

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFT ADVISORY OPINION 2012-08 is now available for comment. It was requested by Eric M. Zolt, on behalf of Repledge, and is scheduled to be considered by the Commission at its public meeting on April 12, 2012. The meeting will begin at 10:00 a.m. and will be held in the 9th Floor Hearing Room at the Federal Election Commission, 999 E Street, NW, Washington, DC. Individuals who plan to attend the public meeting and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Commission Secretary, at (202) 694-1040, at least 72 hours prior to the meeting date.

If you wish to comment on DRAFT ADVISORY OPINION 2012-08, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on April 11, 2012.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fec.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.

FOR FURTHER INFORMATION

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth
(202) 694-1040

Comment Submission Procedure: Kevin Deeley
Acting Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2012-08, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of the Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
ATTN: Kevin Deeley, Esq.
Federal Election Commission
999 E Street, NW
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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
For Meeting of 4/12/12

April 5, 2012

MEMORANDUM

TO: The Commission

FROM: Anthony Herman *AH*
General Counsel

Kevin Deeley *KD*
Acting Associate General Counsel

Amy Rothstein *DCA for ALR*
Assistant General Counsel

Theodore Lutz *TL*
Attorney

Subject: Draft AO 2012-08 (Repledge)

2012 APR -5 P 5:01

FEDERAL ELECTION
COMMISSION
SECRETARIAT

Attached is a proposed draft of the subject advisory opinion. We have been asked to have this draft placed on the Open Session agenda for April 12, 2012.

Attachment

1 **ADVISORY OPINION 2012-08**

2 **Mr. Eric Zolt**
3 **546 South Rimpau Boulevard**
4 **Los Angeles, CA 90020**
5

DRAFT

6 **Dear Mr. Zolt:**

7 **We are responding to your advisory opinion request on behalf of Repledge,**
8 **concerning the application of the Federal Election Campaign Act of 1971, as amended**
9 **(the "Act"), and Commission regulations to Repledge's proposal. Repledge asks whether**
10 **(1) a pledge to make a contribution will be a contribution at the time of the pledge;**
11 **(2) Repledge will receive a contribution when it receives a fee for services rendered;**
12 **(3) Repledge will have the major purpose of influencing a Federal election (if the**
13 **Commission answers Questions 1 and 2 affirmatively); (4) a payment to Repledge will be**
14 **a contribution; (5) Repledge will make corporate contributions; (6) Repledge will**
15 **facilitate the making of contributions; (7) Repledge will act as a conduit or intermediary;**
16 **and (8) Repledge must file any reports with the Commission.**

17 **The Commission concludes that the Act and Commission regulations permit**
18 **Repledge to conduct the proposed activities described in its request and do not subject**
19 **Repledge to the reporting requirements in the Act and Commission regulations.**

20 ***Background***

21 **The facts presented in this advisory opinion are based on your letter received on**
22 **March 2, 2012.**

23 **Repledge is a corporation that was founded by Mr. Zolt and two of his colleagues**
24 **to enable individuals to remove equally pledged funds from political campaigns and**

1 redirect those funds to charitable purposes.¹ Repledge intends to establish a Web-based
2 platform that allows individuals to remove pledged funds in equal amounts from
3 opposing candidates for Federal office and to donate their funds, instead, to organizations
4 exempt from taxation under section 501(c)(3) of the Internal Revenue Code (“charities”).
5 Repledge’s Web-based platform will serve as “a virtual meeting place where supporters
6 of opposing Federal candidates can agree to refrain from making contributions to the
7 candidates’ principal campaign committees and instead direct their funds to charities.”
8 The platform will allow individuals who register with Repledge (“members”) to pledge
9 money to a Federal candidate and at the same time designate the charity that will receive
10 funds if the pledge is matched by supporters of the opposing candidate.

