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**AGENDA DOCUMENT NO. 16-30-B**  
**AGENDA ITEM**  
**For meeting of August 16, 2016**  
**SUBMITTED LATE**

August 15, 2016

MEMORANDUM

TO: The Commission

FROM: Daniel A. Petalas *NFS for DAP*  
Acting General Counsel

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Attorney

Subject: AO 2016-08 (eBundler.com) Draft B

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 August 16, 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 2016-08

2

3 Ronald M. Jacobs, Esq.  
4 William A. Powers, Esq.  
5 Venable LLP  
6 575 7th Street, NW  
7 Washington, DC 20004

**DRAFT B**

8

9 Dear Messrs. Jacobs and Powers:

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

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter received on June 17,  
18 2016, and your emails dated June 29 and August 11, 2016.

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

1 to process individual donations and contributions and to allow an individual to solicit<sup>1</sup> his or her  
2 online contacts for contributions to political committees and organizations. *Id.*

3 A. *Donorship Contribution Processing Platform*

4 1. *Contribution Processing and Forwarding*

5 Individuals who wish to use the *Donorship* platform will begin by searching or browsing  
6 the *Donorship* database for a specific candidate, committee, organization (such as a non-profit  
7 organization or ballot initiative committee), or cause that the individual wishes to support.

8 AOR002. An individual will be able to filter his or her results by location or office sought. *Id.*  
9 The requestor intends to list as many political committees in the *Donorship* database up front as  
10 possible.<sup>2</sup> AOR016. If an individual wishes to make a contribution to a political committee not  
11 already included in the *Donorship* database, the requestor will add the desired political  
12 committee. *Id.* A political committee will not need to be a political committee client to be  
13 included in the *Donorship* database. AOR003.

14 Once an individual selects his or her desired recipient political committee, the individual  
15 will be redirected to a landing page that the requestor maintains for that recipient. AOR002.  
16 The landing page will provide the individual with information about the candidate or committee,  
17 such as the candidate or committee's position on various issues. *Id.* If the recipient political  
18 committee is a political committee client, that client will be able to customize the landing page.  
19 *Id.* If the recipient political committee is not a political committee client, the landing page will

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<sup>1</sup> 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” by individuals, rather than “bundling.”

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

1 be a generic page created by the requestor using publicly available sources, including publicly  
2 available campaign advertisements. *Id.*

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

17 The requestor will process all contributions made through *Donorship* — regardless of  
18 whether the recipient is a political committee — through an account segregated from the  
19 requestor’s operating account. AOR007, AOR015. “Although all contributions and donations  
20 will be processed through one account,” the requestor and its e-commerce vendor will track and  
21 keep itemized records of each contribution and donation within the *Donorship* and *eBundler*  
22 platforms to “ensure[] that all funds intended for federal contributions are strictly from federally  
23 permissible sources.” AOR015.

1           2.     *Fundraising*

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

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

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<sup>3</sup> 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.

1 *B. eBundler Online Committee Fundraising Platform*

2 The *eBundler* platform will allow political committee clients<sup>4</sup> to personalize their landing  
3 pages on the *Donorship* platform, to track contributions they receive through *Donorship*, to  
4 obtain donor information from individuals using the fundraising tool, and to contact donors  
5 directly through *eBundler*. AOR003. Political committee clients also will be able to publicly  
6 recognize individuals whose fundraising efforts through the *Donorship* platform reach certain  
7 “bundler levels.” AOR004. The *eBundler* and *Donorship* platforms will work in tandem, with  
8 the requestor processing and forwarding contributions to the political committee client through  
9 the *Donorship* platform.

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

16 *C. Fees*

17 The requestor will charge its users, whether individuals or political committee clients,  
18 commercially reasonable fees for the requestor’s services. AOR004, AOR006-07. If the  
19 recipient political committee is a political committee client, the fees paid by the political  
20 committee client will cover all costs associated with contribution processing and forwarding, the  
21 establishment and maintenance of the two platforms, and a reasonable profit to the requestor.

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

1 AOR004, AOR006. The requestor will not provide its services at a below-market value.  
2 AOR007. Fees will be assessed according to a variable fee schedule that takes into account a  
3 number of factors, including the number of new contributors that make contributions to the  
4 political committee client through the *Donorship* platform. AOR015. The general fee structure  
5 will be the same for political committee clients and non-political committee clients. *Id.*  
6 Although there may be variations for business reasons, the requestor will not “in any way” base  
7 variations in the fee schedule on political considerations. *Id.*

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

15 ***Questions Presented***

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

1 ***Legal Analysis and Conclusions***

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

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

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

10 The Act and Commission regulations define a contribution as including “any gift,  
11 subscription, loan, advance, or deposit of money or anything of value made by any person for the  
12 purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R.  
13 § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2). “Anything of value” includes all in-kind  
14 contributions, such as the provision of goods and services without charge or at a charge that is  
15 less than the usual and normal charge. *See* 11 C.F.R § 100.52(d)(1). The “usual and normal  
16 charge” for services is the commercially reasonable prevailing rate at the time the services were  
17 rendered. *See* 11 C.F.R. § 100.52(d)(2).

