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For meeting of July 23, 2014
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July 21, 2014

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson
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Subject: AO 2014-06 (Ryan, Ryan for Congress, and Prosperity Action)
Drafts A and B

Attached are proposed drafts of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinions. We are making these drafts available for comment until 9:00 am (Eastern Time) on July 23, 2014.

Members of the public may also attend the Commission meeting at which the drafts 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 <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2014-06

2

3 Timothy E. Kronquist, Esq.

4 Michael Bayes, Esq.

5 Holtzman Vogel Josefiak PLLC

6 45 North Hill Drive

7 Suite 100

8 Warrenton, VA 20186

9

DRAFT A

10 Dear Messrs. Kronquist and Bayes:

11 We are responding to your advisory opinion request on behalf of Representative Paul
12 Ryan, Ryan for Congress, Inc., and Prosperity Action, Inc., concerning the application of the
13 Federal Election Campaign Act, 2 U.S.C. §§ 431-57 (the “Act”), and Commission regulations to
14 the publication, promotion, purchase, and distribution of a book authored by Representative
15 Ryan. The Commission concludes that the requestors may engage in the proposed activities in
16 accordance with the requirements described below.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on June 30,
19 2014.

20 Representative Ryan is a member of the U.S. House of Representatives representing the
21 First Congressional District of Wisconsin, and he is a candidate for re-election to the House of
22 Representatives. Ryan for Congress is Representative Ryan’s principal campaign committee.
23 Prosperity Action is a leadership PAC sponsored by Representative Ryan.

24 In August 2014, Grand Central Publishing (the “Publisher”), a division of the
25 international publishing company Hachette Book Group, will publish a book authored by
26 Representative Ryan entitled *The Way Forward*. The book will address “the state of the
27 conservative movement in America today, discuss how it contrasts with liberal progressivism,
28 and explain what must be done to save what Representative Ryan refers to as the ‘American

1 Idea.” Advisory Opinion Request at 2 (June 30, 2014) (“AOR”). The Publisher will promote
2 and market the book through a variety of events in which Representative Ryan will participate,
3 including a promotional bus tour to various cities around the country, book signings, media
4 appearances on national and local television and radio shows, and interviews with print and
5 online media. Although the bus tour will not travel through or stop in Wisconsin, some of the
6 television and radio appearances and print and online media interviews will likely be available
7 within media markets covering Representative Ryan’s district. The Publisher intends to pay all
8 costs associated with obtaining and operating the tour bus.

9 Representative Ryan’s agreement with the Publisher provides for the payment to
10 Representative Ryan of royalties based on what the request describes as an industry-standard
11 percentage of net sales revenue. The request states that there will be no advance payment of
12 royalties to Representative Ryan, in accordance with Rule 25 of the Rules of the House of
13 Representatives. The request also states that all costs incurred by the Publisher in connection
14 with the promotional bus tour will be in accordance with the agreement and the Rules of the
15 House of Representatives, which require that such activities be conducted on the same or equal
16 terms as are made available to other authors who are not Members of Congress.

17 Ryan for Congress and Prosperity Action each propose to purchase copies of the book to
18 be distributed solely to their respective supporters and contributors. Both Ryan for Congress and
19 Prosperity Action would purchase the book in bulk directly from the Publisher at the standard
20 discounted bulk rate the Publisher offers, under normal industry practice, to other large
21 purchasers. Neither Ryan for Congress nor Prosperity Action will purchase more books than the
22 number needed to fulfill the purpose of distribution to each entity’s supporters and contributors.
23 The Publisher will be instructed to exclude all associated royalties from the bulk purchases by

1 both entities from the royalty calculation, and the Publisher will donate any royalties generated
2 by these purchases directly to a section 501(c)(3) charitable organization that is not in any way
3 associated with Representative Ryan or his family.

4 Representative Ryan and Ryan for Congress wish to advertise and market the sale of the
5 book in various ways. Ryan for Congress plans to promote the book on its website, which is
6 updated daily. Any references or information related to the Representative's book on this
7 website would be limited to one-to-two sentences in length — including hyperlinks directing
8 readers to the Publisher's website or to an online book seller (such as Amazon.com) — except
9 that Ryan for Congress would like to include on its website longer references to the book if the
10 Act and Commission regulations so permit. Ryan for Congress states that the cost of placing the
11 promotional material on its website would be *de minimis*. Ryan for Congress also plans to
12 promote the book through information and hyperlinks distributed via its social media pages,
13 including Twitter and Facebook. References or information related to the book on social media
14 would include information regarding buying the book or attending book tour events and
15 appearances, and similar promotional content.

16 Prosperity Action also wishes to advertise and market the sale of the book on its website
17 and social media pages. Such references to the Representative's book would provide basic
18 information about it and give details regarding purchasing the book or attending book tour events
19 and appearances, and similar promotional content.

20 As part of its fundraising appeals and other efforts to advocate Representative Ryan's re-
21 election, Ryan for Congress plans to send to its existing email lists emails that reference the
22 Representative's book. Prosperity Action likewise plans to send to its existing email lists emails

1 that reference the book for fundraising purposes and in the context of other election-related
2 activities for the purpose of influencing one or more elections for federal office.

3 Representative Ryan intends to use personal funds to purchase or rent email and mailing
4 lists maintained by both Ryan for Congress and Prosperity Action. Representative Ryan intends
5 to use these lists to promote his book, such as by sending emails announcing its publication.

6 Representative Ryan will enter into separate list rental agreements with Ryan for Congress and
7 Prosperity Action. Each agreement will provide for Representative Ryan to pay the fair market
8 value for renting the lists, as determined by an independent list appraisal. The request further
9 states that the list rental agreements will comply with the requirements set forth in Advisory
10 Opinion 2002-14 (Libertarian National Committee).

11 ***Questions Presented***

12 *1a. May Ryan for Congress use campaign funds to purchase copies of The Way Forward*
13 *directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to*
14 *Ryan for Congress supporters and for other campaign-related activities?*

15 *1b. Does Ryan for Congress's purchase of books from the Publisher at the standard,*
16 *discounted bulk rate result in an in-kind contribution from the Publisher to Ryan for Congress?*

17 *2a. May Prosperity Action use committee funds to purchase copies of The Way Forward*
18 *directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to*
19 *Prosperity Action supporters and for other election-related activities?*

20 *2b. Does Prosperity Action's purchase of books from the Publisher at the standard,*
21 *discounted bulk rate result in an in-kind contribution from the Publisher to Prosperity Action?*

22 *3. May Ryan for Congress place material promoting The Way Forward on its website and*
23 *social media pages so long as the cost of doing so is de minimis?*

1 4. *May Prosperity Action place material promoting The Way Forward on its website and*
2 *social media pages?*

3 5. *May Representative Ryan use the Ryan for Congress and Prosperity Action email and*
4 *mailing lists to promote the sale of The Way Forward if Representative Ryan reimburses each*
5 *committee for the lists' fair market value based on an independent list appraisal?*

6 6. *Are the Publisher's costs and expenses for the publication of Representative Ryan's book*
7 *covered by the media exemption?*

8 7. *Is the Publisher's payment of costs incurred in connection with the promotion of*
9 *Representative Ryan's book, including a bus tour, covered by the media exemption?*

10 8. *Are the Publisher's costs and expenses for the publication and promotion of*
11 *Representative Ryan's book exempt from the Act's regulation because they are bona fide*
12 *commercial activity?*

13 ***Legal Analysis and Conclusions***

14 1a. *May Ryan for Congress use campaign funds to purchase copies of The Way Forward*
15 *directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to*
16 *Ryan for Congress supporters and for other campaign-related activities?*

17 Yes, Ryan for Congress may use campaign funds to purchase copies of the book from the
18 Publisher at the standard discounted bulk rate for distribution to supporters and for other
19 campaign-related activities.

20 Under the Act and Commission regulations, an authorized committee may spend its funds
21 to finance activities "in connection with the candidate's campaign for federal office." 2 U.S.C.
22 § 439a(a)(1); 11 C.F.R. § 113.2(a) (providing that campaign funds may be used to "defray[]
23 expenses in connection with a campaign for federal office"). Such spending must not, however,

1 result in the conversion of campaign funds to the personal use of the candidate or any other
2 person. 2 U.S.C. § 439a(b); 11 C.F.R. §§ 113.1(g), 113.2(e).

3 The Act provides that campaign funds “shall be considered to be converted to personal
4 use if [the funds are] used to fulfill any commitment, obligation or expense of a person that
5 would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of
6 Federal office.” 2 U.S.C. § 439a(b); *see also* 11 C.F.R. § 113.1(g). The Act and Commission
7 regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use.
8 2 U.S.C. § 439a(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses of campaign funds not on this list,
9 the Commission determines, on a case-by-case basis, whether they constitute personal use. 11
10 C.F.R. § 113.1(g)(1)(ii).

