limited liability company, who shall manage the day to day affairs of the limited liability company in accordance with the terms of the Operating Agreement.

#### **ARTICLE V**

##### **OPERATING AGREEMENT**

Except as otherwise provided in these Articles of Organization, the affairs of the limited liability company and the conduct of its business shall be governed by the terms of an Operating Agreement agreed to by each of the Members at the time of its adoption. Said Operating Agreement may, from time to time, be altered, amended or repealed and replaced by a new Operating Agreement, in accordance with the terms thereof.

#### **ARTICLE VI**

##### **DURATION**

The period of duration of the limited liability company shall be perpetual.

## **ARTICLE VII**

### **INDEMNIFICATION**

The limited liability company shall indemnify each of its Members, Directors and Managers, whether or not then in office, and his executor, administrator, and heirs, against all reasonable expenses actually and necessarily incurred by him, including but not limited to, judgments, costs and counsel fees, in connection with the defense of any litigation, including any civil, criminal or administrative action, suit or proceeding, to which he may have been made a party because he is or was a Member, Director or Manager of the limited liability company. The right to indemnity shall also apply to claims or suits which are reasonably compromised or settled. The right to indemnity shall also apply to Members, Directors and Managers for liability arising from the acts of any agent or employee selected by the Members, Directors or Managers with reasonable care, or for liability arising from any act or omission of any other Member, Director or Manager.

No person shall have a right to reimbursement, however, in relation to matters as to which he has been adjudged liable to the limited liability company for misconduct in the performance of his duties.

The foregoing right of indemnification shall be in addition to, not exclusive of, all other rights to which such Member, Director or Manager may now, or in the future, be lawfully entitled, including those under Chapter 12 of Title 13.1 of the Code of Virginia.

## **ARTICLE VIII**

### **ALLOCATIONS**

All net income, loss, gain, credits and deductions of the limited liability company

shall be allocated to each of the Members in proportion to their respective ownership interests.

#### **ARTICLE IX**

##### **DISSOLUTION & WINDING UP**

In the event of the dissolution, liquidation or winding up of the business and affairs of the limited liability company, whether voluntary or involuntary or by operation of law, the net assets of the limited liability company shall be distributed to the Members in accordance with their respective ownership interests.

#### **ARTICLE X**

##### **INITIAL REGISTERED OFFICE AND REGISTERED AGENT**

The address of the initial registered office of the limited liability company is 4101 Chain Bridge Road, Suite 313, Fairfax, Virginia 22030, which is located within the City of Fairfax. The initial registered agent of the limited liability company is Michael Boos, who is a member of the Virginia State Bar and a resident of the Commonwealth of Virginia, whose business address is the same as the registered office.

#### **ARTICLE XI**

##### **PRINCIPAL OFFICE**

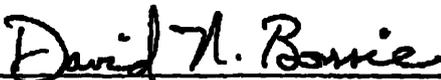
The address of the principal office of the limited liability company is 1006 Pennsylvania Ave., SE, Washington, DC 20003. The Members, from time to time, may designate a different location as the principal office of the limited liability company, and may also designate such other offices within or without the Commonwealth of Virginia as the business and affairs of the Company may require.

**ARTICLE XII**

**ORGANIZER**

The name and address of the organizer of the limited liability company is David N. Bossie, whose business address is located at 1006 Pennsylvania Avenue, SE, Washington, DC 20003.

Witness the following signature this 5 day of May, 2009.

  
David N. Bossie, Organizer

**EXHIBIT B**

# Commonwealth of Virginia



## STATE CORPORATION COMMISSION

*Richmond, May 11, 2009*

*This is to certify that the certificate of organization of*

**CITIZENS UNITED PRODUCTIONS NO. 1, LLC**

*was this day issued and admitted to record in this office and that the said limited liability company is authorized to transact its business subject to all Virginia laws applicable to the company and its business. Effective date: May 11, 2009*



