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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 15-39-A
AGENDA ITEM
For meeting of July 16, 2015
SUBMITTED LATE

July 13, 2015

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
Deputy General Counsel

Adav Noti *AN*
Acting Associate General Counsel

Robert M. Knop *RMK by AN*
Assistant General Counsel

Joanna S. Waldstreicher *JSW by AN*
Attorney

Gabriel A. Panek *GP*
Intern

Subject: AO 2015-04 (Collective Actions PAC) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 5:00 pm (Eastern Time) on June 15, 2015.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2015-04

2

3 Chris Pearson
4 Collective Actions PAC
5 P.O. Box 605
6 Burlington, VT 05402

DRAFT

7

8 Dear Mr. Pearson:

9

We are responding to your advisory opinion request on behalf of Collective Actions PAC (the “Committee”) concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to the names under which the Committee conducts activities. The Committee asks whether it may include the name of Senator Bernard Sanders, a candidate for federal office, in the name of a website or social media page operated by the Committee if such website or social media page does not solicit any contributions. The Commission concludes that the Committee may not use Senator Sanders’s name as proposed.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter received on June 8, 18 2015, and public disclosure reports filed with the Commission.

19 The Committee is an unauthorized nonconnected political committee whose goal “is to 20 help Sen. Bernie Sanders in his bid to win the Democratic nomination for President.” Advisory 21 Opinion Request at AOR001. The Committee was originally organized as “Draft Bernie,” an 22 independent-expenditure-only political committee formed to encourage Senator Sanders to 23 become a candidate in the 2016 Presidential election.¹ On June 15, 2015, Draft Bernie

¹ The Advisory Opinion Request and certain forms filed with the Commission refer to the Committee’s earlier iteration as “Bernie Draft.” See AOR001; Bernie Draft, FEC Form 3X at 2 (February 5, 2015), <http://docquery.fec.gov/pdf/277/15031392277/15031392277.pdf>. Both “Bernie Draft” and “Draft Bernie” refer to the committee listed under FEC Identification Number C00555615, which is now named Collective Actions PAC, FEC Form 1 at 1 (June 15, 2015), <http://docquery.fec.gov/pdf/703/15031431703/15031431703.pdf>.

1 reorganized from a so-called “draft committee” to a non-draft independent-expenditure-only
2 political committee and changed its name to Collective Actions PAC. *See* Collective Actions
3 PAC, FEC Form 1 at 1 (June 15, 2015),
4 <http://docquery.fec.gov/pdf/703/15031431703/15031431703.pdf>.

5 The Committee operates a number of websites and social media accounts, including
6 RunBernieRun.com, ProBernie.com, BelieveInBernie.com, and related Facebook and Twitter
7 pages such as the Facebook page Run Bernie Run and the Twitter accounts @Bernie_Run and
8 @ProBernie.² AOR001. The Committee does not currently use these websites or social media
9 pages to solicit donations for itself, but it does use them to disseminate information about
10 Senator Sanders and provide links to his campaign website, including his official donation page.³

11 ***Question Presented***

12 *May the Committee use Senator Sanders’s name in the names of the Committee’s websites*
13 *or social media accounts if the Committee does not use those sites or accounts to solicit*
14 *contributions to itself?*

15 ***Legal Analysis and Conclusions***

16 No, the Committee may not use Senator Sanders’s name in the names of the Committee’s
17 websites or social media pages.

18 A “candidate” is any individual who seeks nomination or election to federal office. 52
19 U.S.C. § 30101(2)(A); 11 C.F.R. § 100.3(a). “Federal office” includes the office of President of

² See attached examples.

³ For example, while RunBernieRun.com has a page labeled, “Donate,” this page links only to Senator Sanders’s official donation page along with an instruction that users should “give to Bernie 2016 directly” instead of donating to Collective Actions PAC. *Donate*, RUN BERNIE RUN, <http://www.runbernierun.com/donate/> (last visited June 26, 2015).

