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Washington, DC 20463

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For meeting of January 14, 2016
SUBMITTED LATE

January 13, 2016

MEMORANDUM

TO: The Commission

FROM: Daniel A. Petalas *DAP by AV*
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Subject: AO 2015-15 (WeSupportThat.com) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on January 14, 2016.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2015-15

2 Mr. Dan Brady
3 Attorney at Law
4 P.O. Box 31818
5 Bellingham, WA 98228

DRAFT A

6 Dear Mr. Brady:

7 We are responding to your advisory opinion request on behalf of WeSupportThat.com
8 concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the
9 “Act”), and Commission regulations to the requestor’s proposal to process contributions made
10 through its website. The Commission concludes that the requestor’s proposed plan is
11 permissible and that service fees paid by individuals who use the requestor’s website are not
12 contributions.

13 ***Background***

14 The facts presented in this advisory opinion are based on your letter received on
15 November 16, 2015, and your email received on November 20, 2015.

16 The requestor is a for-profit corporation that proposes to offer an internet-based service
17 through which users will be able to support or oppose certain actions of federal candidates.
18 Specifically, as described below, the requestor’s website will enable a user to: search for
19 candidates; search for candidates’ or officeholders’ actions, such as public statements, legislative
20 votes, and sponsorship of particular legislation; make contributions to candidates whose actions
21 the user supports; and send messages to candidates explaining why the user made the
22 contributions.

23 The requestor’s website will focus on current events and will feature activities and
24 candidates that are “gaining the most interest in the media.” Advisory Opinion Request
25 (“AOR”) at AOR002, AOR015. The website will provide to users who select a featured activity

1 information about candidates associated with that activity. For example, if a user who supports a
2 proposed bill in the U.S. Senate selects that issue on the website, the user will be taken to a page
3 describing the bill and identifying the bill’s sponsors.¹ If there are candidates on both sides of an
4 issue — such as, for example, candidates voting for and against a featured bill — the user will be
5 able to click a button labeled “I support this” or “I don’t support this” to bring up a list of
6 candidates, broken down by state, who align with the user’s views. The user will then be able to
7 select one or more such candidates to support and will enter the amount of the contribution the
8 user wishes to make to those candidates. Selecting the “contribute now” button will navigate the
9 user to the contribution page.

10 The requestor will collect the contributing user’s credit or debit card information, as well
11 as the user’s name, address, name of employer, and occupation. A user will not be able to
12 proceed with a contribution unless the user provides all of the requested information. In
13 addition, the requestor will require each user to confirm that he or she may lawfully make a
14 contribution.²

15 The requestor will assess a processing fee of 2.9% of the total dollar amount entered by
16 each user on the contribution webpage, plus 30 cents, as well as a matching fee, to cover its costs

¹ The requestor will use publicly available information to describe the relevant issues and candidates, including information obtained from the official websites of federal officeholders and mass media outlets. The requestor states that it will not use information from campaign websites or any other campaign materials, except for “basic biographical information.” AOR002.

² WST will require each user to check a box on the website to confirm the following statements are true and accurate:

1. The contribution is made from their own personal funds and not those of another.
2. The contribution is not from the general treasury funds of a corporation, labor organization or national bank.
3. The donor is not a federal government contractor.
4. The donor is not a foreign national who lacks permanent resident status in the United States.
5. The donor is over the age of 18, and if not, the donor is a minor making this contribution of their own volition, and not at the request or direction of another.

1 and provide a reasonable profit; this is the same amount that will be charged by the financial
2 institution. Once the required information is entered and the user clicks the button to proceed,
3 the customer's credit or debit card will be charged for the full amount and the proceeds deposited
4 into two separate bank accounts. The processing fee will be deposited into one account and the
5 contribution amount will be deposited in another account that is exclusively for contributions.
6 The requestor will forward all contributions and donor information to candidate committees
7 within 10 days of receipt.

8 When a user makes a contribution to a candidate's committee through the foregoing
9 process, the requestor will also forward to the committee an automated message stating the
10 reason the user contributed. The message will state, for example, "John Doe contributed \$5 to
11 your campaign because you support X issue." AOR016. There will be no other interaction
12 between the requestor and recipient candidate committees.