18 Every person who receives a contribution for a political committee that is not an  
19 authorized committee must forward such a contribution within 10 or 30 days of receiving it,  
20 depending upon the amount of the contribution. 52 U.S.C. § 30102(b)(2)(A)-(B); 11 C.F.R.  
21 § 102.8(b)(1)-(2). Every person who receives a contribution for an authorized political  
22 committee must forward the contribution and any required information about the contribution to  
23 the committee’s treasurer within 10 days of receipt. 52 U.S.C. § 30102(b)(1); 11 C.F.R.



1 § 102.8(a).

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

#### 8 *Services to Contributors*

9 The Commission has consistently concluded that entities that process contributions as a  
10 service to contributors, and not to the recipient political committees, are not making  
11 contributions to those political committees. *See, e.g.*, Advisory Opinion 2015-15  
12 (WeSupportThat.com) at 4 (concluding that companies that process contributions as service to  
13 contributors are “analog[ous] . . . to widely available delivery services, such as United Parcel  
14 Service, or an electronic bill-pay service, such as those provided by banks” (internal quotation  
15 marks omitted)); Advisory Opinion 2014-07 (Crowdpac) at 6 (same); Advisory Opinion 2012-22  
16 (skimmerhat) at 4-6 (same); Advisory Opinion 2011-19 (GivingSphere) at 7 (same); Advisory  
17 Opinion 2011-06 (Democracy Engine) at 5 (same).

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

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

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

#### 16 *Services to Political Committee Clients*

17           The Commission has determined that a vendor providing contribution processing services  
18 to a political committee as a commercial vendor does not make a contribution to the political  
19 committee. *See, e.g.*, Advisory Opinion 2012-09 (Points for Politics) at 5-6; Advisory Opinion  
20 2007-04 (Atlatl) at 3-4. In these prior advisory opinions, the Commission determined that  
21 commercial vendors rendered services in the ordinary course of business at the usual and normal  
22 charge; forwarded contributions through a segregated account to candidates and their  
23 committees; and employed adequate screening procedures to ensure that they were not

1 forwarding illegal contributions. *See, e.g.*, Advisory Opinion 2012-09 (Points for Politics) at 5-  
2 6; Advisory Opinion 2007-04 (Atlatl) at 3-4; *See also* Advisory Opinion 2012-17 (Red Blue T  
3 LLC, *et al.*) at 10-11.

4         The requestor's service package — which will allow its political committee clients to  
5 customize their landing pages, create form solicitation letters, track individuals' fundraising  
6 progress, catalogue new contributors, and direct-message contributors through the *eBundler*  
7 platform, as well as have their contributions processed and forwarded through the *Donorship*  
8 platform — satisfies all three criteria. First, the requestor will be providing its services in the  
9 ordinary course of its business as a for-profit developer of web-based fundraising and  
10 contribution processing platforms, charging a commercially reasonable fee at the “ordinary and  
11 usual charge” for those services. AOR007. Although the fee may vary according to certain  
12 criteria, such as the number of new contributors the political committee client obtains, and there  
13 may be variations in the fees charged to political committee clients versus non-political  
14 committee clients, these variations, as well as the overall fee structure, will not be based on  
15 political considerations “in any way.” AOR015.

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

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

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

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

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

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

11           As in Advisory Opinion 2012-22 (skimmerhat), the Commission concludes that “[b]ased  
12 on the facts set forth in the request, the [requestor] will be a commercial service provider, not a  
13 political committee, and therefore will not be subject to the [Act’s] reporting requirements for  
14 political committees.” Advisory Opinion 2012-22 (skimmerhat) at 9; *see also* 52 U.S.C. §§  
15 30101(4) (defining political committee), 30104(a), (b) (reporting requirements of political  
16 committees). Nor will the requestor engage in express advocacy or otherwise make independent  
17 expenditures. AOR007. Thus, it will not be subject to the reporting requirements for persons  
18 making independent expenditures. *See* 52 U.S.C. § 30101(17) (defining “independent  
19 expenditure”); 11 C.F.R. § 100.16(a) (same). Moreover, given that all relevant communications  
20 will take place on the internet, the requestor’s proposal will not implicate the reporting  
21 requirements for persons making electioneering communications. *See* 52 U.S.C.  
22 § 30104(f)(3)(A)(i) (defining “electioneering communications”); 11 C.F.R. § 100.29 (same).

23           The Act and Commission regulations also require intermediaries or conduits of

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

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

19       This response constitutes an advisory opinion concerning the application of the Act and  
20 Commission regulations to the specific transaction or activity set forth in this advisory opinion

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<sup>5</sup> 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.

1 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of  
2 the facts or assumptions presented, and such facts or assumptions are material to a conclusion  
3 presented in this advisory opinion, then the requestor may not rely on that conclusion as support  
4 for its proposed activity. Any person involved in any specific transaction or activity which is  
5 indistinguishable in all its material aspects from the transaction or activity with respect to which  
6 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
7 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
8 affected by subsequent developments in the law including, but not limited to, statutes,  
9 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
10 on the Commission's website.

11 On behalf of the Commission,

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14  
15 Matthew S. Petersen  
16 Chairman  
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