



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2016-08

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Dear Messrs. Jacobs and Powers:

We are responding to your advisory opinion request on behalf of eBundler.com, LLC concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 (“the Act”), and Commission regulations to the requestor’s online contribution processing and fundraising services. The Commission concludes that the requestor’s provision of services as proposed would not result in the requestor making contributions and would not subject the requestor to any reporting requirements under the Act.

Background

The facts presented in this advisory opinion are based on your letter received on June 17, 2016, and your emails dated June 29 and August 11, 2016.

The requestor is a non-partisan, for-profit, limited liability company that has elected to be treated as a partnership under the Internal Revenue Code for federal tax purposes. Advisory Opinion Request at AOR001. The requestor has developed web-based platforms intended to “encourage public participation in politics and to facilitate fundraising efforts of small donors.” *Id.* The requestor provides certain fundraising services to political committees and other organizations that have contracted with the requestor (“political committee clients”) through a platform called *eBundler*. *Id.* The requestor has developed a second online platform, *Donorship*, to process individual donations and contributions and to allow an individual to solicit¹ his or her online contacts for contributions to political committees and organizations. *Id.*

¹ The request describes the platform as allowing individuals to “bundle” contributions. AOR001. To avoid confusion with the Commission’s definition of a “bundled contribution” at 11 C.F.R. § 104.22(a)(6), which applies to certain lobbyist activities not at issue in this request, this advisory opinion refers to “soliciting” or “fundraising”

A. Donorship *Contribution Processing Platform*

1. *Contribution Processing and Forwarding*

Individuals who wish to use the *Donorship* platform will begin by searching or browsing the *Donorship* database for a specific candidate, committee, organization (such as a non-profit organization or ballot initiative committee), or cause that the individual wishes to support. AOR002. An individual will be able to filter his or her results by location or office sought. *Id.* The requestor intends to list as many political committees in the *Donorship* database up front as possible.² AOR016. If an individual wishes to make a contribution to a political committee not already included in the *Donorship* database, the requestor will add the desired political committee. *Id.* A political committee will not need to be a political committee client to be included in the *Donorship* database. AOR003.

Once an individual selects his or her desired recipient political committee, the individual will be redirected to a landing page that the requestor maintains for that recipient. AOR002. The landing page will provide the individual with information about the candidate or committee, such as the candidate or committee's position on various issues. *Id.* If the recipient political committee is a political committee client, that client will be able to customize the landing page. *Id.* If the recipient political committee is not a political committee client, the landing page will be a generic page created by the requestor using publicly available sources, including publicly available campaign advertisements. *Id.*

To make a contribution through *Donorship*, an individual first will be required to attest to certain statements establishing that he or she is eligible to make contributions under federal law. AOR004-05. Specifically, an individual will attest that, “[b]y making this contribution, I confirm that the following statements are true and accurate: I am not a federal contractor; I am at least eighteen years old; I am either a U.S. citizen or lawful permanent resident of the U.S.; I am making this contribution from my own funds, and funds are not being provided to me by another person for the purpose of making this contribution; I am making this contribution with my own personal credit or debit card and not with a corporate or business card or a card issued to another person.” AOR018. Individuals will be prompted to enter the amount of their contribution, their contact information, employer, occupation, and credit card information. AOR002. Individuals will be notified of the contribution limits and that any contributions aggregating over \$200 will be publicly reported by the recipient political committee to the Commission. AOR005, AOR016. The *Donorship* platform will reject a single contribution that exceeds the federal limits. AOR016.

The requestor will process all contributions made through *Donorship* — regardless of whether the recipient is a political committee — through an account segregated from the requestor's operating account. AOR007, AOR015. “Although all contributions and donations will be processed through one account,” the requestor and its e-commerce vendor will track and

by individuals, rather than “bundling.”

² For example, the requestor plans to add the authorized committees of all candidates for U.S. House of Representatives to its *Donorship* database. AOR015.

keep itemized records of each contribution and donation within the *Donorship* and *eBundler* platforms to “ensure[] that all funds intended for federal contributions are strictly from federally permissible sources.” AOR015.

