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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 25-04-A**  
**AGENDA ITEM**  
**For meeting of March 27, 2025**

March 20, 2025

**MEMORANDUM**

TO: The Commission

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

Neven F. Stipanovic *NFS*  
Associate General Counsel

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Attorney

Subject: AO 2025-04 (Government Accountability Institute) 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 12:00 pm (Eastern Time) on March 26, 2025.

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 2025-04

2

3 Stuart Christmas  
4 Government Accountability Institute  
5 P.O. Box 12594  
6 Tallahassee, FL 32317  
7 Stuart.Christmas@g-a-i.org  
8

**DRAFT A**

9 Dear Mr. Christmas:

10 We are responding to your advisory opinion request on behalf of the Government  
11 Accountability Institute (“GAI”), regarding the application of the Federal Election  
12 Campaign Act (the “Act”),<sup>1</sup> and Commission regulations to its television and radio  
13 appearances and publication of books, articles, editorials, reports, documentaries,  
14 podcasts, video shorts, and commentary on websites and social media accounts and in  
15 other news outlets. The Commission concludes that GAI’s activities described in the  
16 request fall within the media exemption from the definitions of “contribution,”  
17 “expenditure,” and “electioneering communication.”

18 **Background**

19 The facts presented in this advisory opinion are based on your letter received on  
20 February 18, 2025.

21 GAI is a nonprofit corporation established in 2012 under section 501(c)(3) of the  
22 Internal Revenue Code.<sup>2</sup> GAI is not owned or controlled by any candidate, political  
23 party, or political committee, and GAI states that it “has not and will not endorse any

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<sup>1</sup> 52 U.S.C. §§ 30101-45.

<sup>2</sup> Advisory Opinion Request (“AOR”) at AOR001. GAI is incorporated in Delaware.

1 candidate, donate funds to any candidate or committee, or oppose the election of any  
2 candidate.”<sup>3</sup>

3 GAI’s stated mission is to “investigate and expose crony capitalism, misuse of

4 taxpayer monies, and other governmental corruption or malfeasance.”<sup>4</sup> To this end, GAI  
5 employs researchers, writers, editors, fact-checkers, and subject matter experts to  
6 investigate governmental actors and broadcast investigative findings as news.<sup>5</sup>

7 Specifically, GAI publishes books, articles, editorials, reports, documentaries, podcasts,  
8 video shorts, and commentary on websites and social media and in other media outlets.<sup>6</sup>

9 GAI authors and journalists also maintain an active schedule of television and radio  
10 appearances to discuss their investigative findings.<sup>7</sup>

11 ***Question Presented***

12 *Does GAI’s television and radio appearances and its publication of books,  
13 articles, editorials, investigative reports, documentaries, podcasts, video shorts, and  
14 commentary qualify for the media exemption from the definitions of “contribution,”  
15 “expenditure,” and “electioneering communication”?*

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<sup>3</sup> AOR003.

<sup>4</sup> AOR002.

<sup>5</sup> AOR004.

<sup>6</sup> AOR005. GAI’s work has been featured on or in CNN, NPR News, The New York Times, National Review, 60 Minutes, ABC News, New York Post, Fox News, Politico, The Washington Post, Washington Times, Forbes, The Wall Street Journal, The Daily Beast, Daily Wire, The Daily Mail, The Epoch Times, The Guardian, Esquire, and The Federalist. AOR002. GAI maintains two websites and various social media accounts. AOR010. GAI’s reach, as measured through an industry analytical tool that tracks earned media coverage in real time, is significant. *See AOR005-7*

<sup>7</sup> AOR009. In 2024, GAI employees made 181 media appearances through an in-house “state-of-the-art” broadcasting studio, and 70 additional appearances through other methods including video conferencing applications and mobile devices. GAI engages with news outlets “on an almost daily basis.” *Id.*

1     ***Legal Analysis***

2             Yes, GAI's television and radio appearances and publication of books, articles,  
3     editorials, reports, documentaries, podcasts, video shorts, and commentary qualifies for  
4     the media exemption from the definitions of "contribution," "expenditure," and  
5     "electioneering communication."

6             Under the Act, corporations are generally prohibited from using general treasury  
7     funds to make contributions to federal candidates, federal accounts of political party  
8     committees, and other political committees.<sup>8</sup> Subject to certain exclusions, a contribution  
9     is "any gift, subscription, loan, advance, or deposit of money or anything of value made  
10    by any person for the purpose of influencing any election for Federal office."<sup>9</sup> Similarly,  
11    an expenditure is "any purchase, payment, distribution, loan, advance, deposit, or gift of  
12    money or anything of value, made by any person for the purpose of influencing any  
13    election for Federal office."<sup>10</sup>

14             Corporations may make, but may be required to report, electioneering  
15    communications, which are broadcast, cable, or satellite communications that refer to  
16    clearly identified candidates within certain time periods preceding elections, and in the

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<sup>8</sup>             52 U.S.C. § 30118(a). A corporation may make independent expenditures and may make contributions to nonconnected political committees that make only independent expenditures or to separate accounts maintained by nonconnected political committees for making only independent expenditures. *Citizens United v. FEC*, 558 U.S. 310 (2010); *Speechnow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

<sup>9</sup>             52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

<sup>10</sup>             52 U.S.C. § 30101(9)(A)(i); *see also* 11 C.F.R. § 100.111(a).

