



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2017-05

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Dear Mr. Backer:

We are responding to your advisory opinion request on behalf of Great America PAC and The Committee to Defend the President, concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-43126 (the "Act"), and Commission regulations to your proposal to use Twitter handles in disclaimers on public communications, emails, and websites, and to maintain Twitter profiles without a disclaimer. The Commission concludes that Great America PAC may use its Twitter handle in lieu of its full name in disclaimers, and that The Committee to Defend the President may include its Twitter handle along with its full name as long as the disclaimer's language makes clear that the committee is paying for the communication, but that neither committee may use Twitter handles as an alternative to its permanent street address, telephone number, or World Wide Web address. The Commission could not approve a response by the required four-affirmative votes regarding whether the committees' Twitter profile pages must include disclaimers.

Background

The facts presented in this advisory opinion are based on your letter received on June 5, 2017, and publicly available information.

Great America PAC and The Committee to Defend the President are nonconnected political committees.¹ Advisory Opinion Request at AOR002. They each maintain a publicly

¹ See The Committee to Defend the President, Statement of Organization, FEC Form 1, Amend (Jan. 28, 2017), <http://docquery.fec.gov/pdf/619/201701289041532619/201701289041532619.pdf>; Great America PAC, Statement of Organization, FEC Form 1, Amend (May 26, 2016), <http://docquery.fec.gov/pdf/493/20160526901>

accessible Twitter profile,² and they assert that they plan to make independent expenditures for various types of communications that are within the scope of the disclaimer requirements under the Act and Commission regulations, including “public communications” within the meaning of 11 C.F.R. § 100.26 (for example, certain broadcast, cable, newspaper, magazine, and mass mailings), emails of substantially similar content distributed to more than 500 recipients, and their respective publicly accessible websites. AOR002-003.

Twitter is free to use and “allows users to disseminate, receive, and read online messages called ‘tweets,’ which may include text, hypertext links, audio, and video components.” AOR002. Before sending tweets, each user must obtain a unique Twitter “handle” — a username preceded by the “@” symbol — at which point “Twitter automatically creates a Twitter profile page under the Twitter.com domain.” *Id.* As noted in the request, a “profile page displays the user’s name and handle; a biography or description of the user, not exceeding 160 characters; the web address for; and hypertext link to, the user’s home page; a personal picture and header picture; and a list of the user’s [t]weets.” *Id.* Though users create the content for their Twitter profiles, Twitter maintains ownership interests in its software (which it merely licenses to users for free) and retains the right to “remove or refuse to distribute any [c]ontent on [its] [s]ervices, suspend or terminate users, and reclaim usernames.”³

Great America PAC’s Twitter handle is @GreatAmericaPAC. *Id.* at AOR003. By contrast, as acknowledged in the request, The Committee to Defend the President’s Twitter handle — @Defend_Trump — is not “materially identical” to its name. *Id.*

Questions Presented

1. *When Great America PAC pays for and disseminates a communication subject to the disclaimer requirements of 11 C.F.R. § 110.11, would including the committee’s Twitter handle in the disclaimer, when either written or spoken, in lieu of the committee’s actual name satisfy the requirement that the committee include its “full name” in the disclaimer?*
2. *When The Committee to Defend the President pays for and disseminates a communication subject to the disclaimer requirements of 11 C.F.R. § 110.11, may it satisfy the requirement to include its “full name” in disclaimers by including both its full name and Twitter handle?*
3. *When Great America PAC or the Committee to Defend the President pays for and disseminates a communication subject to the disclaimer requirements of 11 C.F.R. § 110.11, would including the committee’s Twitter handle in the disclaimer satisfy the requirement that the*

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² See The Committee to Defend the President, @Defend_Trump, https://twitter.com/defend_trump?lang=en; Great America PAC, @GreatAmericaPAC, https://twitter.com/GreatAmericaPAC?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor.

