



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 21, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2013-16

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Dear Messrs. Backer and Kamenar:

We are responding to your advisory opinion request on behalf of PoliticalRefund.org. PoliticalRefund.org asks about the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to its proposal to use data obtained from filings with the Commission to contact persons who have made contributions to candidates, to inform those contributors of their right to seek a refund of their contributions, and to facilitate requests for refunds. PoliticalRefund.org also asks whether it may display on its website the aggregate number of contributors who have requested refunds, and whether it may accept advertising on its website and sponsorship of its communications with contributors. The Commission concludes that the proposed use of contributor data, display of the aggregate number of contributors who have requested refunds, and acceptance of advertising and sponsorship are consistent with the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on September 10 and your email dated September 20, 2013 (collectively, “Advisory Opinion Request”).

PoliticalRefund.org is a non-profit organization¹ whose stated mission is “to provide political campaign contributors a simple, user-friendly means to request a refund of their contributions.” Advisory Opinion Request at 2. PoliticalRefund.org plans to focus its efforts on contributions made to federal officeholders “whose dramatically shifting issue positions or scandals” might cause contributors to seek refunds of their campaign contributions. *Id.* PoliticalRefund.org’s directors will decide whether to target a particular officeholder’s contributors, although in some cases the officeholder might be suggested by third parties, including paying sponsors (as described below).

PoliticalRefund.org plans to use data obtained from reports filed with the Commission and posted on the Commission’s website to identify persons who have contributed to a given officeholder. PoliticalRefund.org will contract with a vendor to match that information with data from other sources to fill in missing address information and obtain contributors’ email addresses, when available. PoliticalRefund.org states that, once the vendor provides the information to PoliticalRefund.org, the vendor will destroy its records of the data to prevent any further use of the contributor information.

PoliticalRefund.org plans to communicate with contributors either by conventional mail (letter or postcard) or, to reduce costs, by email when email addresses are available. Recipients of letters and postcards will decide whether to visit PoliticalRefund.org’s website and use its platform to request a contribution refund, whereas recipients of email communications will be able to click on a link to access PoliticalRefund.org’s website. Whether by traditional mail or email, each communication will inform contributors about their right to request a refund of their contributions and about PoliticalRefund.org’s website and services, although these communications also will state that no candidate or political committee is under any obligation to refund contributions. Each communication will be personalized with the contributor’s name and address, the name of the officeholder to whom the contribution was made, and the amount of the contribution. PoliticalRefund.org represents that once it sends the communication, it will destroy its records of the data to prevent further use of contributor information.

A contributor who visits PoliticalRefund.org’s website will be able to complete a form with the information necessary to request a refund; data entered into the form will automatically populate a refund request letter, which the contributor will send to the appropriate authorized committee. PoliticalRefund.org also wishes to give contributors who generate refund request letters the option of having PoliticalRefund.org follow up

¹ PoliticalRefund.org states that its application for federal tax-exempt status under section 501(c)(4) of the Internal Revenue Code is currently pending. Advisory Opinion Request at 2.

with the committees from which the contributors request refunds. Except for contributors who affirmatively consent to be contacted again by PoliticalRefund.org, PoliticalRefund.org will contact each contributor only once per election cycle concerning contributions made to a given candidate. PoliticalRefund.org may contact a person who has made contributions to multiple candidates multiple times, but only once for each candidate per election cycle. PoliticalRefund.org will not retain, sell, or otherwise use the information provided by contributors, other than to populate the refund request letter and for any follow-up communications requested by the contributor.

PoliticalRefund.org also proposes to publish on its website the aggregate number of contributors who have requested refunds from specific authorized committees. The data will be collected to measure the efficacy of PoliticalRefund.org's efforts and will provide the public with information about trends in refund requests, including trends regarding particular authorized committees. The data will be solely numerical and will not disclose any contributor's identifying information.

PoliticalRefund.org will not solicit donations from visitors to its website to help fund its activities, nor will it charge a fee for its services. To cover the costs of its website and activities, PoliticalRefund.org wishes to accept banner advertising on its website and sponsorship for its communications. PoliticalRefund.org will not accept such advertising or sponsorship from candidates, political committees, or any other entities engaging primarily in political activities. Sponsors will be identified as such in the communications that they sponsor. Because PoliticalRefund.org does not seek to make a profit on its activities, it will charge sponsorship fees only to cover the costs of the sponsored communication, and it will charge advertising fees only to cover the administrative costs of operating the website. PoliticalRefund.org will not enable or encourage anyone to make a contribution to any candidate or political committee.