11 The purchase of a candidate’s book is not one of the *per se* personal uses listed in the Act
12 and Commission regulations. *See* 2 U.S.C. § 439a(b)(2); 11 C.F.R. § 113.1(g)(1)(i).
13 Accordingly, the Commission determines on a case-by-case basis whether such a purchase by an
14 authorized committee is personal use. *See, e.g.*, Advisory Opinion 2011-02 (Brown); Advisory
15 Opinion 2006-18 (Granger); Advisory Opinion 2004-18 (Lieberman); Advisory Opinion 2001-
16 08 (Specter); Advisory Opinion 1995-46 (D’Amato); Advisory Opinion 1993-20 (Nighthorse
17 Campbell).

18 The facts presented in this request are particularly similar to those presented in Advisory
19 Opinion 2001-08 (Specter) and Advisory Opinion 2011-02 (Brown). In each of those advisory
20 opinions, the Commission determined that the authorized committee’s use of campaign funds to
21 purchase copies of its candidate’s book would defray an expense that would not exist irrespective
22 of the campaign, and therefore the spending would not be an impermissible personal use. The
23 Commission’s conclusion in each of those advisory opinions was based on several facts: The

1 authorized committee's funds would be used to purchase the book solely for distribution to the
2 committee's contributors and supporters, and thus would be used by the committee only for the
3 purpose of influencing its candidate's election to federal office; the quantity purchased would not
4 exceed the number needed for this described purpose; all royalties attributable to the committee's
5 purchase would be paid by the publisher to charity; and the committee's purchase would be
6 excluded by the publisher from the royalty calculation. Advisory Opinion 2011-02 (Brown) at
7 5-6; Advisory Opinion 2001-08 (Specter) at 3.

8 Similarly here, Ryan for Congress's funds would be used to purchase the book solely for
9 distribution to contributors and supporters, and the quantity purchased would not exceed the
10 number needed for such distribution. Thus the purchased books would be used by Ryan for
11 Congress only "in connection with" Representative Ryan's election. *See* 2 U.S.C. § 439a(a)(1);
12 11 C.F.R. § 113.2(a).

13 The requestors' proposal is also consistent with the Commission's prior conclusions
14 regarding a candidate's book royalties. The Commission concluded in Advisory Opinion 2001-
15 08 (Specter) and Advisory Opinion 2011-02 (Brown) that no personal use results if the publisher
16 (1) donates the candidate's royalties for his campaign's book purchases to a charitable
17 organization that is not associated with the candidate and (2) excludes such sales from the
18 calculation of royalties that accrue to the candidate. These are precisely the terms of the
19 agreement proposed between Representative Ryan and the Publisher here. Consistent with prior
20 Commission advice, the Publisher's direct contribution to charity of royalties from Ryan for

1 Congress's purchase of the book will not result in conversion of campaign funds to
2 Representative Ryan's personal use.¹

3 Accordingly, as in Advisory Opinion 2001-08 (Specter) and Advisory Opinion 2011-02
4 (Brown), the Commission concludes that Ryan for Congress's proposed use of campaign funds
5 to purchase Representative Ryan's book for distribution to contributors and supporters will
6 defray an expense that would not exist irrespective of his campaign and will not be an
7 impermissible personal use of campaign funds.

8 *Ib.* Does Ryan for Congress's purchase of books from the Publisher at the standard,
9 discounted bulk rate result in an in-kind contribution from the Publisher to Ryan for Congress?

10 No, Ryan for Congress's purchase of books from the Publisher at the standard,
11 discounted bulk rate does not result in an in-kind contribution from the Publisher to Ryan for
12 Congress.

13 The term "contribution" includes "anything of value" given for the purpose of
14 influencing an election or given by a corporation to a political committee in connection with a
15 federal election. 2 U.S.C. §§ 431(8)(A)(i), 441b(b)(2); 11 C.F.R. §§ 100.7(a)(1), 114.1(a)(1).
16 "Anything of value" includes providing goods or services at less than the usual and normal
17 charge. 11 C.F.R. § 100.7(a)(1)(iii)(A). The "usual and normal charge" for goods is the price of
18 those goods in the market from which they ordinarily would have been purchased at the time of
19 the transaction at issue. 11 C.F.R. § 100.7(a)(1)(iii)(B). The sale of goods or services at a
20 discount does not result in a contribution when the discount is made available in the ordinary
21 course of business and on the same terms and conditions to the vendor's other customers that are

¹ Representative Ryan "must also not receive any personal benefit, tangible or intangible, for the royalties the Publisher donates to charity for the sales of the book to [his campaign committee]." Advisory Opinion 2011-02 (Brown) at 6.

1 not political organizations or committees. *See, e.g.*, Advisory Opinion 2004-18 (Lieberman) at
2 3; Advisory Opinion 2001-08 (Specter) at 3; Advisory Opinion 1996-02 (CompuServe);
3 Advisory Opinion 1995-46 (D’Amato) at 3.

4 As in Advisory Opinion 2004-18 (Lieberman) and Advisory Opinion 2001-08 (Specter),
5 Ryan for Congress indicates that the bulk rate it will pay is a standard, discounted price that the
6 Publisher, under normal industry practice, makes available on equal terms to other bulk
7 purchasers that are not political organizations or committees. Accordingly, the Commission
8 concludes that Ryan for Congress’s payment of the standard, discounted bulk rate will not result
9 in a contribution from the Publisher.

10 *2a. May Prosperity Action use committee funds to purchase copies of The Way Forward*
11 *directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to*
12 *Prosperity Action supporters and for other election-related activities?*

13 Yes, Prosperity Action may use committee funds to purchase copies of the book from the
14 Publisher at the standard, discounted bulk rate for subsequent distribution to Prosperity Action’s
15 supporters and for other election-related activities.

16 A leadership PAC is “a political committee that is directly or indirectly established,
17 financed, maintained or controlled by [a federal candidate or officeholder] but which is not an
18 authorized committee of the candidate or individual and which is not affiliated with an
19 authorized committee of the candidate or individual.” 2 U.S.C. § 434(i)(8)(B); *see also* 11
20 C.F.R. § 100.5(e)(6). The Act’s personal use prohibition, as implemented in Commission
21 regulations, applies only to “use of funds in a campaign account,” *i.e.*, to authorized committees.
22 *See* 11 C.F.R. § 113.1(g). A leadership PAC is not an authorized committee and therefore is not
23 subject to the personal use prohibition. Accordingly, the Commission concludes that Prosperity

1 Action may use committee funds to purchase copies of Representative Ryan's book from the
2 Publisher for distribution to its supporters and for other election-related activities.

3 *2b. Does Prosperity Action's purchase of books from the Publisher at the standard,*
4 *discounted bulk rate result in an in-kind contribution from the Publisher to Prosperity Action?*

5 No, Prosperity Action's purchase of books from the Publisher at the standard, discounted
6 bulk rate does not result in an in-kind contribution from the Publisher to Prosperity Action.

7 As discussed above with respect to Ryan for Congress's purchase of books at the
8 discounted bulk rate, the sale of goods or services at a discount does not result in a contribution
9 when the discount is made available in the ordinary course of business and on the same terms
10 and conditions to the vendor's other customers that are not political organizations or committees.
11 As in Advisory Opinion 2004-18 (Lieberman) and Advisory Opinion 2001-08 (Specter),
12 Prosperity Action indicates that the bulk rate it will pay is a standard, discounted price that the
13 Publisher, under normal industry practice, makes available on equal terms to other purchasers
14 that are not political organizations or committees. Accordingly, the Commission concludes that
15 Prosperity Action's payment of the standard, discounted bulk rate will not result in a contribution
16 from the Publisher.

17 *3. May Ryan for Congress place material promoting The Way Forward on its website and*
18 *social media pages so long as the cost of doing so is de minimis?*

19 Yes, Ryan for Congress may post a *de minimis* amount of material promoting the book on
20 its website and social media pages at a *de minimis* cost.

21 The Act provides that an unlawful conversion of campaign funds to personal use occurs
22 when such funds are "used to fulfill any commitment, obligation, or expense of a person that
23 would exist irrespective of the candidate's election campaign or individual's duties as a holder of

1 Federal office.” 2 U.S.C. § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g). The Commission has
2 previously determined that the expenses associated with marketing a book that a commercial
3 publisher publishes and for which it pays royalties to the candidate are expenses that would exist
4 irrespective of the candidate’s election campaign or duties as a federal officeholder. *See*
5 Advisory Opinion 2011-02 (Brown) at 6; Advisory Opinion 2006-07 (Hayworth) at 3; Advisory
6 Opinion 2006-18 (Granger) at 3. Therefore, the use of an authorized committee’s asset, such as
7 its website, to promote the candidate’s book would ordinarily constitute a prohibited personal
8 use. *See* Advisory Opinion 2011-02 (Brown) at 6; Advisory Opinion 2006-07 (Hayworth) at 3;
9 Advisory Opinion 2006-18 (Granger) at 3.