*State Corporation Commission*

*Attest:*

*Joel H. Beck*  
Clerk of the Commission

# **EXHIBIT C**

**OPERATING AGREEMENT**

**OF**

**CITIZENS UNITED PRODUCTIONS NO. 1. LLC**

**THIS OPERATING AGREEMENT ("Agreement") made this 12 day of June, 2009, by and among Citizens United, an IRC Section 501(c)(4) organization, and Lawrence Kadish, an individual, each of whom is a Member and collectively account for all the Members of Citizens United No. 1, LLC as of the date of this Agreement, and Citizens United Productions No. 1, LLC ("Company"), provides as follows:**

**A. Offices.** The Company shall at all times maintain in the Commonwealth of Virginia a registered agent, whose business office shall be the registered office of the Company. The Company's principal place of business shall be 1006 Pennsylvania Avenue, SE, Washington, DC 20003. The Members, from time to time, may designate a different location as the principal office of the limited liability company, and may also designate such other offices within or without the Commonwealth of Virginia as the business and affairs of the Company may require.

**B. Nature & Purpose of the Company.** The Company is established for the purpose of producing and distributing a documentary film tentatively titled "Bankrupting America". The documentary film will explore what has occurred and what may bring America to the point of economic collapse and financial ruin. Any other provision of this Agreement notwithstanding, the Company shall not engage in any activities that will cause Citizens United to lose its exemption under Section 501 (c)(4) of the Federal Revenue Code.

**C. Members.**

**1. The Members of the Company are as follows:**

- **Citizens United, a Virginia non-stock corporation that is exempt from Federal Income taxes under Section 501 (c) (4) of the Internal Revenue Code and having its principal place of business at 1006 Pennsylvania Ave., SE, Washington, DC 20003, and**
- **Lawrence Kadish, an individual, residing at 135 Jericho Turnpike, Old Westbury, New York 11568.**

**2. Powers: The day to day affairs of the Company shall be managed by one or more managers selected exclusively by Citizens United. The Members shall have such powers as set forth herein and in the Articles of Organization.**

**3. Compensation: No Member shall receive compensation as such from the Company, but such person may be employed by the Company or retained by the Company as an independent contractor. In the event that a Member is employed or retained as an independent contractor, the person's salary, wages or other compensation shall be treated as an expense of the Company in determining net profits or net losses.**

**4. Prohibitions: No Member except as authorized by the Company, may:**

**a. Borrow money in the Company name or utilize collateral owned by the Company as security for a loan;**

**b. Assign, transfer, pledge, compromise or release any of the claims or debts due the Company except upon receipt by the Company of complete satisfaction or full payment of any claim it might have or debt owed to it;**

c. Arbitrate or consent to the arbitration of any dispute or controversy that the Company might have;

d. Make, execute or deliver (i) any assignment for the benefit of creditors, (ii) any bond, (iii) confession of judgment, (iv) any security interest, (v) any deed of guaranty with respect to the Company or its property, or (vi) any contract to sell all or any part of the property of the Company; or

e. Pledge, hypothecate or in any manner transfer a Company interest or any part thereof.

5. Disassociation of a Member: Any Member may resign as a Member of the Company upon giving to the other Member three (3) months notice in writing. Said notice shall become effective ninety (90) days following the date of the notice, unless withdrawn in writing prior to the expiration of the ninety (90) day period. A Member shall also become disassociated upon the happening of any of the events specified in Section 13.1-1040.1 of the Code of Virginia or any subsequent section of the Code of Virginia then in effect specifying events causing a Member's disassociation.

The disassociation of any member shall result in the dissolution and winding up of the affairs of the Company as set forth in Paragraph J of this Agreement.