Questions Presented

1. *May PoliticalRefund.org send a personalized letter with its website URL to contributors whose names and contact information were obtained in part from the Commission and securely matched to provide necessary additional mailing information?*
2. *May PoliticalRefund.org instead send a postcard with its website URL to contributors whose names and contact information were similarly obtained from the Commission and matched for full addresses?*
3. *May PoliticalRefund.org instead send an email containing a link to its website to contributors whose names and contact information were similarly obtained from the Commission and matched for email addresses?*
4. *May PoliticalRefund.org send a personalized email containing computer code embedded in the individual contributor's link to the website, which would then pre-populate the form letter at the website with the contributor's name and address information?*

5. *May PoliticalRefund.org offer contributors who respond to its communications the option of having PoliticalRefund.org follow up with their refund requests and communicate that information back to the contributors?*

6. *Without disclosing the identifying information of any contributor, may the PoliticalRefund.org website display on its home page the aggregate number of persons who have requested a refund and the total dollar amount requested from any individual authorized committee and from all authorized committees through the PoliticalRefund.org system?*

7. *May the PoliticalRefund.org website sell banner advertising and other sponsorship opportunities on its website in order to pay the costs of maintaining the website?*

Legal Analysis and Conclusion

1. *May PoliticalRefund.org send a personalized letter with its website URL to contributors whose names and contact information were obtained in part from the Commission and securely matched to provide necessary additional mailing information?*

2. *May PoliticalRefund.org instead send a postcard with its website URL to contributors whose names and contact information were similarly obtained from the Commission and matched for full addresses?*

3. *May PoliticalRefund.org instead send an email containing a link to its website to contributors whose names and contact information were similarly obtained from the Commission and matched for email addresses?*

4. *May PoliticalRefund.org send a personalized email containing computer code embedded in the individual contributor's link to the website, which would then pre-populate the form letter at the website with the contributor's name and address information?*

Yes, PoliticalRefund.org may use publicly available contributor information obtained from the Commission to contact contributors as proposed via letter, postcard, or email, and may embed computer code in its emails to pre-populate a web form with a contributor's name and address, because the contributor information would not be used

for the purpose of soliciting contributions or for any commercial purpose.²

The Act requires each political committee to report the “identification” of each person who makes aggregate contributions to the committee exceeding \$200 for the calendar year (or election cycle in the case of an authorized committee). 2 U.S.C. § 434(b)(3)(A); *see also* 11 C.F.R. § 104.8(a). For contributions by individuals, “identification” consists of reporting the individual’s name, mailing address, occupation, and employer’s name. 2 U.S.C. § 431(13)(A); 11 C.F.R. § 100.12. The Act requires the Commission to make these reports available for public inspection and copying, 2 U.S.C. § 438(a)(4); *see also* 2 U.S.C. § 438a (requiring Commission to make all reports publicly available online), but Congress was concerned about “protect[ing] the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party.” 117 Cong. Rec. S30057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon). Congress therefore provided a limitation to ensure that public contributor information was not misused: “[A]ny information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.” 2 U.S.C. § 438(a)(4); *see also* 11 C.F.R. § 104.15(a). The prohibition on using contributor information to solicit contributions applies to soliciting any kind of contribution or donation, including charitable donations. 11 C.F.R. § 104.15(b). The Commission has characterized this limitation as “a broad prophylactic measure intended to protect the privacy of the contributors about whom information is disclosed” in reports and statements filed with the Commission. Advisory Opinion 2003-24 (NCTFK) at 4; *see generally* *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523 (D.D.C. 1997) (discussing scope and purpose of provision).