10 However, the Commission also previously has concluded that the addition of a small
11 amount of promotional material about a candidate’s book to an authorized committee’s website
12 or social media pages does not constitute a prohibited personal use of campaign funds, provided
13 that both the amount of promotional material and the cost to the committee are *de minimis*. *See*
14 Advisory Opinion 2011-02 (Brown) at 7; Advisory Opinion 2006-07 (Hayworth) at 3. In one
15 instance, the Commission concluded that a proposal to post promotional material comprising up
16 to 25 percent of the authorized committee’s website’s homepage, 25 percent of the committee’s
17 Facebook page, 10 percent of the committee’s Twitter page, and 25 percent of the candidate’s
18 LinkedIn page may not represent a *de minimis* amount of material. Advisory Opinion 2011-02
19 (Brown) at 7. In another instance, the Commission concluded that the addition of one or two
20 sentences of promotional material about a candidate’s book to an authorized committee’s
21 substantial website was *de minimis*. Advisory Opinion 2006-07 (Hayworth) at 3.

22 Here, Ryan for Congress proposes to promote the book on its website, limiting references
23 to the book to one or two sentences that include hyperlinks to additional information on the

1 Publisher’s website or to online booksellers. Ryan for Congress states that the cost of adding
2 this material to the committee’s website would be *de minimis*. The committee also proposes to
3 promote the book through similar brief references and hyperlinks on its social media pages,
4 which, the request notes, are generally free to use.² The Commission concludes that the amount
5 and cost of such material promoting the book are *de minimis* and Ryan for Congress may place
6 them on its website and social media pages.

7 4. *May Prosperity Action place material promoting The Way Forward on its website and*
8 *social media pages?*

9 Yes, Prosperity Action may place material promoting *The Way Forward* on its website
10 and social media pages.

11 As discussed above, the personal use prohibition applies only to “use of funds in a
12 campaign account.” 11 C.F.R. § 113.1(g). Because a leadership PAC is not a campaign
13 committee, the personal use provision that limits Ryan for Congress’s promotion of
14 Representative Ryan’s book to *de minimis* cost and a *de minimis* amount of material does not
15 govern Prosperity Action’s promotion of the book.

16 Commission regulations nonetheless limit payments by third parties of candidates’ and
17 campaign committees’ expenses. Generally, “[n]otwithstanding that the use of funds for a
18 particular expense would be a personal use . . . payment of that expense by any person other than
19 the candidate or the campaign committee shall be a contribution . . . unless the payment would
20 have been made irrespective of the candidacy.” 11 C.F.R. § 113.1(g)(6). This “irrespective” test
21 asks whether the third party would pay the expense if the candidate were not running for election

² Paid advertising can be purchased on Facebook and Twitter, but such advertising “is not contemplated here.” AOR at 9.

1 to federal office: If the answer is yes, then the payment does not constitute a contribution. As
2 the Commission has explained, “[i]f a third party pays for the candidate’s personal expenses, but
3 would not ordinarily have done so if that candidate were not running for office, the third party is
4 effectively making the payment for the purpose of assisting that candidacy.” Expenditures;
5 Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7871
6 (Feb. 9, 1995).³

7 Here, Prosperity Action proposes to market Representative Ryan’s book. As discussed
8 above, expenses associated with marketing a book that a commercial publisher publishes and for
9 which it pays royalties to the author are personal expenses that would exist irrespective of the
10 author’s election campaign or duties as a federal officeholder. Therefore, payment of those
11 expenses by a third party is a contribution unless the payment would have been made even if the
12 candidate were not running for office.

13 The request explains that Prosperity Action wishes to promote Representative Ryan’s
14 book “for fundraising purposes and other election related activities for the purpose of influencing
15 one or more elections for federal office.” *See* AOR at 3. Raising funds and supporting other
16 candidates are standard, ongoing activities for leadership PACs, and because leadership PACs
17 are formed (in part) to heighten their sponsors’ profiles, Prosperity Action would presumably
18 further these goals by promoting Representative Ryan’s book irrespective of whether he
19 happened to be a candidate for re-election at the time of publication. Accordingly, Prosperity

³ This “irrespective” test operates differently from the “irrespective” test in the personal use provision at 11 C.F.R. § 113.1(g). Under the personal use provision — which applies to campaign committees — Ryan for Congress’s plan is permissible if the expenses it intends to pay *would not* exist irrespective of Representative Ryan’s candidacy. *See supra* Question 1a. Under section 113.1(g)(6) — which applies to entities other than candidates and campaign committees — Prosperity Action’s plan is permissible if it *would* pay the expenses at issue irrespective of Representative Ryan’s candidacy.

1 Action may place material promoting the book on its website and social media pages without
2 limiting such material to a *de minimis* amount or cost.

3 5. *May Representative Ryan use the Ryan for Congress and Prosperity Action email and*
4 *mailing lists to promote the sale of The Way Forward if Representative Ryan reimburses each*
5 *committee for the lists' fair market value based on an independent list appraisal?*

6 Yes, Representative Ryan may use the Ryan for Congress and Prosperity Action email
7 and mailing lists to promote the sale of *The Way Forward* if Representative Ryan reimburses
8 each committee for its lists' fair market value.

9 The Commission has long recognized that a political committee's mailing lists are assets
10 that have value and that are frequently sold, rented, or exchanged in a market. *See, e.g.,*
11 *Advisory Opinion 2011-02 (Brown) at 7-8; Advisory Opinion 2002-14 (Libertarian National*
12 *Committee) at 4-5; Advisory Opinion 1982-41 (Dellums) at 2; Advisory Opinion 1981-46*
13 *(Dellums) at 2.* Thus, as to Representative Ryan's rental of Ryan for Congress's mailing lists,
14 the relevant question is whether the Representative's rental constitutes personal use of the
15 Committee's asset. Commission regulations provide that "the transfer of a campaign committee
16 asset is not personal use so long as the transfer is for fair market value." 11 C.F.R. § 113.1(g)(3).
17 Accordingly, Representative Ryan's proposal to rent his campaign committee's mailing lists for
18 their fair market value, as determined by an independent list broker, is permissible.

19 As discussed above, the personal use prohibition implemented in 11 C.F.R. § 113.1(g)
20 does not apply to leadership PACs, but 11 C.F.R. § 113.1(g)(6) provides that third-party
21 defrayals of a candidate's expenses that would otherwise constitute personal use are
22 contributions to that candidate. By providing its mailing list to Representative Ryan for purposes
23 of marketing his book, Prosperity Action would defray some of his personal marketing expenses,

1 and therefore section 113.1(g)(6) is potentially implicated here. The Commission has
2 determined, however, that no contribution results when a political committee leases its mailing
3 list, provided that: (1) the mailing list has an ascertainable fair market value; (2) the political
4 committee leases the mailing list at the usual and normal charge in a *bona fide*, arm's-length
5 transaction; and (3) the list is used in a commercially reasonable manner consistent with such
6 arm's-length agreement. Advisory Opinion 2002-14 (Libertarian National Committee) at 4.
7 Representative Ryan proposes to enter into a list rental agreement with Prosperity Action that
8 will comply with the requirements of Advisory Opinion 2002-14 (Libertarian National
9 Committee), including payment of fair market value for the lists. Therefore, Representative
10 Ryan's rental of Prosperity Action's mailing lists will not result in a contribution by Prosperity
11 Action to Representative Ryan under 11 C.F.R. § 113.1(g)(6).⁴

12 6. *Are the Publisher's costs and expenses for the publication of Representative Ryan's book*
13 *covered by the media exemption?*

14 7. *Is the Publisher's payment of costs incurred in connection with the promotion of*
15 *Representative Ryan's book, including a bus tour, covered by the media exemption?*

16 8. *Are the Publisher's costs and expenses for the publication and promotion of*
17 *Representative Ryan's book exempt from the Act's regulation because they are bona fide*
18 *commercial activity?*

19 Yes, the Publisher's costs and expenses for the publication and promotion of
20 Representative Ryan's book are exempt from the Act's regulation because (a) they are covered
21 by the media exemption and (b) they are *bona fide* commercial activity.

⁴ The rental payments at fair market value also will not constitute contributions from Representative Ryan to Prosperity Action. See Advisory Opinion 2002-14 (Libertarian National Committee) at 5.