13 The requestor will not offer its services to candidates or their committees, nor will it
14 receive payment from recipient committees. The requestor states that it "has no interest,
15 ideological or otherwise, in advancing any particular issue, position on an issue, or any political
16 outcome." AOR001; *see also* AOR002 (stating that the requestor "will simply use its best
17 business judgment to decide what activities of candidates motivate its customers to contribute");
18 AOR015 (stating that requestor's "sole purpose is generating revenue and profit"). The
19 requestor wishes "to ensure the largest potential customer base," and thus will often feature
20 candidates on both sides of a political issue and "from the entire political spectrum." AOR002.

21 The requestor's website will not necessarily include every candidate. For example, the
22 website might not include a candidate who has gained little or no media attention or who is not
23 associated with an activity "commonly found in the media." *Id.* Nonetheless, users will be able

1 to make contributions via the website to any federal candidate registered with the Commission
2 by entering the candidate's name and the identification number of the candidate's authorized
3 committee. The requestor's website will include a link to the Commission's website, where
4 users will be able to find the candidate's identification information. The requestor's website will
5 not automatically generate messages for contributions to candidates whose names and authorized
6 committee information are entered by users, but in such instances the users will be able to write
7 messages for the requestor to forward with their contributions. The requestor will have no
8 discretion in crafting or transmitting such messages.

9 The requestor plans to advertise its services through online banner ads and on Facebook
10 and Google. These ads will feature specific activities of candidates, such as legislation that they
11 sponsored or voted on or speeches that they made, and will encourage viewers to "[d]onate
12 [n]ow" if they support (or oppose) the action described in the ad. *See* AOR005-006 (providing
13 sample ads). By clicking on an ad, the viewer will be brought to a page on the requestor's
14 website that will display information related to the advertised action.

15 ***Questions Presented***

- 16 1. *Does the requestor's proposed business plan comply with the Act and Commission*
17 *regulations?*
- 18 2. *Will a user's payment of a processing fee to the requestor constitute a contribution to the*
19 *recipient candidate committee?*

20 ***Legal Analysis and Conclusions***

- 21 1. *Does the requestor's proposed business plan comply with the Act and Commission*
22 *regulations?*

23 Yes, the requestor's proposed business plan complies with the Act and Commission

1 regulations.

2 The Act and Commission regulations prohibit a corporation from making a contribution
3 in connection with a federal election. *See* 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b)(1). In this
4 context, a “contribution” includes any “direct or indirect payment, distribution, loan, advance,
5 deposit, or gift of money, or any services, or anything of value . . . to any candidate, [or]
6 campaign committee . . . in connection with any [federal] election.” 52 U.S.C. § 30118(b)(2);
7 11 C.F.R. § 114.2(b)(1); *see also* 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a). “Anything
8 of value” includes in-kind contributions, such as the provision of goods or services without
9 charge or at a charge that is less than the usual and normal charge. *See* 11 C.F.R. § 100.52(d)(1).
10 Commission regulations define “usual and normal charge” as the price of goods in the market
11 from which they ordinarily would have been purchased at the time of the contribution, or the
12 commercially reasonable rate prevailing at the time the services were rendered. *See* 11 C.F.R.
13 § 100.52(d)(2).

14 The Commission has previously concluded that entities that process contributions as a
15 service to contributors, and not to the recipient political committees, are not making
16 contributions to those committees. *See, e.g.*, Advisory Opinion 2014-07 (Crowdpac) at 6
17 (distinguishing between companies that process contributions as service to contributors and
18 companies that process contributions as service to recipient political committees); Advisory
19 Opinion 2012-22 (skimmerhat) at 4-6 (same); Advisory Opinion 2011-19 (GivingSphere) at 7
20 (same); Advisory Opinion 2011-06 (Democracy Engine) at 5 (same). The Commission has
21 analogized these processors to “widely available delivery services, such as United Parcel
22 Service,” or “an electronic bill-pay service, such as those provided by banks.” Advisory Opinion
23 2012-22 (skimmerhat) at 5-6; *see also* Advisory Opinion 2015-08 (Repledge) at 7 (same);

1 Advisory Opinion 2014-07 (Crowdpac) at 6 (same); Advisory Opinion 2011-06 (Democracy
2 Engine) at 5 (analogizing company’s contribution processing services to “delivery services, bill-
3 paying services, or check-writing services for its subscribers”). In two of these advisory
4 opinions, for example, the proposals approved by the Commission involved the processors
5 helping their users to identify candidates who matched the users’ interests or policy goals. *See*
6 Advisory Opinion 2014-07 (Crowdpac) at 1-2 (approving website providing publicly available
7 information about candidates “to make it easier for voters to find and support candidates who
8 share their priorities and positions on issues” and to make contributions to them); Advisory
9 Opinion 2012-22 (skimmerhat) at 1 (approving website enabling users to “find candidates with
10 whom they have shared values” based on “geographic location, ideological similarities, or
11 single-issue positions” and to make contributions to them) (internal quotation marks omitted).