1 case of candidates other than those for President and Vice-President, are targeted to the  
2 relevant electorate.<sup>11</sup>

3 Commission regulations exclude from the definitions of contribution and  
4 expenditure “[a]ny cost incurred in covering or carrying a news story, commentary, or  
5 editorial by any broadcasting station (including a cable television operator, programmer  
6 or producer), website, newspaper, magazine, or other periodical publication, including  
7 any Internet or electronic publication . . . unless the facility is owned or controlled by any  
8 political party, political committee, or candidate.”<sup>12</sup> The Act and Commission  
9 regulations similarly exempt from the definition of “electioneering communication” a  
10 communication that appears in a news story, commentary, or editorial distributed through  
11 the facilities of any broadcast, cable, or satellite television or radio station, unless such  
12 facilities are owned or controlled by any political party, political committee, or  
13 candidate.<sup>13</sup> Together, these exclusions are known as the “press exemption” or “media  
14 exemption.” As reflected in the legislative history of the Act, this exemption was  
15 intended to ensure that the Act would not “limit or burden in any way the first  
16 amendment freedom[] of the press” and would protect “the unfettered right of the  
17 newspapers, TV networks, and other media to cover and comment on political  
18 campaigns.”<sup>14</sup>

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<sup>11</sup> 52 U.S.C. § 30104(f)(1), (3); *see also* 11 C.F.R. §§ 100.29(a), 104.20(b).

<sup>12</sup> 11 C.F.R. §§ 100.73, 100.132; *see also* 52 U.S.C. § 30101(9)(B)(i) (excluding these types of activities from the definition of “expenditure”).

<sup>13</sup> *See* 52 U.S.C. § 30104(f)(3)(B)(i); 11 C.F.R. § 100.29(c)(2).

<sup>14</sup> H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974).

1        To determine whether the media exemption applies, the Commission uses a two-  
2        step analysis, first asking whether the entity engaging in the activity is a media entity<sup>15</sup>  
3        within the meaning of the Act and Commission regulations, and if so, then asking  
4        whether the media entity: a) is owned or controlled by a political party, political  
5        committee, or candidate; and b) is acting in its capacity as a media entity in conducting  
6        the activity at issue (*i.e.*, whether the activity is within the entity’s “legitimate press  
7        function”).<sup>16</sup>

8        **A. Media Entity**

9        In the first step of its analysis, the Commission asks whether the entity engaging  
10      in the activity is a media entity within the meaning of the Act and Commission  
11      regulations.<sup>17</sup> To determine whether an entity is a media entity, the Commission focuses  
12      on “whether the entity in question produc[es] on a regular basis a program that  
13      disseminates news stories, commentary, and/or editorials.”<sup>18</sup> In addition, the  
14      Commission has not limited the definition of “media entity” to “traditional news

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<sup>15</sup> Neither the Act nor Commission regulations use or define the term “press entity” or “media entity.” Those terms are used interchangeably in Commission advisory opinions. For simplicity, this advisory opinion uses the term “media entity” and “media exemption” throughout except where quoting a source that uses the term “press entity” or “press exemption.”

<sup>16</sup> *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *see, e.g.*, Advisory Opinion 2023-10 (Sony Pictures Television) at 4-5; Advisory Opinion 2019-05 (System73) at 4-6; Advisory Opinion 2016-01 (Ethiq) at 2-4.

<sup>17</sup> *See, e.g.*, Advisory Opinion 2023-10 (Sony Pictures Television) at 4; Advisory Opinion 2019-05 (System73) at 4.

<sup>18</sup> Advisory Opinion 2010-08 (Citizens United) at 5; *see also* Advisory Opinion 2008-14 (Melothé) at 4.

1 outlets.”<sup>19</sup> For example, the Commission has found that a web company that operated a  
2 network of specialized news and information websites qualified as a media entity.<sup>20</sup>

3 Further, the Commission does not investigate an entity’s viewpoints in  
4 determining whether it qualifies as a “media entity” under the media exemption, and an  
5 entity otherwise eligible for the media exemption would not lose its eligibility merely  
6 because of a lack of objectivity in a news story, commentary, or editorial, even if the  
7 news story, commentary, or editorial expressly advocates the election or defeat of a  
8 clearly identified candidate for Federal office.<sup>21</sup>

9 Under step one of the media exemption analysis, GAI is a media entity because it  
10 publishes books, articles, editorials, reports, documentaries, podcasts, video shorts, and  
11 commentary informing the public about new investigative findings on a regular basis. GAI  
12 states that it has published hundreds of articles, reports, interviews, editorials, and  
13 commentary on its own website and social media pages and through other news outlets, and  
14 has published at least 16 books,<sup>22</sup> on topics related to government cronyism, fraud, and  
15 corruption investigations. Therefore, because GAI produces on a regular basis content that  
16 disseminates news stories, commentary, and/or editorials, it is a media entity under the  
17 Act and Commission regulations.