11 Repledge will provide its service through “Fund Drives.” Fund Drives will be
12 open to all members and will generally last from seven to 14 days. During a Fund Drive,
13 members will select their preferred candidate and charity. Members will make pledges
14 by entering their credit card information through a payment processor, such as PayPal or
15 WePay, and choosing the amount of their pledges. The payment processor will pre-
16 approve the amounts pledged for the remaining period of the Fund Drive, but the
17 amounts will not be charged to members’ credit card accounts and the ultimate recipients
18 of the pledged amounts will not be determined until the end of the Fund Drive.

19 At the end of the Fund Drive, the payment processor will charge the members’
20 credit cards. Repledge will inform the payment processor how to allocate the funds
21 among the listed charities and the Federal candidate, based on the percentage of the funds

¹ The founders of Repledge have not yet decided whether Repledge will operate as a for-profit or non-profit corporation.

1 that were matched by supporters of the opposing candidate and the percentage of funds
2 that were unmatched. After deducting its processing fee, the payment processor will set
3 up unique accounts for all potential recipients (the listed charities, the Federal candidate,
4 and Repledge) and will notify the recipients that they may withdraw the funds from their
5 respective accounts. The funds transferred as political contributions or charitable
6 donations will not be deposited in, or pass through, any Repledge account. Repledge will
7 disclose all transaction and processing fees and the amounts distributed to the respective
8 charities and political committees.

9 Repledge states that it will charge a commercially reasonable percentage-based
10 transaction fee that will cover operating costs plus a reasonable profit. Repledge
11 currently estimates the fee at one percent of the amounts pledged. Repledge also states
12 that the recipients of funds will receive their funds after the processing costs of credit
13 card transactions have been deducted by the payment processor.

14 Members may not pledge funds in excess of any contribution limits applicable to
15 contributions from individuals to candidates for Federal office, and Repledge will inform
16 members of the contribution amount limits established by 2 U.S.C. 441a. Repledge will
17 require each member to provide the member's name, mailing address, name of employer,
18 and occupation, and Repledge will provide recipients of contributions with this
19 information.² Finally, Repledge will require each member to confirm prior to donating

² The Repledge website will explain that:

Candidates and committees registered with the Federal Election Commission are required to use their best efforts to collect and report the name, address, employer and occupation of all individuals whose contributions to a federal committee exceed \$200 in an election cycle. We require you to enter this information so that we can provide it to those recipients of your contributions. This helps ensure that your contribution will be accepted.

1 that he or she may lawfully make a contribution.³

2 ***Questions Presented***

3 1. *Would a monetary pledge from a member to a Federal political committee and*
4 *charity, which is pre-approved by a third-party payment processor, charged to a*
5 *member's credit card, and which eventually results in a contribution to a Federal*
6 *committee or a donation to charity (depending on whether the pledge is matched*
7 *by a supporter of an opposing candidate or party), constitute a "contribution"*
8 *under 2 U.S.C. 431(8) at the time of the pledge?*

9 a. *Would such a pledge constitute a "contribution" under 2 U.S.C. 431(8) at*
10 *the time the pledge is made through Repledge, subject to the 10-day*
11 *forwarding requirement established by 11 CFR 102.8(a)?*

12 b. *Would any portion of such a pledge that results in a donation to a charity*
13 *(because all or part of the pledge is matched by a supporter of an*
14 *opposing candidate or party) nevertheless constitute a "contribution" for*
15 *the purposes of the contribution limits established by 2 U.S.C. 441a(a)?*

16 2. *Would Repledge's receipt of a small percentage-based transaction fee constitute*
17 *the receipt of a "contribution" by Repledge under 2 U.S.C. 431(8)?*

³ Repledge will require each member to check a box on the website to confirm that the following statements are true and accurate:

1. I am a United States citizen or a lawfully admitted permanent resident of the United States.
2. This contribution is not made from the general treasury funds of a corporation, labor organization or national bank.
3. This contribution is not made from the treasury funds of an entity or person who is a federal contractor.
4. This contribution is not made from the funds of a political action committee.
5. This contribution is not made from the funds of an individual registered as a federal lobbyist or a foreign agent, or an entity that is a federally registered lobbying firm or foreign agent.
6. I am not a minor under the age of 16.
7. The funds I am donating are not being provided to me by another person or entity for the purpose of making this contribution.