³ Twitter, Terms of Service ¶ 4, <https://twitter.com/en/tos> (last visited June 19, 2017).

committee include its "permanent street address, telephone number, or World Wide Web address" in the disclaimer?

4. *If the answer to Question 3 is no, would including Great America PAC's or The Committee to Defend the President's Twitter handle in the disclaimer satisfy the requirement that the committee include its "permanent street address, telephone number, or World Wide Web address" in the disclaimer if its Twitter profile page included the committee's website address and a hypertext link to the committee's website, which contained the committee's permanent street address, telephone number, or World Wide Web address?*

5. *May Great America PAC and The Committee to Defend the President use Twitter without including a disclaimer on their respective profile pages?*

6. *If the answer to Question 5 is no, may Great America PAC and The Committee to Defend the President satisfy the Act and Commission regulations by ensuring that their Twitter profile pages specify, in locations permitted by Twitter, the respective committee's name, the committee's Twitter handle, the web address of the committee's traditional homepage which contains a standard disclaimer, and a hypertext link to that homepage?*

7. *If the answer to Question 5 is no, may Great America PAC and The Committee to Defend the President satisfy the Act and Commission regulations by ensuring that their Twitter profile pages contain a graphic bearing a standard disclaimer, even if the disclaimer may not be visible when the profile page is viewed on certain mobile devices?*

Legal Analysis and Conclusions

1. *When Great America PAC pays for and disseminates a communication subject to the disclaimer requirements of 11 C.F.R. § 110.11, would including the committee's Twitter handle in the disclaimer, when either written or spoken, in lieu of the committee's actual name satisfy the requirement that the committee include its "full name" in the disclaimer?*

Yes, Great America PAC may use its Twitter handle in lieu of its actual name, in both written and spoken disclaimers, because the Twitter handle unambiguously identifies the political committee.

Any "public communication," *see* 11 C.F.R. § 100.26,⁴ made by a political committee, electronic mail of more than 500 substantially similar communications sent by a political committee, and all websites of political committees available to the general public must contain a disclaimer to identify who paid for the communication. 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a). When a communication is not authorized by a candidate, an authorized committee of a candidate, or an agent of either, the disclaimer must "clearly state the full name . . . of the

⁴ Commission regulations define "public communication" as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 11 C.F.R. § 100.26. Moreover, the "term *general public political advertising* shall not include communications over the Internet, except for communications placed for a fee on another person's Web site." *Id.*

person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee." 11 C.F.R. § 110.11(b)(3). In such communications transmitted through radio, television, broadcast, cable, or satellite, the disclaimer must include an audio statement with "the name of the political committee" immediately followed by "is responsible for the content of this advertising." *Id.* § 110.11(c)(4). Disclaimers "must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for . . . the communication." 11 C.F.R. § 110.11(c)(1).

Here, Great America PAC proposes to use its Twitter handle — @GreatAmericaPAC — as its name in both written and spoken disclaimers. Where written, the disclaimer would read "Paid for by @GreatAmericaPAC," and the addition of the "@" symbol would not obscure the name of the entity paying for the communication, which would be unambiguously identified as Great America PAC. *See* Advisory Opinion 1995-09 (NewtWatch PAC) at 1-2 (permitting "NewtWatch PAC" to use "NewtWatch" as its full name in its disclaimers). Likewise, the spoken disclaimer would be "@GreatAmericaPAC is responsible for the content of this advertising," and again the reading of "at" in front of the political committee's name would not obscure the name of the payor. Because the use of Great America PAC's Twitter handle would give adequate notice of the identity of the political committee paying for . . . the communication, it may use its Twitter handle as its name in its disclaimers.

