MEMORANDUM

TO:         The Commission
FROM:       Lisa J. Stevenson
            Deputy General Counsel
            Adav Noti
            Acting Associate General Counsel
            Robert M. Knop
            Assistant General Counsel
            Esther Gyory
            Attorney
            Joanna S. Waldstreicher
            Attorney

Subject:    AO 2014-06 (Ryan, Ryan for Congress, and Prosperity Action)
            Draft C

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 July 23,
2014.

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,

Attachment
Dear Messrs. Kronquist and Bayes:

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

Background

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

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

In August 2014, Grand Central Publishing (the “Publisher”), a division of the international publishing company Hachette Book Group, will publish a book authored by Representative Ryan entitled The Way Forward. The book will address “the state of the conservative movement in America today, discuss how it contrasts with liberal progressivism, and explain what must be done to save what Representative Ryan refers to as the ‘American
Idea.” Advisory Opinion Request at 2 (June 30, 2014) (“AOR”). The Publisher will promote and market the book through a variety of events in which Representative Ryan will participate, including a promotional bus tour to various cities around the country, book signings, media appearances on national and local television and radio shows, and interviews with print and online media. Although the bus tour will not travel through or stop in Wisconsin, some of the television and radio appearances and print and online media interviews will likely be available within media markets covering Representative Ryan’s district. The Publisher intends to pay all costs associated with obtaining and operating the tour bus.

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

Ryan for Congress and Prosperity Action each propose to purchase copies of the book to be distributed solely to their respective supporters and contributors. Both Ryan for Congress and Prosperity Action would purchase the book in bulk directly from the Publisher at the standard discounted bulk rate the Publisher offers, under normal industry practice, to other large purchasers. Neither Ryan for Congress nor Prosperity Action will purchase more books than the number needed to fulfill the purpose of distribution to each entity’s supporters and contributors. The Publisher will be instructed to exclude all associated royalties from the bulk purchases by
both entities from the royalty calculation, and the Publisher will donate any royalties generated
by these purchases directly to a section 501(c)(3) charitable organization that is not in any way
associated with Representative Ryan or his family.

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

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

As part of its fundraising appeals and other efforts to advocate Representative Ryan’s re-
election, Ryan for Congress plans to send to its existing email lists emails that reference the
Representative’s book. Prosperity Action likewise plans to send to its existing email lists emails
that reference the book for fundraising purposes and in the context of other election-related activities for the purpose of influencing one or more elections for federal office.

Representative Ryan intends to use personal funds to purchase or rent email and mailing lists maintained by both Ryan for Congress and Prosperity Action. Representative Ryan intends to use these lists to promote his book, such as by sending emails announcing its publication. Representative Ryan will enter into separate list rental agreements with Ryan for Congress and Prosperity Action. Each agreement will provide for Representative Ryan to pay the fair market value for renting the lists, as determined by an independent list appraisal. The request further states that the list rental agreements will comply with the requirements set forth in Advisory Opinion 2002-14 (Libertarian National Committee).

Questions Presented

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

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

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

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

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

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

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

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

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

Legal Analysis and Conclusions

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

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

Under the Act and Commission regulations, an authorized committee may spend its funds to finance activities “in connection with the candidate’s campaign for federal office.” 2 U.S.C. § 439a(a)(1); 11 C.F.R. § 113.2(a) (providing that campaign funds may be used to “defray[ ] expenses in connection with a campaign for federal office”). Such spending must not, however,
result in the conversion of campaign funds to the personal use of the candidate or any other

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

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

The purchase of a candidate’s book is not one of the per se personal uses listed in the Act

Accordingly, the Commission determines on a case-by-case basis whether such a purchase by an
authorized committee is personal use. See, e.g., Advisory Opinion 2011-02 (Brown); Advisory
Opinion 2006-18 (Granger); Advisory Opinion 2004-18 (Lieberman); Advisory Opinion 2001-
08 (Specter); Advisory Opinion 1995-46 (D’Amato); Advisory Opinion 1993-20 (Nighthorse
Campbell).