1 (a) The Book Publisher is Exempt Under the Media Exemption

2 Under the Act, “[t]he term ‘expenditure’ does not include . . . any news story,
3 commentary, or editorial distributed through the facilities of any broadcasting station,
4 newspaper, magazine, or other periodical publication, unless such facilities are owned or
5 controlled by any political party, political committee, or candidate.” 2 U.S.C. § 431(9)(B)(i); *see*
6 *also* 11 C.F.R. §§ 100.73, 100.132. This exclusion is known as the media exemption.

7 The legislative history of the media exemption indicates that Congress did not intend to
8 “limit or burden in any way the First Amendment freedoms of the press and of association. [The
9 exemption] assures the unfettered right of the newspapers, TV networks, and other media to
10 cover and comment on political campaigns.” H.R. Rep. No. 93-1239 at 4 (1974). Consistent
11 with the Act’s legislative history, the Commission and courts have recognized media covered by
12 the exemption to include magazines,⁵ newsletters,⁶ cartoons,⁷ cable television,⁸ the Internet,⁹
13 webcasts,¹⁰ satellite broadcasts,¹¹ documentary films,¹² radio talk shows,¹³ and even rallies

⁵ MUR 3607 (Northwest Airlines, Inc. and *World Traveler Magazine*); MUR 3660 (*Flower & Garden Magazine*); *Readers Digest Ass’n, Inc. v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

⁶ *FEC v. Phillips Publishing, Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981) (concerning the newsletter “*Pink Sheet on the Left*”).

⁷ MUR 3500 (Brown for President, *et al.*).

⁸ *Explanation and Justification for Final Rules on Candidate Debates and News Stories*, 61 Fed. Reg. 18049 (Apr. 24, 1996); Advisory Opinion 1998-17 (Daniels Cablevision); Advisory Opinion 2003-34 (Showtime); *see also Turner Broadcasting, Inc. v. FCC*, 512 U.S. 622, 636 (1994) (cable stations “engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment”); *Leathers v. Medlock*, 499 U.S. 439, 444 (1991) (“Cable television provides to its subscribers news, information, and entertainment. It is engaged in ‘speech’ under the First Amendment, and is, in much of its operation, part of the ‘press’.”).

⁹ *Explanation and Justification for Final Rules on Internet Communications*, 71 Fed. Reg. 18589 (Apr. 12, 2006); Advisory Opinion 2005-16 (FiredUp!); Advisory Opinion 2008-14 (Melothe).

¹⁰ Advisory Opinion 1996-16 (Bloomberg).

¹¹ Advisory Opinion 2007-20 (XM Radio).

1 staged and broadcast by a radio talk show.¹⁴ “The Commission has not limited the press
2 exemption to traditional news outlets, but rather has applied it to ‘news stories, commentaries,
3 and editorials, *no matter in what medium they are published . . .*’” Advisory Opinion 2008-14
4 (Melothe, Inc.) at 3 (*quoting Explanation and Justification for the Regulations on Internet
5 Communications*, 71 Fed. Reg. 18589, 18608-18609 (Apr. 12, 2006)).¹⁵

6 The Commission historically has conducted a two-step analysis to determine whether the
7 media exemption applies. *See, e.g.*, Advisory Opinion 2010-08 (Citizens United) at 4-7;
8 Advisory Opinion 2005-16 (Fired Up!) at 4-6. First, the Commission asks whether the entity
9 engaging in the activity is a press or media entity. *See, e.g.*, Advisory Opinion 2010-08 (Citizens
10 United) at 5-6; Advisory Opinion 2005-16 (Fired Up!) at 5. If so, the media exemption applies
11 as long as the entity (a) is not owned or controlled by a political party, political committee, or
12 candidate, and (b) is acting as a press entity in conducting the activity at issue. Advisory
13 Opinion 2010-08 (Citizens United) at 6-7; Advisory Opinion 2005-16 (Fired Up!) at 6; *see also*
14 *Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

15 “Neither the Act nor Commission regulations use or define the term ‘press entity.’

¹² Advisory Opinion 2010-08 (Citizens United); *see also United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 166 (1948) (“We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment.”).

¹³ MUR 3624 (Bush-Quayle ’92 General Committee, *et al.*).

¹⁴ *See* MUR 5569 (The John and Ken Show, *et al.*), First General Counsel’s Report at 9 (in a matter where a radio talk show expressly advocated the election and defeat of Federal candidates, and that also staged and broadcast public rallies outside the offices of Federal candidates, the Commission concluded that the media exemption applied to the rallies because they were “similar in form to other broadcast events featured on the Show” which were “within the media exemption.”).

¹⁵ *See also* Advisory Opinion 2010-08 (Citizens United) (same). Although one early Commission advisory opinion narrowly concluded that the exemption covered only the explicitly enumerated media, *see* Advisory Opinion 1987-08 (AIG/U.S. News), the Commission has abandoned that narrow interpretation of the exemption. Commission actions since that time, as well as court opinions, have read the press exemption to include a broad array of “other media” formats.

1 Therefore, when determining whether the term applies to a particular entity, the Commission has
2 focused on whether the entity in question produces on a regular basis a program that
3 disseminates news stories, commentary, and/or editorials.” Advisory Opinion 2010-08 (Citizens
4 United) at 5 (*citing* Advisory Opinion 2008-14 (Melothe, Inc); Advisory Opinion 2007-20 (XM
5 Radio) and Advisory Opinion 2005-19 (Inside Track)). Also of relevance here, the publication
6 of books is a well-established medium for disseminating political and social commentary and is
7 protected by the free press clause of the First Amendment. *See, e.g. Bantam Books, Inc. v.*
8 *Sullivan*, 372 U.S. 58, 65 n.6 (1963) (“The constitutional guarantee of freedom of the press
9 embraces the circulation of books as well as their publication.”). The request states that the
10 Publisher “has been in the business of disseminating information and commentary to the public
11 in book form (including e-books and audio books) for decades, and routinely markets its book
12 through print, radio, television, magazines, and on-line advertising.” Advisory Opinion Request
13 at 13. Furthermore, “[t]he Publisher averages approximately six (6) such politically themed
14 books and book promotions each year.” *Id.* In light of these facts, the Commission concludes
15 that the Publisher is a press entity for purposes of this advisory opinion.

16 The Publisher is not owned or controlled by a political party, political committee, or
17 candidate. *See id.*

18 In prior advisory opinions, the Commission has looked to two factors in determining
19 whether an entity is engaging in its legitimate press function: “(1) whether the entity’s materials
20 are available to the general public, and (2) whether they are comparable in form to those
21 ordinarily issued by the entity.” Advisory Opinion 2010-08 (Citizens United); *see also FEC v.*
22 *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 251 (1986); Advisory Opinions 2005-16
23 (Fired Up!); 2000-13 (iNEXTV). Here, the Publisher’s books “can be bought at book stores

1 across the country and from numerous online book sellers, and they can be borrowed usually at
2 no cost from public libraries.” Advisory Opinion Request at 13. Accordingly, the Publisher’s
3 materials are publicly available. Further, the Publisher “regularly produces ‘news stories,
4 commentary, or editorials’ in the form of books,” including an average of six politically themed
5 books and book promotions per year. *Id.* Thus, the Publisher’s materials are comparable in form
6 to those it ordinarily produces. Therefore, the Publisher is engaging in a legitimate press
7 function by publishing and promoting the book in question.

8 Based on the facts presented in the request, the Publisher’s activities satisfy both prongs
9 of the Commission’s test. The Commission has previously concluded that “where the underlying
10 product is covered by the press exemption, so are advertisements to promote that underlying
11 product.” Advisory Opinion 2010-08 (Citizens United) at 7 (*citing FEC v. Phillips Publishing,*
12 *Inc.*, 717 F. Supp. 1308, 1313 (D.D.C. 1981)).¹⁶ Accordingly, the costs referenced above with
13 respect to the publication and promotion of Representative Ryan’s book fall within the media
14 exemption for “expenditures” and are exempt from the Act’s disclosure, disclaimer, and
15 reporting requirements.

16 (b) The Publication and Promotion of the Book are *Bona Fide* Commercial Activity¹⁷

17 In addition to the statutory media exemption, the Act and Commission regulations limit
18 the term “contribution” to “any gift, subscription, loan, advance, or deposit of money or anything
19 of value made by any person *for the purpose of influencing any election for Federal office.*” 2

¹⁶ The Commission further noted that the “advertisements will only come within the press exemption to the extent that [the media entity] is not ‘acting in a manner unrelated to its [press] function’ when it produces and distributes the advertisements themselves.” Advisory Opinion 2010-08 (Citizens United) at 7 (*citing* Advisory Opinion 2004-07 (MTV)); *see also*, MUR 3709 (Cinema World, Inc., *et al.*) (promotional sponsorships are exempt); MUR 2567 (Gannett Company, *et al.*) (same); *Readers Digest Ass’n v. FEC*, 509 F. Supp. 1210 (S.D.N.Y. 1981).