2. *When The Committee to Defend the President pays for and disseminates a communication subject to the disclaimer requirements of 11 C.F.R. § 110.11, may it satisfy the requirement to include its "full name" in disclaimers by including both its full name and Twitter handle?*

Yes, The Committee to Defend the President may use both its full name and Twitter handle in disclaimers, as long as the disclaimer contains language making clear that the committee is paying for the communication.⁵

As discussed in the answer to Question 1 above, where the Act and Commission regulations require communications to "clearly state the full name" of a political committee, 11 C.F.R. § 110.11(b)(3); *see* 52 U.S.C. § 30120(a)(3), that name "must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for . . . the communication," 11 C.F.R. § 110.11(c)(1).

⁵ The Commission notes that The Committee to Defend the President's Twitter handle — @Defend_Trump — appears to be inconsistent with 11 C.F.R. § 102.14(a), which provides that, with certain exceptions, "no unauthorized committee shall include the name of any candidate in its name," including in any "special project" name. *See also* Advisory Opinion 2015-04 (Collective Actions PAC) (concluding that unauthorized committee could not use "@Bernie_Run" as its Twitter handle). The U.S. Court of Appeals for the D.C. Circuit, however, recently held that there was a "substantial likelihood" this regulation was unconstitutional as applied to the conduct of a certain unauthorized political committee and remanded to the district court with an order to enter a preliminary injunction enjoining enforcement of the rule as applied to that committee. *See Pursuing America's Greatness v. FEC*, 831 F.3d 500 (D.C. Cir. 2016). Because this litigation is pending and the requestor does not ask whether it may use the name of a federal candidate in its Twitter handle, the Commission is not answering that question here.

Here, The Committee to Defend the President could use both its full name and Twitter handle without confusing the reader about the identity of the entity paying for the communication, as long as it is clear who is paying for the communication. *See* Advisory Opinion 2011-14 (Utah Bankers Association Action PAC) at 9 (“The requestors may retain a reference to the [p]roject in [their] disclaimer should they wish to do so, as long as the identity of the payor is clear.”).

For example, it would be sufficient for the committee to have a disclaimer stating, “Paid for by The Committee to Defend the President, @Defend_Trump, committeetodefendthepresident.com. Not authorized by any candidate or candidate’s committee.” *See id.* (approving disclaimer including different name of fundraising project because disclaimer contained language that communication “paid for by” political committee). Thus, the Committee to Defend the President may use its full name and Twitter handle in disclaimers because it is clear who is paying for the communication.

3. *When Great America PAC or the Committee to Defend the President pays for and disseminates a communication subject to the disclaimer requirements of 11 C.F.R. § 110.11, would including the committee’s Twitter handle in the disclaimer satisfy the requirement that the committee include its “permanent street address, telephone number, or World Wide Web address” in the disclaimer?*

No, neither Great America PAC nor The Committee to Defend the President may use its Twitter handle in its disclaimers in lieu of its permanent street address, telephone number, or World Wide Web address, because the Act specifically requires certain identifying information that a Twitter handle alone cannot satisfy.

In addition to the requirement that communications not authorized by a candidate, candidate’s committee, or its agents must include a disclaimer with the name of who paid for the communication, such disclaimers must also include the “permanent street address, telephone number, or World Wide address” of the payor. 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3). The requestors assert that a “Twitter handle plays the same role as a conventional World Wide Web address in directing viewers to a freely accessible internet resource containing information about the PAC sponsoring a communication.” AOR005.

Under the specific statutory requirements of the Act, however, a political committee may not substitute alternative identifying information in place of a World Wide Web address. Even if it could, a Twitter handle is different from a World Wide Web address in material respects. The latter includes a “domain name” (for example, greatamericapac.com) that corresponds to a unique “location on the Internet” that a user (particularly one that may be unfamiliar to Twitter) may find by entering it into a web browser.⁶ By contrast, a Twitter handle does not refer directly to a specific place on the internet — it makes no reference to Twitter.com — and the “@” symbol, which is not unique to Twitter, may easily be confused with other social media

⁶ Internet Corporation for Assigned Names and Numbers (“ICANN”), *Beginner’s Guide to Domain Names at 3*, <https://www.icann.org/en/system/files/files/domain-names-beginners-guide-06dec10-en.pdf> (last visited June 22, 2017).

platforms.⁷ Moreover, a Twitter handle, unlike a domain name, gives no information about what type of organization it references (for example, “.com,” “.org,” or “.gov.”).

