



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Office of the Commission Secretary *LC*

**DATE:** August 22, 2024

**SUBJECT:** AOR 2024-11 (Caroline Gleich)  
Comment from Elias Law Group

Attached is AOR 2024-11 (Caroline Gleich) Comment from Elias Law Group.

Attachment



**RECEIVED**

By Office of General Counsel at 9:38 am, Aug 22, 2024

**RECEIVED**

By Office of the Commission Secretary at 9:52 am, Aug 22, 2024

250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

August 21, 2024

**BY ELECTRONIC MAIL DELIVERY**

Office of General Counsel  
Attn: Lisa J. Stevenson, Esq.  
Acting General Counsel  
Federal Election Commission  
1050 First Street NE  
Washington, DC 20463

**Re: Advisory Opinion Request 2024-11 (Gleich)**

Dear Ms. Stevenson:

On behalf of Caroline Gleich, we submit this comment to the Federal Election Commission (“*FEC*” or “*Commission*”) in response to comments filed by Campaign Legal Center (“*CLC*”). CLC argues that Ms. Gleich’s request “seeks a material expansion of the existing safe harbor for commercial transactions” that is inappropriate in the advisory opinion context.<sup>1</sup> According to CLC, Ms. Gleich’s request does not satisfy the existing safe harbor because her company, Big Mountain Dreams (“*BMD*”), is “merely the contracting entity for her personal marketing services and would not be paying for the communications at issue.”<sup>2</sup>

Ms. Gleich’s request does not seek a material expansion of the safe harbor for commercial transactions. As explained in the request, the regulations do not require that the candidate’s business sponsor the ad. The regulations state a public communication in which a federal candidate is clearly identified in the candidate’s “capacity as the owner or operator of a business that existed prior to the candidacy is not a coordinated communication with respect to the clearly identified candidate” so long as: (1) the medium, timing, content, and geographic distribution of the public communication are consistent with public communications made prior to the candidacy; and (2) the public communication must not “promote, support, attack, or oppose that candidate or another candidate who seeks the same office as that candidate.”<sup>3</sup>

Contrary to CLC’s arguments, the regulations require only that Ms. Gleich be clearly identified in a commercial capacity – as the owner and operator of a business. That is the case here. The companies are contracting with BMD for Ms. Gleich’s services and pay BMD for the services. The ads sponsored by these companies (which we refer to as “Commercial Advertisements”)

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<sup>1</sup> CLC Comment at 4 (Aug. 12, 2024), Advisory Opinion Request 2024-11.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> 11 C.F.R. § 109.21(i).

would not refer to Ms. Gleich’s federal candidacy or promote, attack, support, or oppose (“*PASO*”) Ms. Gleich or any other federal candidate.<sup>4</sup> Under these specific facts, the commercial safe harbor is satisfied.

The Commission should not make the arbitrary distinction that CLC is advancing in its comments between commercial ads paid for by a candidate’s business and commercial ads paid for by third party companies. That the safe harbor was created due to past enforcement matters where a candidate’s business paid for the ads is not a sufficient reason to deny Ms. Gleich the protection of the safe harbor. In the same rulemaking, the Commission explained that the safe harbor was specifically designed to exempt “*bona fide* business communications” from the coordination regulations.<sup>5</sup> Nothing in the regulation requires that the Commission limit the safe harbor to only those instances in which the candidate’s business is the entity sponsoring the ads.<sup>6</sup> In either case, the communications are commercial in nature. The Commission’s regulatory interest starts and ends with activities made “for the purpose of *influencing a federal election*,” regardless of whether it is the candidate’s business or a third-party business that is paying for commercial advertisements.<sup>7</sup> As Ms. Gleich’s request makes clear, her clients are paying her to appear in commercial advertisements to promote and market their products and services. These ads will not mention any federal candidacy and will not PASO any candidate.

Finally, CLC argues that the Commission should consider a rulemaking to enact “sufficient guardrails” to address what it perceives as concerns specific to the influencer marketing industry.<sup>8</sup> Ms. Gleich agrees that there needs to be clarity on the application of campaign finance laws to careers in the influencer industry. As Ms. Gleich noted in her request, there is uncertainty in the business community regarding whether these employment opportunities implicate federal campaign finance laws. Ms. Gleich’s advisory opinion request provides the Commission with the opportunity to give much needed clarity to the regulated community. At a minimum, the regulated community would have assurances that the types of activities outlined in Ms. Gleich’s request would not be subject to regulation by the Commission. But the need for clarity more

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<sup>4</sup> CLC argues that Ms. Gleich is not conveying a purely commercial message, claiming that her personal Instagram account contains posts that simultaneously promote products and services and link to her campaign account and mentions her candidacy. *See* CLC Comment at 5-6 & n.28. However, Ms. Gleich’s advisory opinion request covers advertisements that are placed for a fee on a third-party website, platform, or application by companies and brands; advertisements that are promoted (*i.e.*, “boosted”) by companies and brands; and communications printed by companies and brands, such as magazines and catalogs. In amending the definition of what constitutes a “public communication,” the Commission explained that the definition of “public communication” applies “only where the speaker pays a third party’s website, digital device, application or advertising platform to increase the communication’s visibility on that website, device, application, or platform.” Technological Modernization, 89 FR 196, 211 (January 2, 2024). The definition does not apply “where an individual is paid to create or share political content” in the absence of a third-part payment to a website, platform or application. *Id.* at 211. The posts CLC complains about in its comments were not placed for a fee on a third-party website, platform, or application. Nor were these posts boosted.

<sup>5</sup> Coordinated Communications, 75 Fed. Reg. 55,947, 55,959 (Sept. 15, 2010).

<sup>6</sup> Moreover, the Commission has long recognized that it may determine, based “on the specifics facts and circumstances of a particular case,” whether certain advertisements are subject to its regulatory authority. *See* Advisory Opinion 2004-31 at 4 (Russ Darrow Group).

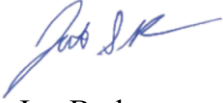
<sup>7</sup> 52 USC § 30101(8)(B), (9)(A).

<sup>8</sup> *Id.* at 5-7.

generally in this area does not preclude the Commission from issuing an advisory opinion based on the specific facts presented in Ms. Gleich's request.

Accordingly, the Commission should answer both questions presented in Ms. Gleich's advisory opinion request in the affirmative.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jon Berkon".

Jon Berkon  
Jonathan Peterson  
*Counsel to Caroline Gleich*