- 1 3. *If a monetary pledge from a Repledge member to a Federal committee or*
2 *Repledge's receipt of a small percentage-based transaction fee would constitute a*
3 *"contribution" under 2 U.S.C. 431(8), is Repledge's "major purpose"*
4 *influencing Federal candidate elections such that it would be required to organize*
5 *and register as a "political committee" under 2 U.S.C. 431(4) and 433 when and*
6 *if it exceeds the \$1,000 contribution threshold established by 2 U.S.C. 431(4)?*
- 7 4. *Would payment of a small percentage-based transaction fee to Repledge*
8 *constitute a contribution to the recipient political committee?*
- 9 5. *Would a Repledge member's contributions to political committees result in*
10 *impermissible corporate contributions from Repledge to those political*
11 *committees under 2 U.S.C. 441b?*
- 12 6. *Would a Repledge member's contributions to political committees cause Repledge*
13 *to violate the prohibition on a corporation "facilitating the making of*
14 *contributions to candidates or political committees" in 11 CFR 114.2(f)(1)?*
- 15 7. *Would a Repledge member's contributions to Federal committees cause Repledge*
16 *to violate the prohibition on a corporation "acting as a conduit for contributions*
17 *earmarked to candidates" in 11 CFR 110.6(b)(2)(ii)?*
- 18 8. *Would a Repledge member's contributions to Federal committees subject*
19 *Repledge to any reporting requirements of the Act or Commission regulations,*
20 *including but not limited to the "conduit and intermediary" reporting*
21 *requirements established by 11 CFR 110.6(c)?*

1 ***Legal Analysis and Conclusions***

2 1. *Would a monetary pledge from a member to a Federal political committee and*
3 *charity, which is pre-approved by a third-party payment processor, charged to a*
4 *member's credit card, and which eventually results in a contribution to a Federal*
5 *committee or a donation to charity (depending on whether the pledge is matched*
6 *by a supporter of an opposing candidate or party), constitute a "contribution"*
7 *under 2 U.S.C. 431(8) at the time of the pledge?*

8 a. *Would such a pledge constitute a "contribution" under 2 U.S.C. 431(8) at*
9 *the time the pledge is made through Repledge, subject to the 10-day*
10 *forwarding requirement established by 11 CFR 102.8(a)?*

11 b. *Would any portion of such a pledge that results in a donation to a charity*
12 *(because all or part of the pledge is matched by a supporter of an*
13 *opposing candidate or party) nevertheless constitute a "contribution" for*
14 *the purposes of the contribution limits established by 2 U.S.C. 441a(a)?*

15 No, a monetary pledge from a member to a Federal political committee and
16 charity as described in the request would not constitute a "contribution" under
17 2 U.S.C. 431(8) at the time of the pledge and would not be subject to the 10-day
18 forwarding requirement established by 11 CFR 102.8(a). Any portion of such a pledge
19 that results in a donation to a charity would not constitute a "contribution" for purposes
20 of the contribution limits established by 2 U.S.C. 441a(a).

21 Under the Act and Commission regulations, a "contribution" includes "any gift,
22 subscription, loan, advance, or deposit of money or anything of value made by any
23 person for the purpose of influencing any election for Federal office."

1 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a). “Anything of value” includes all in-kind
2 contributions, including the provision of goods or services without charge or at a charge
3 that is less than the usual and normal charge. 11 CFR 100.52(d)(1). The term “usual and
4 normal charge” means the price of goods in the market from which they ordinarily would
5 have been purchased at the time of the contribution, or the commercially reasonable rate
6 prevailing at the time that the services were rendered. *See* 11 CFR 100.52(d)(2); *see also*
7 11 CFR 100.51(a) (defining contribution as including “other things of value described in
8 this subpart”).