6. Assignment of Membership: No Member of the Company shall assign his or her membership or any part thereof.

**D. Member Contributions.**

1. Initial Contributions: The Members' initial contributions shall be as follows:

Citizens United:           \$375,000.00

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**Lawrence Kadish:           \$125,000.00**

**Citizens United's initial contribution shall be paid as follows: \$75,000.00 within ten (10) days following execution of this Agreement by all of the parties thereto, \$100,000.00 on or before June 30, 2009, \$100,000.00 on or before August 31, 2009, and \$100,000.00 on or before October 31, 2009. Citizens United shall receive credit towards its contribution for any start-up costs that it incurs in the organization of the Company and for any reasonable expenses it incurs with respect to the production of the documentary film contemplated in this Agreement, which are incurred prior to the complete execution of the Agreement.**

**The Members acknowledge that Lawrence Kadish has on 5/4/2009 contributed his required \$125,000.00 contribution towards the capitalization of the Company.**

**2. Additional Contributions: Whenever the reasonable demands of the Company business require the contribution of additional capital, the amount so required shall be determined by the unanimous vote of all the Members. Unless a Member declines to make additional contributions, such additional contributions shall be made by each Member in proportion to his or her ownership interest in the Company within thirty (30) days written notice of such determination. If a Member declines to make an additional contribution, that Member's ownership interest in the Company shall be proportionally reduced to reflect the Member's percentage contributions in relation to the total contributions of all Members. Thus, for example, if the Members determines that one hundred thousand dollars (\$100,000.00) in additional capital is needed and Lawrence**

**Kadish declines to contribute towards that amount, his ownership interest in the Company shall be reduced from 25% to 20.833%, provided Citizens United makes an additional contribution of the full one hundred thousand dollars (\$100,000.00). In this example, Citizen United's ownership interest in the Company would increase to 79.167%.**

**E. Initial Ownership Interest.** Citizens United shall have a seventy-five percent (75%) initial ownership interest in the Company and Lawrence Kadish shall have a twenty-five percent (25%) initial ownership interest in the Company.

**F. Allocations & Distribution of Profits.**

**1. Allocations:** All net income, loss, gain, credits and deductions of the Company shall be allocated to each of the Members in proportion to their respective ownership interest.

**2. Distribution of Profits:** Any cash not reasonably required for the operation of the Company other than proceeds upon dissolution, which shall be governed by Section J of this Agreement, shall be distributed to the Members in accordance with the Members' percentages not less frequently than annually.

**G. Management & Manager.** A Manager or Managers shall be responsible for managing the day to day activities of the business of the Company. The Manager(s) shall be selected by Citizens United and shall serve at the pleasure of Citizens United. If more than one Manager is selected, Citizens United shall designate the duties and responsibilities of the individual Managers, and may designate one or more of the

**Managers as "Assistant Managers", who shall be subordinate to the Manager. Citizens United appoints its President, David N. Bossie, to serve as the initial Manager of the Company. The amount that Citizens United may charge the Company for the services of Mr. Bossie shall not exceed the lesser of ten percent (10%) of the annual aggregate compensation paid to Mr. Bossie by Citizens United and its affiliated organizations or Forty Thousand Dollars (\$40,000.00) per calendar year. If Mr. Bossie resigns, dies or is removed as Manager by Citizens United, Citizens United shall select a new Manager or Managers to replace him, and the new Manager(s) aggregate compensation shall not exceed the lesser of ten percent (10%) of the aggregate annual compensation then being paid to the President of Citizens United and its affiliated organizations or Forty Thousand Dollars (\$40,000.00) per calendar year.**

**H. Production & Distribution of the Documentary Film. The documentary film to be produced by the Company will explore the nation's economy including what has occurred and what may bring America to the point of economic collapse and financial ruin.**

**The Members shall have creative input on scripts, film editing and the final cut of the film, the marketing plans for the film's distribution, and the copy and design of the DVD packaging of the film, but, in the event of a dispute or disagreement on any of these matters, the Manager shall have the final decision-making authority.**

**The Manager is authorized to contract with vendors and suppliers of goods and services, which he determines are reasonably necessary or appropriate to facilitate the production and/or distribution of the film. The Manager is further authorized to contract**

with Citizens United and/or Citizens United Foundation for the use of either or both entity's offices, facilities, equipment and/or staff in the production and/or distribution of the film. Any compensation paid to Citizens United and/or Citizens United Foundation for the use of their offices, facilities, equipment and/or staff shall be treated as an expense of the Company in determining net profits or net losses. The Manager's authority to spend Company funds under this paragraph is limited to an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) in aggregate, except that the Members may vote to increase, but not decrease, the Manager's spending authority pursuant to this paragraph.

