

Supplemental Material to AOR 2011-11

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VIA ELECTRONIC MAIL AND HAND DELIVERY

Amy Rothstein, Esq.
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Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request 2011-11—Supplemental Answers

Dear Ms. Rothstein and Mr. Adkins:

A recent letter from the Commission's Office of General Counsel indicated that the Advisory Opinion Request submitted by our client, Mr. Stephen Colbert, "qualified as a complete advisory opinion request as of May 13, 2011." Office of General Counsel staff members have posed a few follow-up questions about Mr. Colbert's completed request. We address in the enclosed document each of these questions as articulated by Office of General Counsel staff members.

Please let us know if you have any other questions concerning this Advisory Opinion Request.

Sincerely,



Trevor Potter
Joseph M. Birkenstock
Matthew T. Sanderson
Caplin & Drysdale, Chartered

Encl: Supplemental Answers for Advisory Opinion Request 2011-11

SUPPLEMENTAL ANSWERS FOR ADVISORY OPINION REQUEST 2011-11

1. Will all of the independent expenditure advertisements run by Colbert Super PAC be created by the staff of *The Colbert Report* and featured on the show?

The Colbert Report staff will produce all discussion of Colbert Super PAC on the show. It is intended that *The Colbert Report* staff will produce some of Colbert Super PAC's independent expenditure advertisements. Other PAC advertisements may be produced by outside entities and donated. It is unclear to what extent independent expenditure ads will be shown on other shows and networks, as that will depend, among other things, on Colbert Super PAC's available financial resources (although some certainly will be). Any independent expenditures run by Colbert Super PAC on other shows and networks would appear on *The Colbert Report* as well.

2. Does *The Colbert Report* have any history of making its content or videos available to outside groups - without cost - to run independently of the show?

Yes, *The Colbert Report* staff frequently produces videos using the show's resources and provides them free of charge to non-profit organizations.¹ These videos are not shown on *The Colbert Report* and are not approved by Viacom or Comedy Central. Viacom and Comedy Central also license video clips of materials that have actually appeared on *The Colbert Report* (and other Viacom/Comedy Central shows) to outside entities for a fee at industry-standard rates, which can be waived on a case-by-case basis.

3. What is the current review and approval process by Viacom and/or its subsidiaries for *The Colbert Report*? Is there advance approval of story lines, scripts, editing, completed shows, and website content? Is the process or will the process be the same for segments about and materials to be used by Colbert Super PAC? What if there is disagreement about what Colbert Super PAC should be doing—who will decide?

Viacom's review of *The Colbert Report* content is performed by lawyers and executives from Viacom's subsidiary, MTV Networks (Comedy Central's parent company). This review includes a review of scripts of *The Colbert Report* and, where appropriate, specific proposals or subjects regarding content of the show, to identify legal and commercial issues and to ensure compliance with MTV Networks' "standards and practices" for cable shows. This same process will remain in place after Colbert Super PAC's formation for segments on *The Colbert Report*, including those that discuss the PAC. (Content on Colbert Super PAC's website that does not

¹ Recipients of these videos include the Yellow Ribbon Fund, UN Correspondents Dinner, Humane Society, Lookingglass Theatre Company, National Association for Urban Debate Leagues, Newseum, Posse Foundation, Saginaw Spirit Hockey Club, TEDMED, University of Wisconsin-LaCrosse, and U.S.O.

appear on *The Colbert Report* will not be subject to this review process.) As Executive Producer of *The Colbert Report*, Mr. Colbert is and will remain principally responsible for formulation of the show's content, subject to this review process.

4. The current disclaimers on both *The Colbert Report* and the Colbert Super PAC websites say they are the property of MTV and Comedy Central. Will the Colbert Super PAC's intellectual property be or remain Viacom's? Will content created for the show that discusses Colbert Super PAC remain Viacom's intellectual property (including any potential independent expenditure ads run on the show)? If Mr. Colbert left Comedy Central for another show, would the content related to Colbert Super PAC (e.g., logo and ads) go with him or would it stay behind as the property of Comedy Central?

To clarify, no actual website for the soon-to-be-created Colbert Super PAC currently exists. As stated in the Advisory Opinion Request, "Colbert Super PAC" is to date only an on-air vehicle for discussing campaign finance rules and issues. Colbert Super PAC is not yet an entity and therefore cannot have a website. (There is a page on a Viacom website that says "Colbert Super PAC," but that is there solely as an illustrative visual device for the show.) After an actual Colbert Super PAC entity is formed, Colbert Super PAC will maintain a separate website not owned nor paid for by Viacom or its subsidiaries, and that website (and any unique content not produced for *The Colbert Report*) will be separately accounted for by Colbert Super PAC. Please note that this answer supersedes a previous representation about the PAC's website arrangement in the Advisory Opinion Request.

The content of any segment of *The Colbert Report* that discusses Colbert Super PAC, including any potential independent expenditure advertisements used on the show, as well as any logos related to *The Colbert Report* and *The Colbert Report* website, will remain the intellectual property of Viacom and its subsidiaries. By contrast, Colbert Super PAC will have ownership of its Super PAC logo and all "off-air" content.

5. Is anyone already accepting contributions for Colbert Super PAC?

No. Colbert Super PAC is not yet a legal entity and no individual is accepting contributions on its behalf. Funds collected by Mr. Colbert from the crowd outside the Commission after he filed his Advisory Opinion Request were not contributions to the PAC; they were \$1 bills received by Mr. Colbert personally as payment for shaking his hand.