9 The Commission has previously distinguished between pledges and contributions.
10 In Advisory Opinion 2010-23 (CTIA – The Wireless Association), for example, the
11 Commission considered a proposal in which cell phone users would initiate contributions
12 to political committees by text message. The Commission stated that “a contribution
13 would be made at the time that a wireless subscriber pays a bill that includes a charge
14 resulting from a Code-initiated pledge to contribute – not at the time a pledge is made.”
15 *See also* Advisory Opinion 1990-14 (AT&T) (“When a person makes a 900 line phone
16 call, he or she has not yet made a contribution. The caller has merely pledged to make a
17 contribution[.]”).

18 Additionally, in Advisory Opinion 1985-29 (Breanx), the Commission determined
19 that an unsecured promise in a promissory note to pay interest to a candidate committee
20 was not a contribution. “[A]ny actual payment of interest,” however, the Commission
21 found, would be a contribution. Advisory Opinion 1985-29 (Breanx); *see also* Advisory
22 Opinion 1991-31 (Goss) (charitable donations made by an individual in the candidate’s

1 name “in lieu of contributions to the campaign” are not “something of value” to the
2 candidate and thus not contributions).

3 Similarly, here, a member will not provide “something of value” to a political
4 committee upon pledging funds to a Fund Drive. Repledge and its members may well
5 not know until the Fund Drive is over whether any of the pledged funds will result in a
6 political contribution. Indeed, if Repledge achieves its goals, all of the money pledged
7 during a Fund Drive will, after fees, be donated to charity.

8 The Commission’s conclusion that a pledge under Repledge’s proposal is not a
9 contribution is consistent with congressional intent and the history of the Act. Prior to
10 January 8, 1980, the Act stated that the term “contribution” included “a written contract,
11 promise, or agreement, whether or not legally enforceable.” 2 U.S.C. 431(e)(2) (1976);
12 *see also* 11 CFR 100.4(a)(3) (1977). In the 1979 amendments to the Act, however,
13 Congress removed that language from the definition of “contribution.” *See generally*
14 *Amendments to Federal Election Campaign Act of 1971, Pub. L. No. 96-187,*
15 *93 Stat. 1339 (1979).* In Advisory Opinion 1985-29 (Breux), the Commission explained
16 that “[t]he effect of such a repeal is that a mere promise to make a contribution is not by
17 itself subject to the Act as a contribution.”

18 Because a pledge under Repledge’s proposal does not constitute a contribution
19 under 2 U.S.C. 431(8), it is not subject to the requirement at 11 CFR 102.8 that
20 contributions received for an authorized committee be forwarded within ten days to the
21 treasurer of the authorized committee. For the same reason, any portion of a pledge that
22 results in a donation to charity does not count against the member’s contribution limits
23 under 2 U.S.C. 441a(a).

1 2. *Would Repledge's receipt of a small percentage-based transaction fee constitute*
2 *the receipt of a "contribution" by Repledge under 2 U.S.C. 431(8)?*

3 No, Repledge's receipt of a small percentage-based transaction fee will not
4 constitute the receipt of a contribution by Repledge under 2 U.S.C. 431(8).

5 As discussed in the response to Question 1, above, under the Act and Commission
6 regulations, a "contribution" includes "any gift, subscription, loan, advance, or deposit of
7 money or anything of value made by any person for the purpose of influencing any
8 election for Federal office." 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a).

9 The facts presented in the request indicate that Repledge will be organized and
10 operated solely to provide services to its members. The fees that Repledge proposes to
11 charge its members are in exchange for services rendered and are intended to be
12 commercially reasonable, to cover its operating costs, and to generate a reasonable profit.
13 Repledge will charge the same fees regardless of whether its members' pledges
14 ultimately result in contributions to a Federal candidate or donations to charity.

15 The funds that Repledge proposes to charge its members are materially
16 indistinguishable from the fees for services proposed by the requestors in a number of
17 recent advisory opinions. *See, e.g.,* Advisory Opinion 2011-19 (GivingSphere); Advisory
18 Opinion 2011-06 (Democracy Engine); Advisory Opinion 2006-08 (Brooks). As in those
19 advisory opinions, the Commission does not consider the fees that Repledge proposes to
20 charge its members to be contributions to Repledge under 2 U.S.C. 431(8).