2. *Fundraising*

The *Donorship* platform will also provide a tool for an individual to fundraise for a political committee by soliciting the individual’s online contacts. The fundraising tool will allow an individual to import a contact list from an existing online account such as Outlook, Gmail, or LinkedIn. AOR002. The individual will then be able to select contacts to solicit for contributions to the individual’s selected recipient political committee.³ The individual will use the fundraising tool to send a solicitation form letter through email to the user’s selected contacts. If the intended recipient political committee is a political committee client, the political committee client will be able to draft a form letter for use by individuals who wish to fundraise through *Donorship*. AOR003. If the recipient political committee is not a political committee client, the requestor will provide a boilerplate solicitation email. AOR015. In both cases, the individual will be able to add a personalized message to the email. AOR003, AOR015. The request states that although individuals and political committee clients may engage in express advocacy through the platforms, the requestor itself will not make independent expenditures or engage in express advocacy. AOR007.

An individual using the fundraising tool will be able to track the total contributions made in response to a specific solicitation. AOR003. The platform also will give each fundraising individual an “Impact Score,” which will represent contributions raised directly from the individual’s contacts, as well as contributions made as a result of solicitations sent by the individual’s contacts. *Id.*

B. *eBundler Online Committee Fundraising Platform*

The *eBundler* platform will allow political committee clients⁴ to personalize their landing pages on the *Donorship* platform, to track contributions they receive through *Donorship*, to obtain donor information from individuals using the fundraising tool, and to contact donors directly through *eBundler*. AOR003. Political committee clients also will be able to publicly recognize individuals whose fundraising efforts through the *Donorship* platform reach certain “bundler levels.” AOR004. The *eBundler* and *Donorship* platforms will work in tandem, with the requestor processing and forwarding contributions to the political committee client through the *Donorship* platform.

³ When an individual selects contacts to solicit, the platform will notify the individual that soliciting foreign nationals for contributions or donations to federal, state, or local elections is prohibited and that soliciting federal contractors for contributions to federal political committees is prohibited. AOR002.

⁴ The requestor currently does not plan to offer its services through the *eBundler* platform to separate segregated funds. AOR003.

A political committee wishing to become a political committee client will first register with the requestor. *Id.* The requestor will verify the political committee's identity and bank account information. *Id.* The requestor and the political committee then will enter into a contractual relationship that will cover the services the requestor provides to the political committee client through the *eBundler* and *Donorship* platforms and the fees for those services, as described below. AOR003-04.

C. Fees

The requestor will charge its users, whether individuals or political committee clients, commercially reasonable fees for the requestor's services. AOR004, AOR006-07. If the recipient political committee is a political committee client, the fees paid by the political committee client will cover all costs associated with contribution processing and forwarding, the establishment and maintenance of the two platforms, and a reasonable profit to the requestor. AOR004, AOR006. The requestor will not provide its services at a below-market value. AOR007. Fees will be assessed according to a variable fee schedule that takes into account a number of factors, including the number of new contributors that make contributions to the political committee client through the *Donorship* platform. AOR015. The general fee structure will be the same for political committee clients and non-political committee clients. *Id.* Although there may be variations for business reasons, the requestor will not "in any way" base variations in the fee schedule on political considerations. *Id.*

If an individual makes a contribution to a political committee that is not a political committee client, the requestor will deduct from the contribution a fee for the requestor's contribution processing and forwarding services. AOR006. This fee will cover the requestor's financial institution costs, development costs, operating expenses, and a reasonable profit. *Id.* In such an instance, an individual will be notified of the fee arrangement before completing the contribution transaction. AOR004. The requestor will not include the fee amount in the total contribution amount reported to the recipient political committee. AOR015.

Questions Presented

- 1) May the requestor provide its web-based platform, Donorship, to process and forward individuals' contributions to federal candidates without making impermissible contributions to federal candidates?*
- 2) May the requestor provide its web-based platform, eBundler, to political committees to allow them to track information related to contributions and to solicit contributions from individual Donorship users?*
- 3) Would the requestor's proposed plan subject it to any reporting requirements under the Act?*

Legal Analysis and Conclusions

1) May the requestor provide its web-based platform, Donorship, to process and forward individuals' contributions to federal candidates without making impermissible contributions to federal candidates?

2) May the requestor provide its web-based platform, eBundler, to political committees to allow them to track information related to contributions and to solicit contributions from individual Donorship users?

Yes, the requestor may provide the proposed processing, forwarding, tracking, and solicitation services, and the provision of such services would not constitute contributions.