6. Will there be links between *The Colbert Report*'s website and Colbert Super PAC's website?

As part of its content, Colbert Super PAC's website will contain links to *The Colbert Report*'s website. *The Colbert Report* may also place links on its website that direct Internet users to Colbert Super PAC's website, as the PAC will be an integral part of the show's content

after the PAC's formation. The use of links to the PAC website will be subject to Viacom's standard policy for hosting such links.

7. Is the continued operation of Colbert Super PAC's website and activities dependent on the show? If the show stopped covering Colbert Super PAC because it was thought to be stale or no longer funny, would Viacom cease providing support to it?

Colbert Super PAC could be operated by Mr. Colbert without reference to it on *The Colbert Report*. Mr. Colbert, however, does not foresee any circumstances under which the show would lose interest in something he is doing. Indeed, he expects that coverage of his off-set activities through the vehicle of Colbert Super PAC will provide significant additional content for the show.

8. The Advisory Opinion Request states that Mr. Colbert's personal activities have previously been a source of discussion or commentary on *The Colbert Report*. Has Viacom funded these similar activities? What examples of this do you have?

Mr. Colbert, as host of *The Colbert Report*, considers the segments about his political activity an essential and unique aspect of the show. As Mr. Colbert stated in a recent media interview, "[w]e throw ourselves into the pond of the news, and then we report on our own ripples."²

To that end, Mr. Colbert has placed himself in positions where his off-set actions and experiences can serve as material for the show. The Advisory Opinion Request provided the examples of the Mr. Colbert's "Hail to the Cheese Stephen Colbert Nacho Cheese Doritos 2008 Presidential Campaign"³ and the "Rally to Restore Sanity and/or Fear" that he co-hosted with Jon Stewart in October 2010.⁴ In addition to those two examples, *The Colbert Report* has featured Mr. Colbert's off-set activities on many occasions, including his congressional

² DB Ferguson, *Exclusive Interview with Rev. Sir Dr. Stephen T. Colbert*, *The No Fact Zone* (May 21, 2011), available at <http://www.nofactzone.net/2011/05/21/exclusive-interview-rev-sir-dr-stephen-t-colbert-d-f-a/>. See also Broadcasting and Cable, *Stephen Colbert at the Peabody Awards* (June 17, 2008), available at http://www.broadcastingcable.com/video/B_C_VIDEO/740-Stephen_Colbert_At_The_Peabody_Awards.php ("My friend Jon Stewart said that what he enjoys about his show is that he gets to sit in the back of the room and shoot spitballs at the news. We have the great fun on our show of turning ourselves into the spitball and shooting ourselves into the news. And our show is best when we inject ourselves into the center of the story. And then once we're in the story, anything that looks like us in the story is probably bullshit.").

³ See, e.g., *The Colbert Report, Hail to the Cheese – Campaign Coverage Finance* (Oct. 8, 2007), available at <http://www.colbertnation.com/the-colbert-report-videos/118650/october-18-2007/hail-to-the-cheesc---campaign-coverage-finance>.

⁴ See, e.g., *The Colbert Report, President Obama Endorse Rally to Restore Sanity* (Sept. 30, 2010), <http://www.colbertnation.com/the-colbert-report-videos/360638/september-30-2010/president-obama-endorses-the-rally-to-restore-sanity>.

testimony on immigration,⁵ his U.S.O. Tour to Baghdad,⁶ his public dispute with the Associated Press about the word "truthiness,"⁷ and his sponsorship of the U.S. Speedskating Team.⁸

These activities were all funded by Viacom.

9. Who would make decisions about Colbert Super PAC's independent expenditures and other activities? Who would make decisions about the content of Colbert Super PAC's website that will solicit contributions?

Mr. Colbert will make decisions related to Colbert Super PAC's independent expenditures and website.

10. Will Colbert Super PAC run independent expenditures for or against 2012 Presidential candidates or other federal candidates who Mr. Colbert interviews on *The Colbert Report*?

Mr. Colbert will not discuss with any federal candidate he interviews on *The Colbert Report* any campaign plans, projects, activities or needs if the candidate could be referenced in a Colbert Super PAC independent expenditure.

11. Which corporate entity within the Viacom family will provide support to the Colbert Super PAC, and what is its relation to Viacom?

The Colbert Report staff produces (and will continue to produce) all discussion of Colbert Super PAC on the show. These staff members of *The Colbert Report* are employees of Hello Doggie, a production company that produces the show under contract to Viacom. (Hello Doggie is not owned or controlled by any political party, committee, or candidate.) Viacom and its subsidiaries will provide support to Colbert Super PAC as described in this document and in the Advisory Opinion Request.

⁵ CSPAN, *Stephen Colbert Opening Statement* (Sept. 24, 2010), available at <http://www.youtube.com/watch?v=k1T75jBYeCs>.

⁶ Campbell Robertson, *In Iraq, Colbert Does His Schtick for the Troops*, N.Y. Times (June 7, 2009), available at <http://www.nytimes.com/2009/06/08/arts/television/08colb.html>.

⁷ Jake Coyle, *Colbert Says Associated Press Can't Handle the 'Truthiness'*, Associated Press (Jan. 13, 2006), available at <http://www.chron.com/disp/story.mpl/ent/celebrities/3585104.html>.

⁸ Sean Gregory, *Colbert to the Rescue: Can He Save U.S. Speedskating?*, Time (Nov. 3, 2009), available at <http://www.time.com/time/arts/article/0,8599,1934349,00.html>.