**I. Contracts, Checks, Deposits and Fund.**

1. Contracts. The Members may authorize the Manager, Assistant Manager(s), agent or agents of the Company to enter into a contract or execute and deliver any instrument or document in the name and on behalf of the Company, and such authority may be general or confined to specific instances.

2. Checks, Drafts and Similar Documents. All checks, drafts or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Company, shall be signed by the Manager, Assistant Manager(s) and/or agent or agents of the Company, as authorized by the Manager.

3. Deposits. All funds of the Company shall be deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Manager may select.

**J. Dissolution & Winding Up**. The Company shall dissolve and its affairs shall be wound up upon the occurrence of any of the following events: (i) The

disassociation of any Member; (ii) the unanimous written consent of the Members; or (iii) any event specified by law requiring the dissolution of the Company.

On dissolution, the Company shall immediately commence to wind up its affairs by disposing of its assets and satisfying its creditors. The Members shall continue to share profits and losses during dissolution and during the period of time the Company property is being liquidated and its business affairs wound up in the same proportions as before dissolution. The proceeds of liquidation of the Company property shall be applied as follows: debts of the Company other than debts owed to Members; amounts owed to Members for distributions declared, but not paid out, or for loans made by the Members of the Company; and the capital of the Members as reflected in their respective Capital Accounts.

The property distributed in-kind during liquidation shall be valued and treated as though the property was sold and the cash proceed were distributed. The difference between the value of the property distributed in-kind and its book value shall be treated as a gain or loss on the sale of the property and shall be credited or charged to the Members in accordance with their Percentage Interests.

Should any Member have a deficit in his Capital Account upon liquidation, the Member shall, before the end of the taxable year in which the liquidation takes place, or if later, within ninety (90) days of the date of dissolution, contribute cash or property to the Company sufficient to bring his Capital Account to zero. This shall not apply to Lawrence Kadish (See Paragraph D.2 herein).

**K. Books and Records.** The Company shall keep and maintain complete books and records of account and also shall keep minutes of the proceedings of its Member meetings.

**L. Fiscal Year.** The fiscal year of the Company shall begin on the first day of January and end of the last day in December in each year.

**M. Notice.** All notices provided for under this Agreement shall be in writing and shall be sufficient when sent by U.S. Mail, first class postage prepaid, to the last known address of the person to whom such notice is to be given. Whenever any notice is required to be given under the provisions of the Virginia Limited Liability Act, the Articles of Organization or this Agreement, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

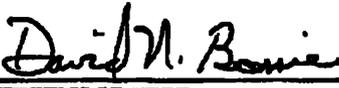
**N. Amendments.** This Agreement may be altered, amended or repealed and a new Agreement may be adopted by a unanimous vote of all of the Members, if at least ten (10) days written notice is given of intention to alter, amend or repeal this Agreement or to adopt a new Operating Agreement prior to such meeting.

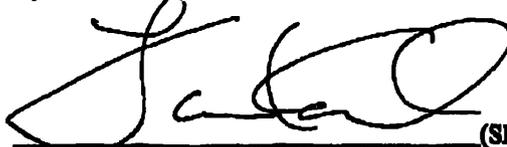
**O. Choice of Law & Forum Selection.** This Agreement is entered into in the Commonwealth of Virginia, and shall be governed and construed by the laws of the Commonwealth of Virginia, without regard to the conflict of law provisions of said laws. Venue in any action among or between the parties hereto, which arises out of, or is related

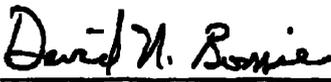
to, this Agreement, shall be in a court of competent jurisdiction in Fairfax County, Virginia.

**P. Number of Copies.** This Agreement may be executed in multiple counterparts, each of which is deemed an original and all of which constitute one and the same document.

