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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 19-30-B**  
**AGENDA ITEM**  
**For meeting of July 11, 2019**  
**SUBMITTED LATE**

July 10, 2019

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by NFS*  
Acting General Counsel

Neven F. Stipanovic *NFS*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Acting Assistant General Counsel

Cheryl Hemsley *cafh*  
Attorney

Subject: Draft AO 2019-09 (Mad Dog PAC) Revised 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 9:00 am (Eastern Time) on July 11, 2019.

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

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2019-09  
2  
3 Claude A, Taylor  
4 Chairman  
5 Mad Dog PAC  
6 2000 14<sup>th</sup> Street NW, Suite 104  
7 Box 73071  
8 Washington, DC 20056  
9

**REVISED DRAFT A**

10 Dear Mr. Taylor:

11 We are responding to your advisory opinion request on behalf of Mad Dog PAC  
12 (“the Committee”), regarding the application of the Federal Election Campaign Act, 52  
13 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the Committee’s  
14 proposal to raise funds for the Committee by selling t-shirts bearing the facial likenesses  
15 and names of certain candidates. The Commission concludes that the Committee’s  
16 proposal is permissible under the Act and Commission regulations because the  
17 Committee will treat the full amount of proceeds it receives from the sale of t-shirts as a  
18 contribution and will comply with the applicable disclaimer, source, amount, and  
19 reporting requirements.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on  
22 May 20, 2019, and your subsequent emails received on June 4 and 28.

23 Mad Dog PAC is a registered nonconnected committee<sup>1</sup> that engages in “high-  
24 visibility, high-impact, peaceful activities . . . with a specific focus on generating support

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<sup>1</sup> Mad Dog PAC, Statement of Organization, Amend., FEC Form 1 (Oct. 24, 2018),  
<https://docquery.fec.gov/pdf/967/201810249130854967/201810249130854967.pdf>.

1 for the removal of Donald J. Trump” from the office of President. Advisory Opinion  
2 Request at AOR001.

3         The Committee intends to sell t-shirts featuring the facial likenesses and names of  
4 various candidates seeking the Democratic Party’s nomination for the 2020 presidential  
5 election. *Id.* The Committee will use the sale proceeds “to continue and expand [its]  
6 efforts to advance the Mad Dog PAC agenda.” AOR002. The Committee will use free,  
7 open source candidate photos as the basis for the graphic depictions on the t-shirts.  
8 AOR004. The Committee will neither communicate nor share proceeds with any of the  
9 candidates. AOR002. The t-shirts will be sold exclusively on the Committee’s website,  
10 [www.MadDogPac.com](http://www.MadDogPac.com), where purchasers will be informed that the entire purchase price  
11 is a contribution to the Committee. AOR001, AOR004.

12         Every page of the Committee’s website, including the webpage on which the  
13 Committee sells apparel, contains a disclaimer that informs visitors that it was paid for by  
14 the Committee and was not authorized by any candidate or candidate’s committee.<sup>2</sup> The  
15 Committee will also inform the potential purchasers that the images on the t-shirts have  
16 not been authorized by any candidate or candidate committee. AOR Supp. In addition,  
17 the Committee will screen potential purchasers to prevent receiving contributions from  
18 impermissible sources and will require eligible purchasers to provide all required  
19 contributor information so that the Committee can ensure that (1) no purchaser’s

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<sup>2</sup>         The disclaimer states “Paid for by Mad Dog PAC; not authorized by any candidate or candidate’s committee.” See <https://MadDogPAC.com/collections/apparel>.

1 contributions exceed the applicable contribution limits and (2) every purchaser's  
2 aggregate contributions comply with the applicable reporting requirements.<sup>3</sup>

3 ***Question Presented***

4 *May the Committee raise funds by selling t-shirts bearing the facial likenesses*  
5 *and names of candidates for the Democratic Party's 2020 presidential nomination?*

6 ***Legal Analysis and Conclusion***

7 Yes, the Committee may raise funds by selling t-shirts bearing the facial  
8 likenesses and names of candidates for the Democratic Party's 2020 presidential  
9 nomination because the Committee will treat the entire purchase price of the t-shirts as  
10 contributions and will comply with the applicable disclaimer, source, amount, and  
11 reporting requirements.