1 the United States. 52 U.S.C. § 30101(3); 11 C.F.R. § 100.4. An individual becomes a candidate
2 for federal office when his or her campaign committee receives contributions or makes
3 expenditures in excess of \$5000. *See* 52 U.S.C. § 30101(2)(A); 11 C.F.R. § 100.3(a)(1). Senator
4 Sanders has filed a statement of candidacy for the office of President in the 2016 election and his
5 principal campaign committee has received contributions and made expenditures exceeding
6 \$5000. Bernard Sanders, FEC Form 2 at 1 (Apr. 30, 2015),
7 <http://docquery.fec.gov/pdf/533/15031422533/15031422533.pdf>; [Sanders 2016, FEC Form 3
8 at __([date]), [URL]]. Accordingly, Senator Sanders is a candidate under the Act.

9 A political committee is “unauthorized” if it has not been authorized in writing by a
10 candidate to solicit or receive contributions or make expenditures on behalf of such candidate.
11 11 C.F.R. § 100.5(f)(2). The Committee has not been authorized by Senator Sanders or any
12 other candidate to solicit or receive contributions or make expenditures on the candidate’s behalf.
13 Therefore, the Committee is an unauthorized political committee.

14 To limit “the potential for confusion” and “minimize[e] the possibility of fraud and
15 abuse,” the Act and Commission regulations generally prohibit an unauthorized committee from
16 including the name of a candidate in the name of the committee. 52 U.S.C. § 30102(e)(4); 11
17 C.F.R. § 102.14(a); *Special Fundraising Projects and Other Use of Candidate Names by*
18 *Unauthorized Committees*, 57 Fed. Reg. 31,424, 31,425 (July 15, 1992).⁴ For purposes of this
19 prohibition, the “name” of the committee includes “any name under which [the] committee
20 conducts activities, such as solicitations or other communications, including a special project
21 name or other designation.” 11 C.F.R. § 102.14(a). A committee’s online activities are

⁴ Two types of committees that are not at issue here — delegate committees and draft committees — are exempt from this prohibition. 11 C.F.R. § 102.14(b)(1)-(2).

1 “projects” that fall within the scope of section 102.14. *See, e.g.*, Advisory Opinion 1995-09 at 6
2 (NewtWatch PAC) (“The operation of a World Wide Web site would be considered a project of
3 the Committee.”). The only relevant exception to the ban on using a candidate’s name in the
4 name of such a project or communication is that an unauthorized committee may include the
5 name of a candidate “in the title of a special project name or other communication if the title
6 clearly and unambiguously shows opposition to the named candidate.” 11 C.F.R. § 102.14(b)(3).

7 Here, the Committee wishes to directly incorporate Senator Sanders’s first name into the
8 names of its websites and social media accounts. These names — ProBernie.com,
9 BelieveInBernie.com, etc. — are therefore inconsistent with section 102.14. *See* Advisory
10 Opinion 1995-09 at 5-6 (NewtWatch PAC) (concluding that “the use of a candidate’s first name
11 where the first name clearly conveys the identity of the candidate,” like “Newt,” was sufficiently
12 unambiguous to violate section 102.14) (citing *Buckley v. Valeo*, 424 U.S. 1, 43 n.51 (1976)).

13 The Committee nonetheless asks if its proposal would be permissible if the websites or
14 social media pages that have Senator Sanders’s name in their names do not solicit contributions
15 to the Committee. In promulgating the current text of section 102.14, the Commission
16 specifically considered and rejected the distinction that the Committee proposes. When the
17 Commission revised the definition of “name” in section 102.14 to include “any name under
18 which a committee conducts activities,” the Commission rejected a proposal to limit the
19 restriction to fundraising projects; instead, the Commission noted that “the potential for
20 confusion is equally great in all types of committee communications.” *Special Fundraising*
21 *Projects and Other Use of Candidate Names by Unauthorized Committees*, 57 Fed. Reg. at
22 31,425. The Commission therefore determined that a “total ban” on the use of candidate names
23 in committee names was more “responsive to the problem,” as well as easier to monitor and

1 enforce. *Id.* Accordingly, the Commission amended the regulation to apply to “solicitations *or*
2 *other communications*,” 11 C.F.R. § 102.14(a) (emphasis added), which necessarily means that
3 communications need not be solicitations in order to fall within the name restriction.