The Commission has determined that the Act and Commission regulations do not prohibit the use of contributor information in circumstances similar to those presented here. In Advisory Opinion 2009-19 (Club for Growth), the Commission concluded that a nonprofit membership organization and its separate segregated fund (“SSF”) could use information obtained from a candidate’s disclosure reports to compile a list of the candidate’s contributors and to inform each contributor by letter or telephonically that the candidate had changed his party affiliation and had offered to refund contributions upon

² PoliticalRefund.org intends to contact contributors to federal candidates with regard to the candidates’ “dramatically shifting issue positions,” “scandals,” “controversial actions or other occurrences of potential concern.” Advisory Opinion Request at 2. PoliticalRefund.org has not expressed any intention to make contributions or expenditures in connection with a federal election. However, if PoliticalRefund.org makes contributions or expenditures, PoliticalRefund.org may be required to register and file reports as a political committee under the Act. The Act and Commission regulations define a “political committee” as “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 2 U.S.C. § 431(4)(A); *see also* 11 C.F.R. § 100.5. However, an organization that has made contributions or expenditures in excess of \$1,000 will not be considered a “political committee” unless, in addition, its “major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).” Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

request. In concluding that the proposed use of contributor information was permissible, the Commission emphasized that the organization and its SSF would neither solicit contributions nor use contributor information for any commercial purpose; the communications would be made only once to each contributor and would not require any follow-up contact; and the organization and its SSF would safeguard the contributor information against misuse by themselves or third parties. *Id.* at 4-5; *see also* Advisory Opinion 1984-02 (Gramm) (concluding that Representative Gramm’s authorized committee could use information obtained from disclosure reports to inform contributors to a nonconnected committee calling itself “Americans for Phil Gramm in ’84” that the nonconnected committee was not an authorized committee); Advisory Opinion 1981-05 (Findley) (concluding that a candidate could use information obtained from disclosure reports to mail letters to his opponent’s contributors to correct allegedly defamatory statements made by his opponent). In each of these advisory opinions, the Commission noted that the purpose of the prohibition is to prevent contributor information from being used for commercial purposes or for making solicitations. The prohibition does not “foreclose the use of this information for other, albeit political, purposes, such as correcting contributor misperceptions.” Advisory Opinion 1984-02 (Gramm).

Like Club for Growth, PoliticalRefund.org will use contributor information for the limited purpose of identifying and informing contributors about a candidate’s change in position and about their right to request a refund of their contributions, rather than for commercial purposes or to solicit contributions or donations. Moreover, PoliticalRefund.org has stated that it will safeguard contributor information to ensure that it is not misused by its vendors or by PoliticalRefund.org itself. Finally, as explained further in response to Question 5 below, PoliticalRefund.org will contact each contributor only once per candidate per election cycle (unless the contributor affirmatively consents to be contacted again), which is consistent with the limited activity the Commission found permissible in Advisory Opinion 2009-19 (Club for Growth).

Accordingly, PoliticalRefund.org’s proposed use of contributor information obtained from the Commission to contact contributors via letter, postcard, or email is consistent with the Act and Commission regulations.

5. *May PoliticalRefund.org offer contributors who respond to its communications the option of having PoliticalRefund.org follow up with their refund requests and communicate that information back to the contributors?*

Yes, PoliticalRefund.org may offer contributors who respond to its communications the option of having PoliticalRefund.org follow up with their refund requests and communicate that information back to the contributors because any such follow-up communications would not be to solicit donations or for commercial purposes, would occur solely at the request of the contributors, and would be limited in quantity.

PoliticalRefund.org generally proposes to contact contributors only once per election cycle for each targeted candidate. The only exception PoliticalRefund.org identifies to this one-contact rule is that the organization would follow up with

contributors regarding the status of their refund requests if the contributors authorize PoliticalRefund.org to do so.

PoliticalRefund.org's proposal is consistent with that approved by the Commission in Advisory Opinion 2009-19 (Club for Growth), for three reasons. First, as discussed above, the substance of PoliticalRefund.org's communications regarding contribution refunds would not constitute solicitations or commercial communications within the meaning of the Act or Commission regulations.

Second, in Advisory Opinion 2009-19 (Club for Growth), the Club for Growth stated that it would not contact a contributor more than once unless the contributor affirmatively requested additional communications. The Commission incorporated this limitation into its conclusion that the Club for Growth's proposal was permissible because its communications would be "made only once to each donor" and would not necessarily entail "any further contact." PoliticalRefund.org similarly states that it would require affirmative authorization from a contributor before contacting that contributor more than once per candidate.