12 Like prior requestors, the requestor here proposes to develop an internet-based platform
13 through which its users will make contributions to authorized committees. Identifying
14 candidates whose activities are of interest to its users, and processing users’ contributions to
15 those candidates, are services that the requestor may permissibly provide to its users. *See*
16 Advisory Opinion 2014-07 at 1-2 (Crowdpac) (approving website providing publicly available
17 information about candidates “to make it easier for voters to find and support candidates who
18 share their priorities and positions on issues” and to make contributions to them); Advisory
19 Opinion 2012-22 (skimmerhat) at 1 (approving website enabling users to “find candidates with
20 whom they have shared values” based on “geographic location, ideological similarities, or
21 single-issue positions” and to make contributions to them); Advisory Opinion 2004-19
22 (DollarVote) (approving website enabling subscribers to pledge funds to any candidate who had
23 promised to support particular issue statement and to make contributions to them). Also like

1 prior requestors, the requestor here will forward contributions to the committees and charge users
2 a fee that it expects to cover its costs and generate a profit. In addition, the requestor will require
3 users to certify their eligibility to make contributions to federal candidates, provide contributor
4 identification to recipient candidate committees, and maintain users' contributions in a separate
5 bank account from corporate treasury funds.

6 The requestor's proposed service differs from those previously approved by the
7 Commission in that the requestor's website and advertising will list certain candidate activities
8 that the requestor believes are most likely to motivate individuals to use its website to make
9 contributions. The requestor will not "advance[e] any particular issue, position on an issue, or
10 any political outcome," AOR001, and will often feature candidates who oppose each other on a
11 given issue because doing so will "ensure the largest possible customer base." AOR002. The
12 requestor's listing of candidate activities that it considers most likely to motivate individuals to
13 make contributions on its website does not raise concerns that the requestor is selecting candidate
14 recipients to influence the outcome of the election. Ultimately, it is the contributor and not the
15 requestor who decides whether and how much to contribute to any given candidate.

16 Accordingly, under the circumstances presented in the request, the requestor's proposed
17 business plan complies with the Act and Commission regulations.

18 2. *Will a user's payment of a processing fee to the requestor constitute a contribution to the*
19 *recipient candidate committee?*

20 No, a user's payment of a processing fee to the requestor will not constitute a
21 contribution to the recipient candidate committee.

22 As indicated above, the requestor proposes to process users' contributions through its
23 website and to charge contributors a fee that it expects to cover its costs and provide it with a

1 profit. The requestor states that it will not offer its services to candidates or their committees and
2 will not receive payment from or otherwise interact with the recipient committees beyond
3 transmitting contributions and contributor information and messages to them. Because the fees
4 paid to the requestor “are for services rendered for the benefit of the contributors, not of the
5 recipient political committees, such fees do not relieve the recipient political committees of a
6 financial burden they would otherwise have had to pay for themselves.” Advisory Opinion
7 2014-07 (Crowdpac) at 6 (internal quotation marks and brackets omitted); Advisory Opinion
8 2011-06 (Democracy Engine) (internal quotations omitted). Accordingly, the Commission
9 concludes that these fees will not be in-kind contributions to the recipient committees.

10 This response constitutes an advisory opinion concerning the application of the Act and
11 Commission regulations to the specific transaction or activity set forth in this advisory opinion
12 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of
13 the facts or assumptions presented, and such facts or assumptions are material to a conclusion
14 presented in this advisory opinion, then the requestor may not rely on that conclusion as support
15 for its proposed activity. Any person involved in any specific transaction or activity which is
16 indistinguishable in all its material aspects from the transaction or activity with respect to which
17 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
18 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
19 affected by subsequent developments in the law including, but not limited to, statutes,
20 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
21 on the Commission’s website.

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On behalf of the Commission,

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Matthew S. Petersen
Chairman