The facts presented in this request are particularly similar to those presented in Advisory
Opinion 2001-08 (Specter) and Advisory Opinion 2011-02 (Brown). In each of those advisory
opinions, the Commission determined that the authorized committee’s use of campaign funds to
purchase copies of its candidate’s book would defray an expense that would not exist irrespective
of the campaign, and therefore the spending would not be an impermissible personal use. The
Commission’s conclusion in each of those advisory opinions was based on several facts: The
authorized committee’s funds would be used to purchase the book solely for distribution to the
committee’s contributors and supporters, and thus would be used by the committee only for the
purpose of influencing its candidate’s election to federal office; the quantity purchased would not
exceed the number needed for this described purpose; all royalties attributable to the committee’s
purchase would be paid by the publisher to charity; and the committee’s purchase would be
excluded by the publisher from the royalty calculation. Advisory Opinion 2011-02 (Brown) at
5-6; Advisory Opinion 2001-08 (Specter) at 3.

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

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

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

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

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

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

\(^1\) Representative Ryan “must also not receive any personal benefit, tangible or intangible, for the royalties the Publisher donates to charity for the sales of the book to [his campaign committee].” Advisory Opinion 2011-02 (Brown) at 6.
discount does not result in a contribution when the discount is made available in the ordinary course of business and on the same terms and conditions to the vendor’s other customers that are not political organizations or committees. See, e.g., Advisory Opinion 2004-18 (Lieberman) at 3; Advisory Opinion 2001-08 (Specter) at 3; Advisory Opinion 1996-02 (CompuServe); Advisory Opinion 1995-46 (D’Amato) at 3.

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

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

The Commission concludes that, under the circumstances described in the request, the conduct proposed in Question 2a is not in violation of the Act or Commission regulations. The Commission could not agree as to the legal basis for that conclusion by the required four affirmative votes. 2 U.S.C. § 437c(c); 11 C.F.R. § 112.4(a).

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

No, Prosperity Action’s purchase of books from the Publisher at the standard, discounted bulk rate does not result in an in-kind contribution from the Publisher to Prosperity Action.
As discussed above with respect to Ryan for Congress’s purchase of books at the discounted bulk rate, the sale of goods or services at a discount does not result in a contribution when the discount is made available in the ordinary course of business and on the same terms and conditions to the vendor’s other customers that are not political organizations or committees. As in Advisory Opinion 2004-18 (Lieberman) and Advisory Opinion 2001-08 (Specter), Prosperity Action indicates that the bulk rate it will pay is a standard, discounted price that the Publisher, under normal industry practice, makes available on equal terms to other purchasers that are not political organizations or committees. Accordingly, the Commission concludes that Prosperity Action’s payment of the standard, discounted bulk rate will not result in a contribution from the Publisher.

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

Yes, Ryan for Congress may post a de minimis amount of material promoting the book on its website and social media pages at a de minimis cost. The Act provides that an unlawful conversion of campaign funds to personal use occurs when such funds are “used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.” 2 U.S.C. § 439a(b)(2); see also 11 C.F.R. § 113.1(g). The Commission has previously determined that the expenses associated with marketing a book that a commercial publisher publishes and for which it pays royalties to the candidate are expenses that would exist irrespective of the candidate’s election campaign or duties as a federal officeholder. See Advisory Opinion 2011-02 (Brown) at 6; Advisory Opinion 2006-07 (Hayworth) at 3; Advisory Opinion 2006-18 (Granger) at 3. Therefore, the use of an authorized committee’s asset, such as
its website, to promote the candidate’s book would ordinarily constitute a prohibited personal use. See Advisory Opinion 2011-02 (Brown) at 6; Advisory Opinion 2006-07 (Hayworth) at 3; Advisory Opinion 2006-18 (Granger) at 3.

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

Here, Ryan for Congress proposes to promote the book on its website, limiting references to the book to one or two sentences that include hyperlinks to additional information on the Publisher’s website or to online booksellers. Ryan for Congress states that the cost of adding this material to the committee’s website would be de minimis. The committee also proposes to promote the book through similar brief references and hyperlinks on its social media pages, which, the request notes, are generally free to use.2 The Commission concludes that the amount

---

2 Paid advertising can be purchased on Facebook and Twitter, but such advertising “is not contemplated here.” AOR at 9.
of such material promoting the book is de minimis and Ryan for Congress may place them on its website and social media pages, so long as the cost of doing so is de minimis.