¹⁷ Exemption of the Publisher’s book promotion under the broad statutory media exemption may obviate the need for the Publisher to rely upon the more limited exemption for *bona fide* commercial activity, but the Publisher may benefit from clarity in Commission guidance as to both exemptions.

1 U.S.C. § 431(8)(A)(i) (emphasis added); *see also* 11 C.F.R. § 100.52. For corporations, “the
2 term ‘contribution or expenditure’ . . . also includes any direct or indirect payment, distribution,
3 loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any
4 candidate . . . *in connection with any election.*” 2 U.S.C. § 441b(b)(2) (emphasis added); *but see*
5 *generally Citizens United v. FEC*, 558 U.S. 310 (2010) (striking limitations on independent
6 expenditures by corporations). A corporation’s *bona fide* commercial activity is neither “for the
7 purpose of influencing any election for federal office” nor “in connection with any election” and
8 thus is not a contribution or otherwise subject to regulation under the Act. *See, e.g.*, First Gen.
9 Counsel’s Rpt. at 13-17, MUR 5474 and 5539 (Dog Eat Dog Films, Inc.) (May 25, 2005) (“Dog
10 Eat Dog”); Advisory Opinion 1994-30 (Conservative Concepts/Pence) at 3-7; Advisory Opinion
11 1989-21 (Create-a-Craft) at 4. In determining whether activity is *bona fide* commercial activity,
12 the Commission has identified a number of factors, including: “(1) whether the sales of the
13 merchandise involve fundraising activity or solicitations for political contributions; (2) whether
14 the activity is engaged in by the vendor for genuinely commercial purposes and not for the
15 purpose of influencing an election; (3) whether the items are sold at the vendor’s usual and
16 normal charge; and (4) whether the purchases are made by individuals for their personal use.”
17 Dog Eat Dog at 14; *see also* Advisory Opinion 1994-30 (Conservative Concepts/Pence) at 4;
18 Advisory Opinion 1989-21 (Create-a-Craft) at 4.

19 The Publisher’s activities, as described in the request, would involve only the publication,
20 promotion, and sale of Representative Ryan’s book, not any fundraising activity or solicitations
21 for political contributions for Representative Ryan, Ryan for Congress, or Prosperity Action.
22 AOR at 16. Such publication, promotion, and sale — especially as conducted by a “long
23 established and prominent publisher” that “publishes a wide variety of different types of books,

1 ADVISORY OPINION 2014-06

2

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9

DRAFT B

10 Dear Messrs. Kronquist and Bayes:

11 We are responding to your advisory opinion request on behalf of Representative Paul
12 Ryan, Ryan for Congress, Inc., and Prosperity Action, Inc., concerning the application of the
13 Federal Election Campaign Act, 2 U.S.C. §§ 431-57 (the “Act”), and Commission regulations to
14 the publication, promotion, purchase, and distribution of a book authored by Representative
15 Ryan. The Commission concludes that the requestors may engage in the proposed activities in
16 accordance with the requirements described below.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on June 30,
19 2014.

20 Representative Ryan is a member of the U.S. House of Representatives representing the
21 First Congressional District of Wisconsin, and he is a candidate for re-election to the House of
22 Representatives. Ryan for Congress is Representative Ryan’s principal campaign committee.
23 Prosperity Action is a leadership PAC sponsored by Representative Ryan.

24 In August 2014, Grand Central Publishing (the “Publisher”), a division of the
25 international publishing company Hachette Book Group, will publish a book authored by
26 Representative Ryan entitled *The Way Forward*. The book will address “the state of the
27 conservative movement in America today, discuss how it contrasts with liberal progressivism,
28 and explain what must be done to save what Representative Ryan refers to as the ‘American

1 Idea.” Advisory Opinion Request at 2 (June 30, 2014) (“AOR”). The Publisher will promote
2 and market the book through a variety of events in which Representative Ryan will participate,
3 including a promotional bus tour to various cities around the country, book signings, media
4 appearances on national and local television and radio shows, and interviews with print and
5 online media. Although the bus tour will not travel through or stop in Wisconsin, some of the
6 television and radio appearances and print and online media interviews will likely be available
7 within media markets covering Representative Ryan’s district. The Publisher intends to pay all
8 costs associated with obtaining and operating the tour bus.

9 Representative Ryan’s agreement with the Publisher provides for the payment to
10 Representative Ryan of royalties based on what the request describes as an industry-standard
11 percentage of net sales revenue. The request states that there will be no advance payment of
12 royalties to Representative Ryan, in accordance with Rule 25 of the Rules of the House of
13 Representatives. The request also states that all costs incurred by the Publisher in connection
14 with the promotional bus tour will be in accordance with the agreement and the Rules of the
15 House of Representatives, which require that such activities be conducted on the same or equal
16 terms as are made available to other authors who are not Members of Congress.

17 Ryan for Congress and Prosperity Action each propose to purchase copies of the book to
18 be distributed solely to their respective supporters and contributors. Both Ryan for Congress and
19 Prosperity Action would purchase the book in bulk directly from the Publisher at the standard
20 discounted bulk rate the Publisher offers, under normal industry practice, to other large
21 purchasers. Neither Ryan for Congress nor Prosperity Action will purchase more books than the
22 number needed to fulfill the purpose of distribution to each entity’s supporters and contributors.
23 The Publisher will be instructed to exclude all associated royalties from the bulk purchases by

1 both entities from the royalty calculation, and the Publisher will donate any royalties generated
2 by these purchases directly to a section 501(c)(3) charitable organization that is not in any way
3 associated with Representative Ryan or his family.

4 Representative Ryan and Ryan for Congress wish to advertise and market the sale of the
5 book in various ways. Ryan for Congress plans to promote the book on its website, which is
6 updated daily. Any references or information related to the Representative's book on this
7 website would be limited to one-to-two sentences in length — including hyperlinks directing
8 readers to the Publisher's website or to an online book seller (such as Amazon.com) — except
9 that Ryan for Congress would like to include on its website longer references to the book if the
10 Act and Commission regulations so permit. Ryan for Congress states that the cost of placing the
11 promotional material on its website would be *de minimis*. Ryan for Congress also plans to
12 promote the book through information and hyperlinks distributed via its social media pages,
13 including Twitter and Facebook. References or information related to the book on social media
14 would include information regarding buying the book or attending book tour events and
15 appearances, and similar promotional content.

16 Prosperity Action also wishes to advertise and market the sale of the book on its website
17 and social media pages. Such references to the Representative's book would provide basic
18 information about it and give details regarding purchasing the book or attending book tour events
19 and appearances, and similar promotional content.

20 As part of its fundraising appeals and other efforts to advocate Representative Ryan's re-
21 election, Ryan for Congress plans to send to its existing email lists emails that reference the
22 Representative's book. Prosperity Action likewise plans to send to its existing email lists emails

1 that reference the book for fundraising purposes and in the context of other election-related
2 activities for the purpose of influencing one or more elections for federal office.

3 Representative Ryan intends to use personal funds to purchase or rent email and mailing
4 lists maintained by both Ryan for Congress and Prosperity Action. Representative Ryan intends
5 to use these lists to promote his book, such as by sending emails announcing its publication.

6 Representative Ryan will enter into separate list rental agreements with Ryan for Congress and
7 Prosperity Action. Each agreement will provide for Representative Ryan to pay the fair market
8 value for renting the lists, as determined by an independent list appraisal. The request further
9 states that the list rental agreements will comply with the requirements set forth in Advisory
10 Opinion 2002-14 (Libertarian National Committee).

11 ***Questions Presented***

12 *1a. May Ryan for Congress use campaign funds to purchase copies of The Way Forward*
13 *directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to*
14 *Ryan for Congress supporters and for other campaign-related activities?*

15 *1b. Does Ryan for Congress's purchase of books from the Publisher at the standard,*
16 *discounted bulk rate result in an in-kind contribution from the Publisher to Ryan for Congress?*

17 *2a. May Prosperity Action use committee funds to purchase copies of The Way Forward*
18 *directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to*
19 *Prosperity Action supporters and for other election-related activities?*

20 *2b. Does Prosperity Action's purchase of books from the Publisher at the standard,*
21 *discounted bulk rate result in an in-kind contribution from the Publisher to Prosperity Action?*

22 *3. May Ryan for Congress place material promoting The Way Forward on its website and*
23 *social media pages so long as the cost of doing so is de minimis?*

1 4. *May Prosperity Action place material promoting The Way Forward on its website and*
2 *social media pages?*

3 5. *May Representative Ryan use the Ryan for Congress and Prosperity Action email and*
4 *mailing lists to promote the sale of The Way Forward if Representative Ryan reimburses each*
5 *committee for the lists' fair market value based on an independent list appraisal?*

6 6. *Are the Publisher's costs and expenses for the publication of Representative Ryan's book*
7 *covered by the media exemption?*

8 7. *Is the Publisher's payment of costs incurred in connection with the promotion of*
9 *Representative Ryan's book, including a bus tour, covered by the media exemption?*

10 8. *Are the Publisher's costs and expenses for the publication and promotion of*
11 *Representative Ryan's book exempt from the Act's regulation because they are bona fide*
12 *commercial activity?*

13 ***Legal Analysis and Conclusions***

14 1a. *May Ryan for Congress use campaign funds to purchase copies of The Way Forward*
15 *directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to*
16 *Ryan for Congress supporters and for other campaign-related activities?*

17 Yes, Ryan for Congress may use campaign funds to purchase copies of the book from the
18 Publisher at the standard discounted bulk rate for distribution to supporters and for other
19 campaign-related activities.