Thus, neither Great America PAC nor The Committee to Defend the President may use its Twitter handle in disclaimers in lieu of its permanent street address, telephone number, or World Wide Web address, because a Twitter handle does not provide the identifying information required by the Act.

4. *If the answer to Question 3 is no, would including Great America PAC's or The Committee to Defend the President's Twitter handle in the disclaimer satisfy the requirement that the committee include its "permanent street address, telephone number, or World Wide Web address" in the disclaimer if its Twitter profile page included the committee's website address and a hypertext link to the committee's website, which contained the committee's permanent street address, telephone number, or World Wide Web address?*

No, neither Great America PAC nor The Committee to Defend the President may use its Twitter handle in lieu of the identifying information required by the Act, even if its Twitter profile includes the address of, and a hypertext link to, its website containing the committee's permanent street address, telephone number, or World Wide Web address because the Act requires such identifying information to be placed on the communication.

As discussed above, the Act is specific that the “*communication* [requiring a disclaimer] . . . shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication.” 52 U.S.C. § 30120(a)(3) (emphasis added). Though the Commission has recognized “the Internet as a unique and evolving mode of mass communication and political speech that is distinct from other media in a manner that warrants a restrained regulatory approach,”⁸ Internet Communications, 71 Fed. Reg. 18589, 18589 (Apr. 12, 2006), here the issue involves all of Great America PAC or The Committee to Defend the President's public communications (including broadcast, cable, newspaper, magazine, and mass mailings), emails of more than 500 substantially similar communications, and websites available to the general public. Additionally, there is no suggestion of a new and unique burden or impracticability in continuing to place World Wide Web addresses in disclaimers.

Therefore, neither Great America PAC nor The Committee to Defend the President may use its Twitter handle instead of its permanent street address, telephone number, or World Wide Web address, even if its Twitter profile contains a link to its political committee's website,

⁷ See, e.g., Instagram Help Center, https://help.instagram.com/1660923094227526/?helpref=hc_fnav (noting that user may “mention” another user in “story” by “[t]yp[ing] @ followed immediately by their username) (last visited June 22, 2017).

⁸ For example, in Advisory Opinion 2010-19 (Google), the Commission permitted political committees to pay for small Google text advertisements that on their face did not contain a disclaimer, but included a link to a “landing page” that did. That advisory opinion, however, applied only to small text ads on the internet, rather than to all of a political committee's public communications, emails, or websites.

because the Act specifically requires certain identifying information to be placed on the communication requiring a disclaimer.

5. *May Great America PAC and The Committee to Defend the President use Twitter without including a disclaimer on their respective profile pages?*

The Commission could not approve a response to this question by the required four affirmative votes. *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

6. *If the answer to Question 5 is no, may Great America PAC and The Committee to Defend the President satisfy the Act and Commission regulations by ensuring that their Twitter profile pages specify, in locations permitted by Twitter, the respective committee's name, the committee's Twitter handle, the web address of the committee's traditional homepage which contains a standard disclaimer, and a hypertext link to that homepage?*

The Commission could not approve a response to this question by the required four affirmative votes. *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

7. *If the answer to Question 5 is no, may Great America PAC and The Committee to Defend the President satisfy the Act and Commission regulations by ensuring that their Twitter profile pages contain a graphic bearing a standard disclaimer, even if the disclaimer may not be visible when the profile page is viewed on certain mobile devices?*

The Commission could not approve a response to this question by the required four affirmative votes. *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

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

On behalf of the Commission,



Steven T. Walther
Chairman