The Act and Commission regulations define a contribution as including “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2). “Anything of value” includes all in-kind contributions, such as the provision of goods and services without charge or at a charge that is less than the usual and normal charge. *See* 11 C.F.R. § 100.52(d)(1). The “usual and normal charge” for services is the commercially reasonable prevailing rate at the time the services were rendered. *See* 11 C.F.R. § 100.52(d)(2).

Every person who receives a contribution for a political committee that is not an authorized committee must forward such a contribution within 10 or 30 days of receiving it, depending upon the amount of the contribution. 52 U.S.C. § 30102(b)(2)(A)-(B); 11 C.F.R. § 102.8(b)(1)-(2). Every person who receives a contribution for an authorized political committee must forward the contribution and any required information about the contribution to the committee’s treasurer within 10 days of receipt. 52 U.S.C. § 30102(b)(1); 11 C.F.R. § 102.8(a).

The requestor proposes to provide services both to individual contributors and to recipient political committees. In some cases, as a service to individual contributors, the requestor plans to process and forward their contributions to political committees that are not the requestor’s political committee clients. In other cases, the requestor will process and forward contributions for its own political committee clients, as well as provide other services to those clients as described in the request. The Commission addresses each of these situations in turn.

Services to Contributors

The Commission has consistently concluded that entities that process contributions as a service to contributors, and not to the recipient political committees, are not making contributions to those political committees. *See, e.g.*, Advisory Opinion 2015-15 (WeSupportThat.com) at 4 (concluding that companies that process contributions as service to contributors are “analog[ous] . . . to widely available delivery services, such as United Parcel Service, or an electronic bill-pay service, such as those provided by banks” (internal quotation marks omitted)); Advisory Opinion 2014-07 (Crowdpac) at 6 (same); Advisory Opinion 2012-22

(skimmerhat) at 4-6 (same); Advisory Opinion 2011-19 (GivingSphere) at 7 (same); Advisory Opinion 2011-06 (Democracy Engine) at 5 (same).

Like prior requestors, the requestor here will forward contributions at the contributors' direction to the contributors' desired political committees and charge the contributors a "commercially reasonable" fee for this service. AOR006. Also like prior requestors, the requestor will require contributors to certify their eligibility to make contributions under federal law, will provide contributor identification to recipient political committees, and will transfer contributions through a bank account separate from its operational funds.

The requestor's proposal to provide services to contributors differs from those previously approved by the Commission only in that the requestor's proposed platform will also include "innovative tools" designed to "facilitate[] and encourage[] an individual to tap into his or her online network to support a candidate or cause" chosen by the individual. AOR003. This difference, however, is not material, because the individual user, not the requestor, will have complete control over whether to use the tools. *See, e.g.*, Advisory Opinion 2015-15 (WeSupportThat.com) at 5 (approving website listing candidate activities to motivate individuals to make contributions through website); Advisory Opinion 2014-07 (Crowdpac) at 1-2 (approving website providing publicly available information about candidates "to make it easier for voters to find and support candidates who share their priorities and positions on issues" and to make contributions to them); Advisory Opinion 2012-22 (skimmerhat) at 1 (approving website enabling users to "find candidates with whom they have shared values" based on "geographic location, ideological similarities, or single-issue positions" and to make contributions to them).

Accordingly, the provision of contribution processing services to individual contributors as described in the request will not result in the requestor making contributions.

Services to Political Committee Clients

The Commission has determined that a vendor providing contribution processing services to a political committee as a commercial vendor does not make a contribution to the political committee. *See, e.g.*, Advisory Opinion 2012-09 (Points for Politics) at 5-6; Advisory Opinion 2007-04 (Atlatl) at 3-4. In these prior advisory opinions, the Commission determined that commercial vendors rendered services in the ordinary course of business at the usual and normal charge; forwarded contributions through a segregated account to candidates and their committees; and employed adequate screening procedures to ensure that they were not forwarding illegal contributions. *See, e.g.*, Advisory Opinion 2012-09 (Points for Politics) at 5-6; Advisory Opinion 2007-04 (Atlatl) at 3-4; *see also* Advisory Opinion 2012-17 (Red Blue T LLC, *et al.*) at 10-11.