Third, in both Advisory Opinion 2009-19 (Club for Growth) and in the current request, any authorized follow-up communications would necessarily be limited in quantity. In Advisory Opinion 2009-19 (Club for Growth), the only additional information that would be provided in a subsequent contact would be "further information . . . on how to request a refund." This is equivalent to the scope of PoliticalRefund.org's proposal, which would provide a status update on the contributor's refund request. In both cases, once the requested information is provided, there would be no further communications. This limitation distinguishes the instant request from the broad and open-ended interaction with contributors that the Commission found to be impermissible in Advisory Opinion 2003-24 (NCTFK). In that advisory opinion, the National Center for Tobacco Free Kids proposed to use contributor information obtained from reports filed with the Commission to send direct mail communications regarding tobacco use to certain contributors and to share the contributor information with allied organizations to enable them to contact the contributors for similar purposes. The Commission concluded that the proposed use of contributor information was not permissible under the Act and Commission regulations because it "present[s] the possibility of repetitive and intrusive communications to contributors," which "would fall within the realm of 'harassment' that Congress wanted to prevent." Advisory Opinion 2003-24 (NCTFK) at 4. The instant request presents no potential for such "open-ended" communications.

In sum, because PoliticalRefund.org proposes to contact each contributor only once per election cycle per candidate and will limit any further contacts to refund-status updates that the contributor affirmatively requests, the Commission concludes that this aspect of the proposal is consistent with the Act and Commission regulations.

6. *Without disclosing the identifying information of any contributor, may the PoliticalRefund.org website display on its home page the aggregate number of persons*

who have requested a refund and the total dollar amount requested from any individual authorized committee and from all authorized committees through the PoliticalRefund.org system?

Yes, PoliticalRefund.org may display the aggregate number of persons who have requested a refund and the total dollar amount requested from specified committees and from all committees through the PoliticalRefund.org system because the display would not include any identifiable contributor information.

The principal purpose of restricting the use of information from Commission reports is to protect individual contributors from having their information used for solicitation or commercial purposes or sold to others who use the information for such purposes. *See Legi-Tech*, 967 F. Supp. at 530; *see also, e.g.*, Advisory Opinion 2009-19 (Club for Growth); Advisory Opinion 1998-04 (White Oak Technologies); Advisory Opinion 1995-09 (NewtWatch); Advisory Opinion 1986-25 (Public Data); Advisory Opinion 1984-02 (Gramm). The Commission has previously considered whether promotional displays based on aggregate contributor data constitute such a use. In Advisory Opinion 1998-04 (White Oak Technologies), the requestor had developed software that could analyze large datasets, such as the Commission's public databases, for "fraud detection" and other purposes. The requestor proposed to create marketing materials that would not contain any identifiable information filed with the Commission but would include sample analyses of aggregate contributor data to illustrate the efficacy of the requestor's data-mining product. The Commission concluded that the requestor's proposed use of contributor data was not prohibited by the Act or Commission regulations because neither the marketing materials nor the underlying software being marketed would include contributors' identifying information.

Here, PoliticalRefund.org proposes to display aggregate numbers of persons who have used its platform to request refunds. This information will neither identify any contributor nor include contributor information that could be used for solicitations or commercial purposes. Accordingly, PoliticalRefund.org's proposal to display aggregate information about refund requests is not a prohibited use of contributor data.

7. *May the PoliticalRefund.org website sell banner advertising and other sponsorship opportunities on its website in order to pay the costs of maintaining the website?*

Yes, PoliticalRefund.org may sell advertising on its website and other sponsorship opportunities. As explained above, none of PoliticalRefund.org's proposed uses of contributor information violates the prohibition on using contributor data to solicit contributions or for commercial purposes. Because these activities are consistent with the Act, and because, based on the representations made in the request, PoliticalRefund.org is not a political committee³ or otherwise subject to the Act's financing restrictions, PoliticalRefund.org's sources of income are not governed by the

³ *See supra* note 2.

Act. Therefore, as long as PoliticalRefund.org continues to comply with 2 U.S.C. § 438(a)(4) by using contributor data only to contact contributors regarding refunds in the manner approved above in the responses to Questions 1-5 — and by publicizing only aggregate data in the manner approved in the response to Question 6 — PoliticalRefund.org may sell advertising and other sponsorship opportunities to defray the costs of maintaining its website.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. § 437f. 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 that 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* 2 U.S.C. § 437f(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. All advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

(signed)
Ellen L. Weintraub
Chair