12 Under the Act, a contribution includes "any gift, subscription, loan, advance, or  
13 deposit of money or anything of value made by any person for the purpose of influencing  
14 any election for Federal office." 52 U.S.C. § 30101(8)(A)(i); *see also*  
15 11 C.F.R. § 100.52(a). The definition of "contribution" includes the "entire amount paid  
16 as the purchase price for a fundraising item sold by a political committee."  
17 11 C.F.R. § 100.53; *see also* Advisory Opinion 1990-26 (Committee to Re-Elect Virginia  
18 Smith to Congress) at 1-2 (explaining that the Commission has generally viewed "the  
19 sale or commercial use of committee assets by a . . . political committee to be fundraising

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<sup>3</sup> Before allowing contributors to purchase t-shirts, [www.MadDogPAC.com](http://www.MadDogPAC.com) will require them to provide their name, mailing address, employer, and occupation, and to affirmatively agree that they are United States citizens (or legally admitted permanent residents), that the contributions are from their personal funds, are not made with a corporate or business credit card, that they are at least 18 years old, and that they are not a federal contractor.

1 for political purposes”); Advisory Opinion 1995-24 (Palmer) (concluding that the  
2 proceeds from the sale of books by authorized committee constitute contributions in the  
3 full amount paid by the purchaser).

4         The Committee proposes to raise funds by selling t-shirts on the Committee’s  
5 website. As explained above, the full amount paid by the purchasers of the t-shirts must  
6 be treated as a contribution to the Committee. You indicate that the Committee intends to  
7 comply with this requirement. AOR004. In addition, in order to comply with the Act’s  
8 disclaimer requirement, the Committee’s website must contain a disclaimer indicating  
9 that it was paid for by the Committee and was not authorized by any candidate or  
10 candidate’s committee. 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(a)(1), (b)(3). The  
11 disclaimer that currently appears on the Committee’s webpage selling apparel, *see*  
12 [www.MadDogPac.com/collections/apparel](http://www.MadDogPac.com/collections/apparel), informs visitors that the webpage was paid  
13 for by the Committee and not by any candidate or candidate’s committee, including any  
14 candidate who may be depicted on the t-shirts. The Committee thus complies with this  
15 requirement.

16         Before accepting a contribution, the treasurer of a political committee must  
17 examine it “for evidence of illegality and for ascertaining whether contributions received,  
18 when aggregated with other contributions from the same contributor, exceed the  
19 contribution limitations.” *See* 11 C.F.R. § 103.3(b). The online certification mechanism  
20 currently employed by the Committee, *see* [www.MadDogPac.com](http://www.MadDogPac.com), satisfies the source  
21 screening requirement. *See e.g.*, Advisory Opinion 2018-13 (OsiaNetwork) at 7. In  
22 addition, the Committee’s website requires purchasers to complete mandatory online  
23 fields that provide the Committee with the information necessary to identify contributors

1 and screen for excessive contributions from each purchaser. Taken together, these online  
2 procedures will enable the Committee's treasurer to meet the screening requirements for  
3 contributions in 11 C.F.R. § 103.3(b).

4         Once a political committee accepts a contribution, it must comply with certain  
5 reporting requirements. First, as noted above, a political committee must treat the entire  
6 purchase price of fundraising items it sells as a contribution from the purchaser to the  
7 political committee. 11 C.F.R. § 100.53. Second, a political committee must aggregate  
8 all contributions received from each contributor and, if the aggregate amount exceeds a  
9 certain threshold, the committee must report it as a contribution and include the  
10 identification of the contributor. 52 U.S.C. § 30104(b)(2) and  
11 (3); 11 C.F.R. § 104.3(a)(4)(i) and (ii). You indicate that the Committee intends to  
12 comply with both of these requirements. AOR004; AOR Supp.

13         Accordingly, because the Committee will treat the entire purchase price of the t-  
14 shirts as contributions and will comply with the applicable disclaimer, source, amount,  
15 and reporting requirements, the Commission concludes that the Committee's proposal is  
16 permissible under the Act and Commission regulations.

17         This response constitutes an advisory opinion concerning the application of the  
18 Act and Commission regulations to the specific transaction or activity set forth in your  
19 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change  
20 in any of the facts or assumptions presented, and such facts or assumptions are material to  
21 a conclusion presented in this advisory opinion, then the requestor may not rely on that  
22 conclusion as support for its proposed activity. Any person involved in any specific  
23 transaction or activity which is indistinguishable in all its material aspects from the

1 transaction or activity with respect to which this advisory opinion is rendered may rely on  
2 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or  
3 conclusions in this advisory opinion may be affected by subsequent developments in the  
4 law including, but not limited to, statutes, regulations, advisory opinions, and case law.  
5 Any advisory opinions cited herein are available on the Commission's website.

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On behalf of the Commission,

Ellen L. Weintraub  
Chair