4 The Commission then reinforced these principles when it amended the regulation to
5 permit a project title to contain a candidate’s name if the title expresses clear opposition to the
6 candidate. In doing so, the Commission expressed its continued concern that people who “may
7 not understand that the communication is made on behalf of the unauthorized committee rather
8 than the candidate whose name appears in the project’s title” would be confused by the use of a
9 candidate’s name in the title of a fundraising project or any other designation under which the
10 committee operates. *Special Fundraising Projects and Other Use of Candidate Names by*
11 *Unauthorized Committees*, 59 Fed. Reg. 17,267, 17,268 (Apr. 12, 1994). While the Commission
12 concluded that the potential for confusion is sufficiently lessened when the project name
13 unambiguously opposes the named candidate, *see Advisory Opinion 1995-09 at 5-6 (NewtWatch*
14 *PAC)* (concluding that for purposes of 102.14 the addition of “watch” to candidate’s name
15 clearly connoted opposition), the prohibition otherwise prevents the confusion that would result
16 from an unauthorized committee’s use of a candidate’s name in any name under which the
17 committee conducts activities, regardless of whether those activities include solicitations.

18 Because the names of the Committee’s websites and social media accounts that include
19 Senator Sanders’s name do not clearly express opposition to him, those sites and accounts are
20 impermissible under 11 C.F.R. § 102.14. The Commission notes, however, that this restriction
21 only applies to the titles of the Committee’s projects. The Committee is free to promote Senator
22 Sanders (or any other candidate) by name in the body of any website or other communication.
23 *See 59 Fed. Reg. at 17,268.*

1 This response constitutes an advisory opinion concerning the application of the Act and
2 Commission regulations to the specific transaction or activity set forth in your request. *See*
3 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
4 assumptions presented, and such facts or assumptions are material to a conclusion presented in
5 this advisory opinion, then the requestor may not rely on that conclusion as support for its
6 proposed activity. Any person involved in any specific transaction or activity which is
7 indistinguishable in all its material aspects from the transaction or activity with respect to which
8 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
9 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
10 affected by subsequent developments in the law including, but not limited to, statutes,
11 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
12 on the Commission's website.

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On behalf of the Commission,

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Ann M. Ravel

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Chair

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Run Bernie Run

The country needs you, we want to help!

CORPORATE TAX FAIRNESS



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Welcome to Draft Bernie, A Super PAC.
from DraftBernie

02:14 HD vimeo

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"If we're going to go into a major fight on this, the grassroots is exceptionally happy to be going into it with champions like Sens. Warren, Brown and Sanders," said Sroka.

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Liberal groups are ready to make a last stand against Obama's trade agenda.

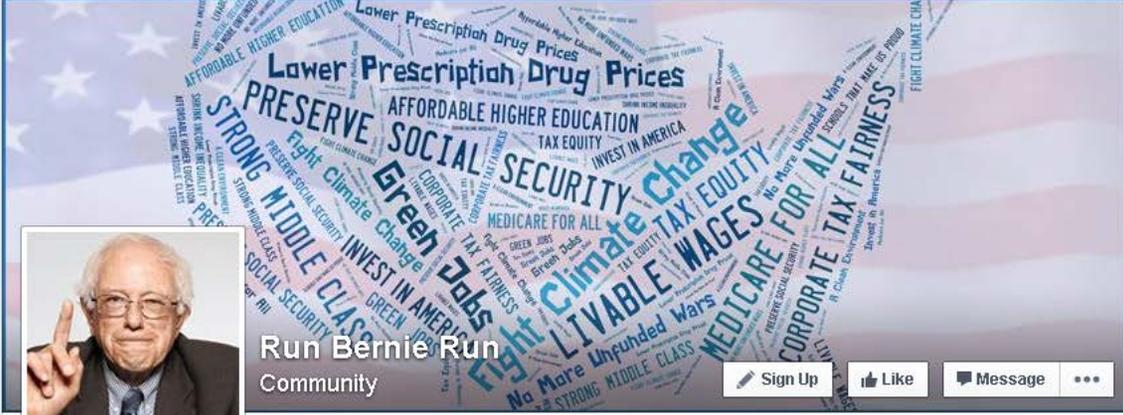
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18 hours ago

"Sanders is doing something definitely outside the Beltway's ken: running a bottom-up, movement-building campaign for president."

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This page is dedicated to helping Bernie Sanders (Independent US Senator from Vermont) run for President in 2016. The country needs him, we want to help.

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"If we're going to go into a major fight on this, the grassroots is exceptionally happy to be going into it with champions like Sens. Warren, Brown and Sanders," said Sroka.





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