21 3. *If a monetary pledge from a Repledge member to a Federal committee or*
22 *Repledge's receipt of a small percentage-based transaction fee would constitute a*
23 *"contribution" under 2 U.S.C. 431(8), is Repledge's "major purpose"*

1 *influencing Federal candidate elections such that it would be required to organize*
2 *and register as a "political committee" under 2 U.S.C. 431(4) and 433 when and*
3 *if it exceeded the \$1,000 contribution threshold established by 2 U.S.C. 431(4)?*

4 Because neither a monetary pledge from a Repledge member to a Federal
5 committee nor Repledge's receipt of a percentage-based transaction fee is a contribution,
6 this question is moot.

7 4. *Would payment of a small percentage-based transaction fee to Repledge*
8 *constitute a contribution to the recipient political committee?*

9 No, the payment of a small percentage-based transaction fee to Repledge will not
10 constitute a contribution to the recipient political committee, because the fee will not
11 relieve recipient political committees of a financial obligation that they otherwise would
12 have had to pay themselves.

13 As discussed in the response to Question 1, above, "anything of value" includes
14 all in-kind contributions, including the provision of goods or services without charge or at
15 a charge that is less than the usual and normal charge. 11 CFR 100.52(d)(1). The term
16 "usual and normal charge" means the price of goods in the market from which they
17 ordinarily would have been purchased at the time of the contribution, or the commercially
18 reasonable rate prevailing at the time that the services were rendered. *See*
19 11 CFR 100.52(d)(2).

20 The Commission has recently reaffirmed the distinction between companies that
21 provide services to political committees and those that provide services to contributors.
22 *See* Advisory Opinion 2011-19 (GivingSphere); Advisory Opinion 2011-06 (Democracy

1 Engine); *see also* Advisory Opinion 2007-04 (Atlatl); Advisory Opinion 2006-08
2 (Brooks).

3 Like the requestors in Advisory Opinion 2011-19 (GivingSphere), Advisory
4 Opinion 2011-06 (Democracy Engine), and Advisory Opinion 2006-08 (Brooks),
5 Repledge will provide its services “at the request and for the benefit of [its members], not
6 of the recipient political committees,” and thus will not “relieve the recipient political
7 committees of a financial burden that they would otherwise have had to pay for
8 themselves.” Advisory Opinion 2007-04 (Atlatl). Repledge members will access its
9 services through the Repledge website, and Repledge does not propose to enter into
10 contractual relationships with any of the recipient political committees. Further, as part
11 of its mission to redirect political contributions to charities, Repledge will process
12 donations to charity in addition to processing political contributions. *See* Advisory
13 Opinion 2007-04 (Atlatl). For its services, Repledge will charge its members a fee set to
14 cover costs and provide a profit. Under these facts, Repledge’s services will be provided
15 to its members and not to the recipient political committees, and the members’ fees will
16 not relieve recipient political committees of a financial burden they would otherwise have
17 to pay.

18 Accordingly, the payment of a small percentage-based transaction fee to Repledge
19 will not constitute a contribution to the recipient political committee.

20 5. *Would a Repledge member’s contributions to political committees result in*
21 *impermissible corporate contributions from Repledge to those political*
22 *committees under 2 U.S.C. 441b?*

1 No, a Repledge member's contributions to political committees would not result
2 in impermissible corporate contributions from Repledge to those political committees
3 under 2 U.S.C. 441b.

4 As discussed in the answer to Question 4, above, there is a distinction under the
5 Act between companies that provide services to political committees and those that
6 provide services to contributors. *See* Advisory Opinion 2011-19 (GivingSphere);
7 Advisory Opinion 2011-06 (Democracy Engine); *see also* Advisory Opinion 2007-04
8 (Atlatl); Advisory Opinion 2006-08 (Brooks). Companies that process contributions to
9 political committees as a service to the political committees must be compensated for
10 those services by the political committees to avoid making in-kind contributions.
11 Companies that process contributions as a service to the contributors, however, do not
12 need to be compensated for these services by the recipient political committees because
13 the companies are not providing any services or anything of value to the recipient
14 political committees. *See* Advisory Opinion 2011-19 (GivingSphere); Advisory Opinion
15 2011-06 (Democracy Engine); Advisory Opinion 2006-08 (Brooks); *see also* Advisory
16 Opinion 2010-21 (ReCellular) (concluding that a company is not required to charge a
17 political committee for costs already paid by the company's customers, as long as the
18 company "does not provide any services without charge, or at less than the usual and
19 normal charge").