The requestor's service package — which will allow its political committee clients to customize their landing pages, create form solicitation letters, track individuals' fundraising progress, catalogue new contributors, and direct-message contributors through the *eBundler* platform, as well as have their contributions processed and forwarded through the *Donorship* platform — satisfies all three criteria. First, the requestor will be providing its services in the ordinary course of its business as a for-profit developer of web-based fundraising and

contribution processing platforms, charging a commercially reasonable fee at the “ordinary and usual charge” for those services. AOR007. Although the fee may vary according to certain criteria, such as the number of new contributors the political committee client obtains, and there may be variations in the fees charged to political committee clients versus non-political committee clients, these variations, as well as the overall fee structure, will not be based on political considerations “in any way.” AOR015.

Second, the requestor will transfer contributions made through the *Donorship* platform from a segregated account within 10 days of receipt.

Third, the requestor will screen contributions to ensure both that they are not excessive and that they are not from prohibited sources: The platform will reject any one-time excessive contribution; all contributors wishing to make a contribution to a political committee will be required to attest to statements verifying their eligibility under federal law to make contributions; and the requestor will track the contributions to ensure that only funds from eligible contributors are forwarded to political committees.

Accordingly, because the requestor will be acting as a commercial vendor, the provision of services to its political committee clients will not result in a contribution to them.

3) *Would the requestor’s proposed plan subject it to any reporting requirements under the Act?*

No, the proposed plan will not subject the requestor to any reporting requirements under the Act.

The Act and Commission regulations require certain persons to file reports with the Commission. For example, a “treasurer of a political committee shall file reports of receipts and disbursements.” *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1. And persons who spend above threshold amounts on independent expenditures or electioneering communications must file reports with the Commission. *See* 52 U.S.C. § 30104(c), (f); 11 C.F.R. §§ 104.20, 109.10.

As in Advisory Opinion 2012-22 (skimmerhat), the Commission concludes that “[b]ased on the facts set forth in the request, the [requestor] will be a commercial service provider, not a political committee, and therefore will not be subject to the [Act’s] reporting requirements for political committees.” Advisory Opinion 2012-22 (skimmerhat) at 9; *see also* 52 U.S.C. §§ 30101(4) (defining political committee), 30104(a), (b) (reporting requirements of political committees). Nor will the requestor engage in express advocacy or otherwise make independent expenditures. AOR007. Thus, it will not be subject to the reporting requirements for persons making independent expenditures. *See* 52 U.S.C. § 30101(17) (defining “independent expenditure”); 11 C.F.R. § 100.16(a) (same). Moreover, given that all relevant communications will take place on the internet, the requestor’s proposal will not implicate the reporting requirements for persons making electioneering communications. *See* 52 U.S.C. § 30104(f)(3)(A)(i) (defining “electioneering communications”); 11 C.F.R. § 100.29 (same).

The Act and Commission regulations also require intermediaries or conduits of earmarked contributions to report the original source of such a contribution and the recipient

candidate or authorized committee. 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c)(1). The Commission has concluded that where a commercial vendor provides contribution processing services to contributors, the contributions made through the platform are not earmarked through an intermediary to a candidate or authorized committee, but are instead “direct contributions to the candidate or authorized committee made via a commercial processing service.” Advisory Opinion 2012-22 (skimmerhat) at 10. Therefore, the requestor will not be a conduit and will not need to report as one when it processes and forwards contributions as a service to contributors.

The requestor also will not act as a conduit when it processes and forwards contributions for its political committee clients. Commission regulations provide that “a commercial fundraising firm retained by the candidate or the candidate’s authorized committee to assist in fundraising” is not a “conduit.” 11 C.F.R. § 110.6(b)(2)(i)(D). Because the requestor will act as a commercial vendor when it contracts with its political committee clients, the requestor will also qualify as a “commercial fundraising firm” for purposes of that regulation. *See* Advisory Opinion 2004-19 (DollarVote.org) at 5 (determining that corporation providing contribution-forwarding services to political committees would be commercial fundraising firm and thus not conduit).⁵ As a commercial fundraising firm, the requestor will not be subject to the reporting requirements applicable to conduits.

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

On behalf of the Commission,



Matthew S. Petersen
Chairman

⁵ In Advisory Opinion 2004-19 (DollarVote.org), the Commission analyzed whether a commercial fundraising firm “exercises any discretion that might influence which candidates would be recipients of the contributions, or the amounts that candidates would receive,” because “[t]he existence of such discretion would militate against a conclusion that the firm is providing a commercial service on an equal basis to all candidates registered with the firm.” *Id.* at 5. There is no indication in the facts presented here that the requestor will influence or seek to influence contributions as between its political committee clients.