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<sup>19</sup> *Id.* at 3.

<sup>20</sup> Advisory Opinion 2000-13 (iNEXTV) at 3.

<sup>21</sup> Factual & Legal Analysis at 8, MUR 7789 (Courier Newsroom, *et al.*) (quoting Advisory Opinion 2008-14 (Melothe, Inc.) at 4, Factual & Legal Analysis at 5, MUR 7206 (Bonneville Int’l Corp.), and Factual & Legal Analysis at 3, MUR 6579 (ABC News, Inc.))

<sup>22</sup> AOR001, 5-7.

1                   **B. Ownership and Control and Legitimate Media Function**

2                   In the second step of the analysis, the Commission considers whether activity by a  
3                   media entity is within the scope of the exemption based on whether: a) the media entity  
4                   is owned or controlled by a political party, political committee, or candidate, and b) the  
5                   media entity is acting within its legitimate media function in conducting the activity at  
6                   issue.<sup>23</sup> Two considerations relevant to this analysis are whether the entity's materials  
7                   are: 1) available to the general public and 2) comparable to those ordinarily issued by the  
8                   entity.<sup>24</sup>

9                   Here, GAI's ongoing activities satisfy both elements of this second step of the  
10                  media exemption analysis. GAI is not owned or controlled by a political party, political  
11                  committee, or candidate.<sup>25</sup> And GAI acts within the scope of its legitimate media  
12                  function because its materials – such as books, articles, and editorials – are available to  
13                  the general public and are published on an ordinary basis. GAI also states that its authors  
14                  regularly appear on television and radio to discuss GAI materials and its findings. Such  
15                  appearances are also within GAI's legitimate media function because they are

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<sup>23</sup>               See, e.g., Advisory Opinion 2016-01 (Ethiq) at 3-4 (concluding personalized distribution of political news and information was within media exemption for company whose core business was to provide news and information about candidates and businesses to users); Advisory Opinion 2007-20 (XM Satellite Radio) at 3-5 (finding satellite radio company featuring news updates, candidate interviews, speeches, debate coverage, polling results, fundraising status, and live call-in shows within the media exemption in providing free airing of candidate-supplied content); Advisory Opinion 2005-16 (Fired Up) at 4, 6 (determining cost of carrying content on website that provided commentary, summaries and editorials of news stories created by others, as well as its own original reporting, within entity's legitimate media function).

<sup>24</sup>               See, e.g., Advisory Opinion 2000-13 (iNEXTV) at 3 (concluding costs of producing website "viewable by the general public and akin to a periodical or news program" within media entity's legitimate media function).

<sup>25</sup>               AOR003.

1 comparable to publications of articles and editorials that GAI publishes in ordinary  
2 course.<sup>26</sup>

3 Accordingly, the Commission concludes that the costs of GAI's television and  
4 radio appearances and publication of books, articles, editorials, investigative reports,  
5 documentaries, podcasts, video shorts, and commentary on government cronyism,  
6 corruption, and fraud are exempted from the definitions of "contribution" and  
7 "expenditure." Moreover, any GAI news stories, commentaries, or editorials on those  
8 topics distributed via broadcast, cable, satellite television, or radio station are exempted  
9 from the definition of "electioneering communication."

10 This response constitutes an advisory opinion concerning the application of the  
11 Act and Commission regulations to the specific transaction or activity set forth in your  
12 request.<sup>27</sup> The Commission emphasizes that, if there is a change in any of the facts or  
13 assumptions presented, and such facts or assumptions are material to a conclusion  
14 presented in this advisory opinion, then the requestor may not rely on that conclusion as  
15 support for its proposed activity. Any person involved in any specific transaction or  
16 activity which is indistinguishable in all its material aspects from the transaction or  
17 activity with respect to which this advisory opinion is rendered may rely on this advisory  
18 opinion.<sup>28</sup> Please note that the analysis or conclusions in this advisory opinion may be  
19 affected by subsequent developments in the law including, but not limited to, statutes,

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<sup>26</sup> *C.f.*, Advisory 2004-07 (MTV) at (concluding that television promotions for program covering or carrying news story, commentary, or editorial was within media entity's legitimate media function).

<sup>27</sup> *See* 52 U.S.C. § 30108.

<sup>28</sup> *See id.* § 30108(c)(1)(B).

1 regulations, advisory opinions, and case law. Any advisory opinions cited herein are  
2 available on the Commission's website.

3

4 On behalf of the Commission,

5

6 James E. "Trey" Trainor III,  
7 Acting Chairman