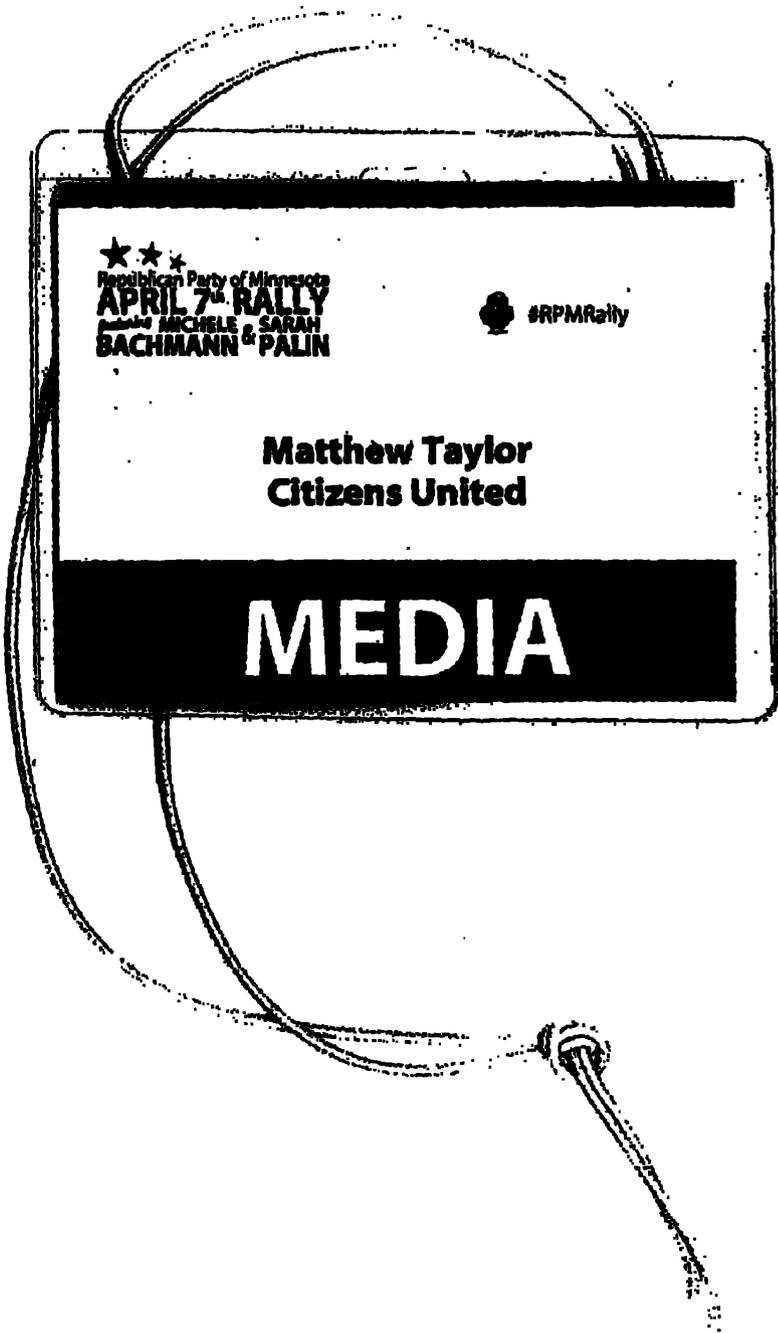
**IN WITNESS WHEREOF**, each of the undersigned has caused this Operating Agreement to be executed and sealed.

  
\_\_\_\_\_  
**CITIZENS UNITED**  
**By Its President, David N. Bossie**

  
\_\_\_\_\_  
**LAWRENCE KADISH**

  
\_\_\_\_\_  
**CITIZENS UNITED PRODUCTIONS NO. 1, LLC**  
**By Its Manager, David N. Bossie**

# **EXHIBIT D**



★★★  
Republican Party of Minnesota  
**APRIL 7<sup>th</sup> RALLY**  
for **MICHELE & SARAH**  
**BACHMANN & PALIN**

 #RPMRally

**Matthew Taylor**  
**Citizens United**

**MEDIA**