20 Because the Commission has determined that Repledge will provide services at
21 the request and for the benefit of its members, and not recipient political committees,
22 Repledge's proposal would not result in impermissible contributions by Repledge to any
23 political committee.

1 6. *Would a Repledge member's contributions to political committees cause*
2 *Repledge to violate the prohibition on a corporation "facilitating the making of*
3 *contributions to candidates or political committees" in 11 CFR 114.2(f)(1)?*

4 No, a Repledge member's contributions to political committees would not cause
5 Repledge to violate the prohibition on a corporation "facilitating the making of
6 contributions to candidates or political committees" at 11 CFR 114.2(f).

7 Repledge does not propose to engage in fundraising for candidates. Instead,
8 Repledge will provide services at the request and for the benefit of its members, not
9 recipient political committees.⁴ Indeed, Repledge's business model contemplates
10 diverting funds away from political committees and to charitable organizations.

11 Accordingly, Repledge will not facilitate the making of contributions under
12 11 CFR 114.2(f)(1).

13 7. *Would a Repledge member's contributions to Federal committees cause Repledge*
14 *to violate the prohibition on a corporation "acting as a conduit for contributions*
15 *earmarked to candidates" in 11 CFR 110.6(b)(2)(ii)?*

16 No, a Repledge member's contributions to Federal committees would not cause
17 Repledge to violate the prohibition on a corporation "acting as a conduit for contributions
18 earmarked to candidates" at 11 CFR 110.6(b)(2)(ii).

19 The Act and Commission regulations provide for the earmarking of contributions
20 "made by a person, either directly or indirectly, on behalf of a particular candidate."

⁴ While 11 CFR 114.2(f)(1) provides that firms that provide goods or services as commercial vendors under 11 CFR part 116 do not facilitate the making of contributions, that provision does not apply here. 11 CFR part 116 requires a firm to provide "goods or services to a candidate or political committee" to qualify as a commercial vendor. As discussed above, however, Repledge will not provide any services to political committees. It will, instead, provide services to its customers. Thus, Repledge does not qualify as a commercial vendor in this context.

1 2 U.S.C. 441a(a)(8); 11 CFR 110.6. An earmarked contribution is one with a
2 “designation, instruction, or encumbrance, whether direct or indirect, express or implied,
3 oral or written, which results in all or any part of the contribution . . . being made to . . . a
4 clearly identified candidate or a candidate’s authorized committee.” 11 CFR 110.6.
5 “[A]ny person who receives and forwards an earmarked contribution to a candidate or a
6 candidate’s authorized committee” is a conduit or intermediary. 11 CFR 110.6(b)(2).
7 Any person prohibited from making contributions, such as a corporation, or expenditures
8 may not act as a conduit or intermediary. 11 CFR 110.6(b)(2)(ii).

9 The Commission has previously recognized that a key element of being a conduit
10 or intermediary is receiving and forwarding earmarked contributions to a candidate. *See*
11 *Advisory Opinion 2006-30 (ActBlue)* (a nonconnected committee is a conduit when it
12 “solicit[s] and receive[s]” earmarked contributions and subsequently transmits a check to
13 candidates “for the total amount of the earmarked contributions that it has received for
14 that candidate”); *see also* *Advisory Opinion 2004-19 (DollarVote)* (a corporation may not
15 “collect and forward earmarked contributions”). A person receives a contribution on “the
16 date such person obtains possession of the contribution.” 11 CFR 102.8(a). Under
17 Repledge’s business model, it will never take possession of any contributions because, as
18 Repledge states in its request, “[t]he funds transferred as political contributions or
19 charitable donations will not be deposited in, or pass through, any Repledge account.”
20 Instead, once a Fund Drive is complete, the payment processor will charge members’
21 credit cards for the amount of their pledges, deduct its transaction fees, and transfer the
22 funds to accounts that it has established for political committees, charities, and Repledge,
23 respectively.