20 Under the Act and Commission regulations, an authorized committee may spend its funds
21 to finance activities "in connection with the candidate's campaign for federal office." 2 U.S.C.
22 § 439a(a)(1); 11 C.F.R. § 113.2(a) (providing that campaign funds may be used to "defray[]
23 expenses in connection with a campaign for federal office"). Such spending must not, however,

1 result in the conversion of funds to the personal use of the candidate or any other person. 2

2 U.S.C. § 439a(b); 11 C.F.R. §§ 113.1(g), 113.2(e).

3 The Act provides that funds “shall be considered to be converted to personal use if [the
4 funds are] used to fulfill any commitment, obligation or expense of a person that would exist
5 irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal
6 office.” 2 U.S.C. § 439a(b); *see also* 11 C.F.R. § 113.1(g). The Act and Commission
7 regulations provide a non-exhaustive list of uses of funds that are *per se* personal use. 2 U.S.C. §
8 439a(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses of funds not on this list, the Commission
9 determines, on a case-by-case basis, whether they constitute personal use. 11 C.F.R.
10 § 113.1(g)(1)(ii).

11 The purchase of a candidate’s book is not one of the *per se* personal uses listed in the Act
12 and Commission regulations. *See* 2 U.S.C. § 439a(b)(2); 11 C.F.R. § 113.1(g)(1)(i).
13 Accordingly, the Commission determines on a case-by-case basis whether such a purchase by an
14 authorized committee is personal use. *See, e.g.*, Advisory Opinion 2011-02 (Brown); Advisory
15 Opinion 2006-18 (Granger); Advisory Opinion 2004-18 (Lieberman); Advisory Opinion 2001-
16 08 (Specter); Advisory Opinion 1995-46 (D’Amato); Advisory Opinion 1993-20 (Nighthorse
17 Campbell).

18 The facts presented in this request are particularly similar to those presented in Advisory
19 Opinion 2001-08 (Specter) and Advisory Opinion 2011-02 (Brown). In each of those advisory
20 opinions, the Commission determined that the authorized committee’s use of campaign funds to
21 purchase copies of its candidate’s book would defray an expense that would not exist irrespective
22 of the campaign, and therefore the spending would not be an impermissible personal use. The
23 Commission’s conclusion in each of those advisory opinions was based on several facts: The

1 authorized committee's funds would be used to purchase the book solely for distribution to the
2 committee's contributors and supporters, and thus would be used by the committee only for the
3 purpose of influencing its candidate's election to federal office; the quantity purchased would not
4 exceed the number needed for this described purpose; all royalties attributable to the committee's
5 purchase would be paid by the publisher to charity; and the committee's purchase would be
6 excluded by the publisher from the royalty calculation. Advisory Opinion 2011-02 (Brown) at
7 5-6; Advisory Opinion 2001-08 (Specter) at 3.

8 Similarly here, Ryan for Congress's funds would be used to purchase the book solely for
9 distribution to contributors and supporters, and the quantity purchased would not exceed the
10 number needed for such distribution. Thus the purchased books would be used by Ryan for
11 Congress only "in connection with" Representative Ryan's election. *See* 2 U.S.C. § 439a(a)(1);
12 11 C.F.R. § 113.2(a).

13 The requestors' proposal is also consistent with the Commission's prior conclusions
14 regarding a candidate's book royalties. Because using campaign funds to finance book
15 purchases that generate royalties for the candidate would effectively transfer funds from the
16 campaign to the candidate, Representative Ryan "may not personally accept royalties for sales of
17 the book to [his campaign committee], even if he then makes charitable contributions equal to
18 that amount." Advisory Opinion 2011-02 (Brown) at 2. But as the Commission concluded in
19 Advisory Opinion 2001-08 (Specter) and Advisory Opinion 2011-02 (Brown), no personal use
20 results if the publisher (1) donates the candidate's royalties for his campaign's book purchases to
21 a charitable organization that is not associated with the candidate, and (2) excludes such sales
22 from the calculation of royalties that accrue to the candidate. Because these are precisely the
23 terms of the agreement between Representative Ryan and the Publisher, the Publisher's direct

1 contribution to charity of royalties from Ryan for Congress’s purchase of the book will not result
2 in conversion of campaign funds to Representative Ryan’s personal use.¹

3 Accordingly, as in Advisory Opinion 2001-08 (Specter) and Advisory Opinion 2011-02
4 (Brown), the Commission concludes that Ryan for Congress’s proposed use of campaign funds
5 to purchase Representative Ryan’s book for distribution to contributors and supporters will
6 defray an expense that would not exist irrespective of his campaign and will not be an
7 impermissible personal use of campaign funds, so long as all royalties for Ryan for Congress’s
8 purchase are paid by the Publisher directly to charity and are not included in the calculation of
9 any royalties due to Representative Ryan.

10 *Ib. Does Ryan for Congress’s purchase of books from the Publisher at the standard,*
11 *discounted bulk rate result in an in-kind contribution from the Publisher to Ryan for Congress?*

12 No, Ryan for Congress’s purchase of books from the Publisher at the standard,
13 discounted bulk rate does not result in an in-kind contribution from the Publisher to Ryan for
14 Congress.

15 The term “contribution” includes “anything of value” given for the purpose of
16 influencing an election or given by a corporation to a political committee in connection with a
17 federal election. 2 U.S.C. §§ 431(8)(A)(i), 441b(b)(2); 11 C.F.R. §§ 100.7(a)(1), 114.1(a)(1).
18 “Anything of value” includes providing goods or services at less than the usual and normal
19 charge. 11 C.F.R. § 100.7(a)(1)(iii)(A). The “usual and normal charge” for goods is the price of
20 those goods in the market from which they ordinarily would have been purchased at the time of
21 the transaction at issue. 11 C.F.R. § 100.7(a)(1)(iii)(B). The sale of goods or services at a

¹ Representative Ryan “must also not receive any personal benefit, tangible or intangible, for the royalties the Publisher donates to charity for the sales of the book to [his campaign committee].” Advisory Opinion 2011-02 (Brown) at 6.

1 discount does not result in a contribution when the discount is made available in the ordinary
2 course of business and on the same terms and conditions to the vendor's other customers that are
3 not political organizations or committees. *See, e.g.*, Advisory Opinion 2004-18 (Lieberman) at
4 3; Advisory Opinion 2001-08 (Specter) at 3; Advisory Opinion 1996-02 (CompuServe);
5 Advisory Opinion 1995-46 (D'Amato) at 3.

6 As in Advisory Opinion 2004-18 (Lieberman) and Advisory Opinion 2001-08 (Specter),
7 Ryan for Congress indicates that the bulk rate it will pay is a standard, discounted price that the
8 Publisher, under normal industry practice, makes available on equal terms to other bulk
9 purchasers that are not political organizations or committees. Accordingly, the Commission
10 concludes that Ryan for Congress's payment of the standard, discounted bulk rate will not result
11 in a contribution from the Publisher.

12 *2a. May Prosperity Action use committee funds to purchase copies of The Way Forward*
13 *directly from the Publisher, at the standard discounted bulk rate, for subsequent distribution to*
14 *Prosperity Action supporters and for other election-related activities?*

15 Yes, Prosperity Action may use committee funds to purchase copies of the book from the
16 Publisher at the standard, discounted bulk rate for subsequent distribution to Prosperity Action's
17 supporters and for other election-related activities, so long as all royalties for Prosperity Action's
18 purchase are paid by the Publisher directly to charity and are not included in the calculation of
19 any royalties due to Representative Ryan.

