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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 25-04-B
AGENDA ITEM
For meeting of March 27, 2025
SUBMITTED LATE

March 26, 2025

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Joesph Wenzinger *JPW*
Attorney

Subject: AO 2025-04 (Government Accountability Institute) Draft B

We have been asked to place this draft on the Agenda by one or more Commissioners.

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 March 27, 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 B

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”),¹ 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.² 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

¹ 52 U.S.C. §§ 30101-45.

² 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.”³

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

4 taxpayer monies, and other governmental corruption or malfeasance.”⁴ 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.⁵

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.⁶

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

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”?*

³ AOR003.

⁴ AOR002.

⁵ AOR004.

⁶ 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

⁷ 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.⁸ 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."⁹ 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."¹⁰

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

⁸ 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).

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

¹⁰ 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.¹¹

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.”¹² 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.¹³ Together, these exclusions are known as the “press exemption” or “media
14 exemption.”

15 Determining on a case-by-case basis whether an organization is afforded the
16 media exemption is a thorny endeavor, as past practice by the federal courts¹⁴ and the
17 Commission has demonstrated.¹⁵ The Commission does not investigate an entity’s

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

¹² 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”).

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

¹⁴ *Fed. Election Comm'n v. Phillips Pub'g.*, 517 F. Supp. 1308 (D.D.C. 1981); *Reader's Digest Ass'n v. Fed. Election Comm'n*, 509 F. Supp. 1210 (S.D.N.Y. 1981).

¹⁵ Advisory Op. 2016-01 (“Ethiq”); Advisory Op. 2010-08 (“Citizens United”); Advisory Op. 2008-14 (“Melothé”); Advisory Op. 2005-07 (“Mayberry”); Advisory Op. 2004-07 (“MTV”); Advisory Op. 2003- 34 (“Showtime”).

1 viewpoints in determining whether it qualifies as a “media entity” under the media
2 exemption, and an entity otherwise eligible for the media exemption would not lose its
3 eligibility merely because of a lack of objectivity in a news story, commentary, or
4 editorial, even if the news story, commentary, or editorial expressly advocates the
5 election or defeat of a clearly identified candidate for Federal office.¹⁶ In this case,
6 GAI’s voluminous past and intended future activity undoubtedly consists of “news
7 stor[ies], commentar[ies], or editorial[s].” Moreover, the Request explains that GAI is
8 neither owned nor controlled by a political party, political committee, or candidate.

9 Accordingly, the Commission concludes that the costs of GAI’s television and
10 radio appearances and publication of books, articles, editorials, investigative reports,
11 documentaries, podcasts, video shorts, and commentary on government cronyism,
12 corruption, and fraud are exempted from the definitions of “contribution” and
13 “expenditure.” Moreover, any GAI news stories, commentaries, or editorials on those
14 topics distributed via broadcast, cable, satellite television, or radio station are exempted
15 from the definition of “electioneering communication.”

16 This response constitutes an advisory opinion concerning the application of the
17 Act and Commission regulations to the specific transaction or activity set forth in your
18 request.¹⁷ The Commission emphasizes that, if there is a change in any of the facts or
19 assumptions presented, and such facts or assumptions are material to a conclusion

¹⁶ Factual & Legal Analysis at 8, MUR 7789 (Courier Newsroom, *et al.*) (quoting Advisory Opinion 2008-14 (“Melothe,”) at 4, Factual & Legal Analysis at 5, MUR 7206 (“Bonneville Int’l Corp.”), and Factual & Legal Analysis at 3, MUR 6579 (“ABC News, Inc.”)).

¹⁷ See 52 U.S.C. § 30108.

1 presented in this advisory opinion, then the requestor may not rely on that conclusion as
2 support for its proposed activity. Any person involved in any specific transaction or
3 activity which is indistinguishable in all its material aspects from the transaction or
4 activity with respect to which this advisory opinion is rendered may rely on this advisory
5 opinion.¹⁸ Please note that the analysis or conclusions in this advisory opinion may be
6 affected by subsequent developments in the law including, but not limited to, statutes,
7 regulations, advisory opinions, and case law. Any advisory opinions cited herein are
8 available on the Commission’s website.

9

10 On behalf of the Commission,

11

¹⁸ See *id.* § 30108(c)(1)(B).