1 Accordingly, Repledge will not be a conduit or intermediary under
2 11 CFR 110.6(b)(2).⁵

3 8. *Would a Repledge member's contributions to Federal committees subject*
4 *Repledge to any reporting requirements of the Act or Commission regulations,*
5 *including but not limited to the "conduit and intermediary" reporting*
6 *requirements established by 11 CFR 110.6(c)?*

7 No, a Repledge member's contributions to Federal committees will not subject
8 Repledge to any reporting requirements under the Act or Commission regulations,
9 including but not limited to the "conduit and intermediary" reporting requirements
10 established by 11 CFR 100.6(c).

11 The Act and Commission regulations require certain persons to file reports with
12 the Commission. For example, a "treasurer of a political committee shall file reports of
13 receipts and disbursements." *See* 2 U.S.C. 434(a)(1); 11 CFR 104.1. Persons who spend
14 above thresholds amounts on independent expenditures or electioneering communications
15 must file reports with the Commission. *See* 2 U.S.C. 434(c), (f); 11 CFR 104.20, 109.10.
16 Also, persons acting as conduits or intermediaries for earmarked contributions to
17 candidates and their committees must file reports with the Commission.
18 11 CFR 110.6(c).

19 Repledge is not a political committee, and therefore is not subject to the reporting
20 requirements for political committees. *See* 2 U.S.C. 434(a)(1); 11 CFR 104.1. Repledge

⁵ This conclusion is consistent with Advisory Opinion 2011-19 (GivingSphere), Advisory Opinion 2011-06 (Democracy Engine), Advisory Opinion 2010-23 (CTIA – The Wireless Association), Advisory Opinion 2010-21 (ReCellular), Advisory Opinion 2010-06 (Famos LLC), Advisory Opinion 2007-04 (Atlant), Advisory Opinion 2006-34 (Working Assets, Inc.), Advisory Opinion 2006-08 (Brooks), and Advisory Opinion 2002-07 (Careau). *But see* 2004-19 (DollarVote).

1 makes no representations indicating that it will engage in express advocacy. Thus, it will
2 not be subject to the reporting requirements for persons making independent
3 expenditures. *See* 2 U.S.C. 431(17) (“The term ‘independent expenditure’ means an
4 expenditure by a person . . . expressly advocating the election or defeat of a clearly
5 identified candidate”); *see also* 11 CFR 100.16. Moreover, given that all relevant
6 communications will take place on the Internet, Repledge’s proposal will not implicate
7 the reporting requirements for persons making electioneering communications. *See*
8 2 U.S.C. 434(f)(3)(A)(i) (“The term ‘electioneering communications’ means any
9 broadcast, cable, or satellite communications”); *see also* 11 CFR 100.29. Finally, as
10 explained in the response to Question 7, above, Repledge will not act as a conduit or
11 intermediary under 11 CFR 110.6. Thus, Repledge’s proposal would not subject it to any
12 reporting requirements under the Act or Commission regulations.

13 This response constitutes an advisory opinion concerning the application of the
14 Act and Commission regulations to the specific transaction or activity set forth in your
15 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
16 of the facts or assumptions presented, and such facts or assumptions are material to a
17 conclusion presented in this advisory opinion, then the requestor may not rely on that
18 conclusion as support for its proposed activity. Any person involved in any specific
19 transaction or activity which is indistinguishable in all its material aspects from the
20 transaction or activity with respect to which this advisory opinion is rendered may rely on
21 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
22 conclusions in this advisory opinion may be affected by subsequent developments in the
23 law, including, but not limited to, statutes, regulations, advisory opinions, and case law.

1 The cited advisory opinions are available on the Commission's website, www.fec.gov, or
2 directly from the Commission's Advisory Opinion searchable database at
3 <http://www.fec.gov/searchao>.

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On behalf of the Commission,

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Caroline C. Hunter

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Chair

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