20 A leadership PAC is "a political committee that is directly or indirectly established,
21 financed, maintained or controlled by [a federal candidate or officeholder] but which is not an
22 authorized committee of the candidate or individual and which is not affiliated with an
23 authorized committee of the candidate or individual." 2 U.S.C. § 434(i)(8)(B); *see also* 11

1 C.F.R. § 100.5(e)(6). The Act’s personal use provision applies to “[a] contribution accepted by a
2 candidate, and any other donation received by an individual as support for activities of the
3 individual as a holder of Federal office.” 2 U.S.C. § 439a(a). Such contributions “shall not be
4 converted by any person to personal use.” 2 U.S.C. § 439a(b)(1). Because a leadership PAC, by
5 definition, is “directly or indirectly established, financed, maintained or controlled” by a federal
6 candidate or officeholder, contributions to a candidate’s or officeholder’s leadership PAC are
7 contributions “accepted by” the candidate or officeholder. 2 U.S.C. § 434(i)(8)(B); *see also* 11
8 C.F.R. § 100.5(e)(6). Contributions to leadership PACs are received by candidates or members
9 of Congress “as support for [their] activities” as candidates or officeholders. 2 U.S.C. § 439a(a).
10 Indeed, the primary purpose of a leadership PAC is to support the activities of the federal
11 officeholder sponsoring the leadership PAC. Thus, the Act’s personal use prohibition applies to
12 leadership PACs, such as Prosperity Action.²

13 In this case, the proposed purchase of books by Prosperity Action does not violate the
14 Act’s prohibition on personal use of leadership PAC funds. The Act provides that funds “shall
15 be considered to be converted to personal use if [the funds are] used to fulfill any commitment,
16 obligation or expense of a person that would exist irrespective of the candidate’s election
17 campaign or individual’s duties as a holder of Federal office.” 2 U.S.C. § 439a(b). Here,
18 Prosperity Action funds would be used to purchase the book solely for distribution to its own
19 contributors and supporters, “for the purpose of influencing one or more elections for Federal

² Commission regulations currently only address the personal use of “funds in a campaign account.” *See* 11 C.F.R. part 113 “Permitted and Prohibited Uses of Campaign Funds”; 11 C.F.R. § 113.1(g). Commission regulations are silent as to the personal use of leadership PAC funds. Presumably relying on that silence, the Commission failed in a prior advisory opinion to apply the personal use prohibition to a leadership PAC. *See* Advisory Opinion 2008-17 (KITPAC). That opinion, however, is contrary to the Act’s clear and broad prohibition on personal use of funds by candidates and Federal officeholders, and therefore is hereby superseded. *See* 2 U.S.C. 439a(a), (b).

1 office.” AOR at 7. Leadership PACs frequently support other candidates, in order to raise the
2 profile of the sponsor of the leadership PAC, and to support the political agenda of the sponsor.
3 Thus, the purchased books would be used by Prosperity Action “in connection with”
4 Representative Ryan’s duties as a holder of Federal office, and the royalties earned as a result of
5 the book purchase would go to charity. *See* 2 U.S.C. § 439a(a)(1). Accordingly, the
6 Commission concludes that Prosperity Action may use committee funds to purchase copies of
7 Representative Ryan’s book from the Publisher for distribution to its supporters and for other
8 election-related activities.³

9 *2b. Does Prosperity Action’s purchase of books from the Publisher at the standard,*
10 *discounted bulk rate result in an in-kind contribution from the Publisher to Prosperity Action?*

11 No, Prosperity Action’s purchase of books from the Publisher at the standard, discounted
12 bulk rate does not result in an in-kind contribution from the Publisher to Prosperity Action.

13 As discussed above with respect to Ryan for Congress’s purchase of books at the
14 discounted bulk rate, the sale of goods or services at a discount does not result in a contribution
15 when the discount is made available in the ordinary course of business and on the same terms
16 and conditions to the vendor’s other customers that are not political organizations or committees.
17 As in Advisory Opinion 2004-18 (Lieberman) and Advisory Opinion 2001-08 (Specter),

³ Because Representative Ryan will receive no direct or indirect royalties from Prosperity Action’s purchase, this advisory opinion does not address whether a leadership PAC may purchase its sponsoring officeholder’s book where doing so would generate royalties for the officeholder.

In addition, the Commission notes that the request describes Ryan for Congress’s book purchase and corresponding activities as being “for the purpose of influencing *Congressman Ryan’s election* to federal office” (AOR at 3, 6 (emphasis added)), while Prosperity Action’s book purchase and corresponding activities are described as being “for the purpose of influencing *one or more elections* for federal office” (AOR at 3, 7 (emphasis added)). The Commission construes this distinction as indicating that the “one or more” elections Prosperity Action seeks to influence through its book-related activities do not include Congress Ryan’s election; otherwise, Prosperity Action’s purchase and promotion of the book might implicate other Commission regulations, including 11 C.F.R. § 109.21 (coordinated communications) and 11 C.F.R. § 113.1(g)(6) (third-party payments of candidate’s or campaign committee’s expenses).

1 Prosperity Action indicates that the bulk rate it will pay is a standard, discounted price that the
2 Publisher, under normal industry practice, makes available on equal terms to other purchasers
3 that are not political organizations or committees. Accordingly, the Commission concludes that
4 Prosperity Action's payment of the standard, discounted bulk rate will not result in a contribution
5 from the Publisher.

6 3. *May Ryan for Congress place material promoting The Way Forward on its website and*
7 *social media pages so long as the cost of doing so is de minimis?*

8 Yes, Ryan for Congress may post a *de minimis* amount of material promoting the book on
9 its website and social media pages at a *de minimis* cost.

10 The Act provides that an unlawful conversion of campaign funds to personal use occurs
11 when such funds are "used to fulfill any commitment, obligation, or expense of a person that
12 would exist irrespective of the candidate's election campaign or individual's duties as a holder of
13 Federal office." 2 U.S.C. § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g). The Commission has
14 previously determined that the expenses associated with marketing a book that a commercial
15 publisher publishes and for which it pays royalties to the candidate are expenses that would exist
16 irrespective of the candidate's election campaign or duties as a federal officeholder. *See*
17 *Advisory Opinion 2011-02 (Brown)* at 6; *Advisory Opinion 2006-07 (Hayworth)* at 3; *Advisory*
18 *Opinion 2006-18 (Granger)* at 3. Therefore, the use of an authorized committee's asset, such as
19 its website, to promote the candidate's book would ordinarily constitute a prohibited personal
20 use. *See Advisory Opinion 2011-02 (Brown)* at 6; *Advisory Opinion 2006-07 (Hayworth)* at 3;
21 *Advisory Opinion 2006-18 (Granger)* at 3.

22 However, the Commission has also previously concluded that the addition of a small
23 amount of promotional material about a candidate's book to an authorized committee's website

1 or social media pages does not constitute a prohibited personal use of campaign funds, provided
2 that both the amount of promotional material and the cost to the committee are *de minimis*. See
3 Advisory Opinion 2011-02 (Brown) at 7; Advisory Opinion 2006-07 (Hayworth) at 3. In one
4 instance, the Commission concluded that a proposal to post promotional material comprising up
5 to 25 percent of the authorized committee’s website’s homepage, 25 percent of the committee’s
6 Facebook page, 10 percent of the committee’s Twitter page, and 25 percent of the candidate’s
7 LinkedIn page did not represent a *de minimis* amount of material. Advisory Opinion 2011-02
8 (Brown) at 7. In another instance, the Commission concluded that the addition of one or two
9 sentences of promotional material about a candidate’s book to an authorized committee’s
10 substantial website was *de minimis*. Advisory Opinion 2006-07 (Hayworth) at 3.

11 Here, Ryan for Congress proposes to promote the book on its website, limiting references
12 to the book to one or two sentences that include hyperlinks to additional information on the
13 Publisher’s website or to online booksellers. Ryan for Congress states that the cost of adding
14 this material to the committee’s website would be *de minimis*. The committee also proposes to
15 promote the book through similar brief references and hyperlinks on its social media pages,
16 which, the request notes, are generally free to use.⁴ Consistent with the advisory opinions cited
17 above, Ryan for Congress may place material promoting the book on its website and social
18 media pages, so long as both the amount and cost of such material are *de minimis*.

⁴ Paid advertising can be purchased on Facebook and Twitter, but such advertising “is not contemplated here.” AOR at 9.

1 4. *May Prosperity Action place material promoting The Way Forward on its website and*
2 *social media pages?*

3 Yes, Prosperity Action may place material promoting *The Way Forward* on its website
4 and social media pages. However, for the reasons discussed above in response to Questions 2a
5 and 3, Prosperity Action may only place a *de minimis* amount of material promoting the book on
6 its website and social media pages at a *de minimis* cost.

7 Commission regulations limit payments by third parties of candidates' and campaign
8 committees' expenses. Generally, "[n]otwithstanding that the use of funds for a particular
9 expense would be a personal use . . . payment of that expense by any person other than the
10 candidate or the campaign committee shall be a contribution . . . unless the payment would have
11 been made irrespective of the candidacy." 11 C.F.R. § 113.1(g)(6). This "irrespective" test asks
12 whether the third party would pay the expense if the candidate were not running for election to
13 federal office: If the answer is yes, then the payment does not constitute a contribution. As the
14 Commission has explained, "[i]f a third party pays for the candidate's personal expenses, but
15 would not ordinarily have done so if that candidate were not running for office, the third party is
16 effectively making the payment for the purpose of assisting that candidacy." Expenditures;
17 Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7871
18 (Feb. 9, 1995).⁵

19 Here, Prosperity Action proposes to market Representative Ryan's book. As discussed
20 above, expenses associated with marketing a book that a commercial publisher publishes and for

⁵ This "irrespective" test operates differently from the "irrespective" test in the personal use provision in the Act and Commission regulations. Under the personal use provision Ryan for Congress's and Prosperity Action's plans are permissible if the expenses it intends to pay *would not* exist irrespective of Representative Ryan's candidacy or his duties as a holder of Federal office. *See supra* Question 1a, 2a. Under section 113.1(g)(6) — which applies to entities other than candidates and campaign committees — Prosperity Action's plans are permissible if it *would* pay the expenses at issue irrespective of Representative Ryan's candidacy.

1 which it pays royalties to the author are personal expenses that would exist irrespective of the
2 author's election campaign or duties as a federal officeholder. Therefore, payment of those
3 expenses by a third party is a contribution unless the payment would have been made even if the
4 candidate were not running for office.

5 The request explains that Prosperity Action wishes to promote Representative Ryan's
6 book "for fundraising purposes and other election related activities for the purpose of influencing
7 one or more elections for federal office."⁶ See AOR at 3. Raising funds and supporting other
8 candidates are standard, ongoing activities for leadership PACs, and because leadership PACs
9 are formed (in part) to heighten their sponsors' profiles, Prosperity Action would presumably
10 further these goals by promoting Representative Ryan's book irrespective of whether he
11 happened to be a candidate for re-election at the time of publication. Accordingly, Prosperity
12 Action may place a *de minimis* amount of material promoting the book on its website and social
13 media pages, at a *de minimis* cost..

14 5. *May Representative Ryan use the Ryan for Congress and Prosperity Action email and*
15 *mailing lists to promote the sale of The Way Forward if Representative Ryan reimburses each*
16 *committee for the lists' fair market value based on an independent list appraisal?*

17 Yes, Representative Ryan may use the Ryan for Congress and Prosperity Action email
18 and mailing lists to promote the sale of *The Way Forward* if Representative Ryan reimburses
19 each committee for its lists' fair market value.

20 The Commission has long recognized that a political committee's mailing lists are assets
21 that have value and that are frequently sold, rented, or exchanged in a market. See, e.g.,

⁶ As discussed in note 2 above, the Commission construes Priority Action's reference to "influencing one or more elections for federal office" as not including Representative Ryan's election.

1 Advisory Opinion 2011-02 (Brown) at 7-8; Advisory Opinion 2002-14 (Libertarian National
2 Committee) at 4-5; Advisory Opinion 1982-41 (Dellums) at 2; Advisory Opinion 1981-46
3 (Dellums) at 2. Thus, as to Representative Ryan's rental of Ryan for Congress's mailing lists,
4 the relevant question is whether the Representative's rental constitutes personal use of the
5 Committee's asset. Commission regulations provide that "the transfer of a campaign committee
6 asset is not personal use so long as the transfer is for fair market value." 11 C.F.R. § 113.1(g)(3).
7 Accordingly, Representative Ryan's proposal to rent his campaign committee's mailing lists for
8 their fair market value, as determined by an independent list broker, is permissible.

9 11 C.F.R. § 113.1(g)(6) provides that third-party defrayals of a candidate's expenses that
10 would otherwise constitute personal use are contributions to that candidate. By providing its
11 mailing list to Representative Ryan for purposes of marketing his book, Prosperity Action would
12 defray some of his personal marketing expenses, and therefore section 113.1(g)(6) is potentially
13 implicated here. The Commission has determined, however, that no contribution results when a
14 political committee leases its mailing list, provided that: (1) the mailing list has an ascertainable
15 fair market value; (2) the political committee leases the mailing list at the usual and normal
16 charge in a *bona fide*, arm's-length transaction; and (3) the list is used in a commercially
17 reasonable manner consistent with such arm's-length agreement. Advisory Opinion 2002-14
18 (Libertarian National Committee) at 4. Representative Ryan proposes to enter into a list rental
19 agreement with Prosperity Action that will comply with the requirements of Advisory Opinion
20 2002-14 (Libertarian National Committee), including payment of fair market value for the lists.

1 Therefore, Representative Ryan’s rental of Prosperity Action’s mailing lists will not result in a
2 contribution by Prosperity Action to Representative Ryan under 11 C.F.R. § 113.1(g)(6).⁷

3 6. *Are the Publisher’s costs and expenses for the publication of Representative Ryan’s book*
4 *covered by the media exemption?*

5 7. *Is the Publisher’s payment of costs incurred in connection with the promotion of*
6 *Representative Ryan’s book, including a bus tour, covered by the media exemption?*

7 8. *Are the Publisher’s costs and expenses for the publication and promotion of*
8 *Representative Ryan’s book exempt from the Act’s regulation because they are bona fide*
9 *commercial activity?*

10 Yes, the Publisher’s costs and expenses for the publication and promotion of
11 Representative Ryan’s book are not subject to regulation under the Act because they are *bona*
12 *fide* commercial activity.

13 The Act and Commission regulations prohibit corporations from making contributions in
14 connection with federal elections. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). A corporation’s
15 *bona fide* commercial activity, however, is not a contribution or otherwise subject to regulation
16 under the Act. *See, e.g.,* First Gen. Counsel’s Rpt. at 13-17, MUR 5474 and 5539 (Dog Eat Dog
17 Films) (May 25, 2005)⁸ (“Dog Eat Dog”); Advisory Opinion 1994-30 (Conservative
18 Concepts/Pence) at 3-7. In determining whether activity is *bona fide* commercial activity, the
19 Commission considers a number of factors, including: “(1) whether the sales of the merchandise
20 involve fundraising activity or solicitations for political contributions; (2) whether the activity is

⁷ The rental payments at fair market value also will not constitute contributions from Representative Ryan to Prosperity Action. *See* Advisory Opinion 2002-14 (Libertarian National Committee) at 5.

⁸ <http://eqs.fec.gov/eqsdocsMUR/000045EB.pdf>

1 engaged in by the vendor for genuinely commercial purposes and not for the purpose of
2 influencing an election; (3) whether the items are sold at the vendor's usual and normal charge;
3 and (4) whether the purchases are made by individuals for their personal use." Dog Eat Dog at
4 14; *see also* Advisory Opinion 1994-30 (Conservative Concepts/Pence) at 4.

5 The Publisher's activities, as described in the request, would involve only the publication,
6 promotion, and sale of Representative Ryan's book, not any fundraising activity or solicitations
7 for political contributions for Representative Ryan, Ryan for Congress, or Prosperity Action.
8 AOR at 16. Such publication, promotion, and sale — especially as conducted by a "long
9 established and prominent publisher" that "publishes a wide variety of different types of books,
10 both political and non-political," *id.* at 1, 16 — are genuine commercial activity on their face,
11 and there are no facts in the request to suggest that the Publisher seeks to engage in them for the
12 purpose of influencing a federal election.⁹ In addition, all of Representative Ryan's books will
13 be sold at usual and normal sales prices (including standard bulk discounts, where applicable).
14 *See id.* at 2, 16. Based on these representations, the Commission concludes that the Publisher's
15 publication of Representative Ryan's book and payment of the related promotional costs
16 described in the request are *bona fide* commercial activity, and thus they are outside the scope of
17 the Act's regulation.¹⁰

⁹ Based on the facts presented in the request, the Commission presumes that Representative Ryan will not participate in any campaign-related events or fundraising while on the promotional bus tour that the Publisher intends to finance. If Representative Ryan does participate in any campaign-related events or fundraising while on the bus tour, Ryan for Congress may be required to reimburse the Publisher for the portion of its expenses allocable to campaign purposes to avoid receiving an impermissible corporate in-kind contribution. *See* Advisory Opinion 2002-05 (Hutchinson) at 2-3.

¹⁰ The request asks whether the Publisher's activities are covered by the media exemption from the definitions of "expenditure" and "contribution." 2 U.S.C. §§ 431(9)(B)(i); *see also* 11 C.F.R. §§ 100.73, 100.132. Because the Publisher's publication of Representative Ryan's book and related promotional activities are *bona fide* commercial activity, and thus already outside the scope of the Act's regulation, the Commission need not determine whether the same activities would also qualify for the media exemption.