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

The Commission could not agree to a conclusion by the required four affirmative votes.

2 U.S.C. § 437c(c); 11 C.F.R. § 112.4(a).

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

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

The Commission has long recognized that a political committee’s mailing lists are assets that have value and that are frequently sold, rented, or exchanged in a market. See, e.g., Advisory Opinion 2011-02 (Brown) at 7-8; Advisory Opinion 2002-14 (Libertarian National Committee) at 4-5; Advisory Opinion 1982-41 (Dellums) at 2; Advisory Opinion 1981-46 (Dellums) at 2. Thus, as to Representative Ryan’s rental of Ryan for Congress’s mailing lists, the relevant question is whether the Representative’s rental constitutes personal use of the Committee’s asset. Commission regulations provide that “the transfer of a campaign committee asset is not personal use so long as the transfer is for fair market value.” 11 C.F.R. § 113.1(g)(3).

Accordingly, Representative Ryan’s proposal to rent his campaign committee’s mailing lists for their fair market value, as determined by an independent list broker, is permissible.
As discussed above, the personal use prohibition implemented in 11 C.F.R. § 113.1(g) does not apply to leadership PACs, but 11 C.F.R. § 113.1(g)(6) provides that third-party defrayals of a candidate’s expenses that would otherwise constitute personal use are contributions to that candidate. By providing its mailing list to Representative Ryan for purposes of marketing his book, Prosperity Action would defray some of his personal marketing expenses, and therefore section 113.1(g)(6) is potentially implicated here. The Commission has determined, however, that no contribution results when a political committee leases its mailing list, provided that: (1) the mailing list has an ascertainable fair market value; (2) the political committee leases the mailing list at the usual and normal charge in a bona fide, arm’s-length transaction; and (3) the list is used in a commercially reasonable manner consistent with such arm’s-length agreement. Advisory Opinion 2002-14 (Libertarian National Committee) at 4.

Representative Ryan proposes to enter into a list rental agreement with Prosperity Action that will comply with the requirements of Advisory Opinion 2002-14 (Libertarian National Committee), including payment of fair market value for the lists. Therefore, Representative Ryan’s rental of Prosperity Action’s mailing lists will not result in a contribution by Prosperity Action to Representative Ryan under 11 C.F.R. § 113.1(g)(6).³

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

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

³ The rental payments at fair market value also will not constitute contributions from Representative Ryan to Prosperity Action. See Advisory Opinion 2002-14 (Libertarian National Committee) at 5.
8. Are the Publisher’s costs and expenses for the publication and promotion of Representative Ryan’s book exempt from the Act’s regulation because they are bona fide commercial activity?

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

The Publication and Promotion of the Book are Bona Fide Commercial Activity

The Act and Commission regulations limit the term “contribution” to “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.” 2 U.S.C. § 431(8)(A)(i) (emphasis added); see also 11 C.F.R. § 100.52. For corporations, “the term ‘contribution or expenditure’ also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate . . . in connection with any election.” 2 U.S.C. § 441b(b)(2) (emphasis added). A corporation’s bona fide commercial activity is neither “for the purpose of influencing any election for federal office” nor “in connection with any election” and thus is not a contribution or otherwise subject to regulation under the Act. See, e.g., First Gen. Counsel’s Rpt. at 13-17, MUR 5474 and 5539 (Dog Eat Dog Films, Inc.) (May 25, 2005) (“Dog Eat Dog”); Advisory Opinion 1994-30 (Conservative Concepts/Pence) at 3-7; Advisory Opinion 1989-21 (Create-a-Craft) at 4. In determining whether activity is bona fide commercial activity, the Commission has identified a number of factors, including: “(1) whether the sales of the merchandise involve fundraising activity or solicitations for political contributions; (2) whether the activity is engaged in by the vendor for genuinely commercial purposes and not for the purpose of influencing an election; (3) whether
the items are sold at the vendor’s usual and normal charge; and (4) whether the purchases are made by individuals for their personal use.” Dog Eat Dog at 14; see also Advisory Opinion 1994-30 (Conservative Concepts/Pence) at 4; Advisory Opinion 1989-21 (Create-a-Craft) at 4. The Publisher’s activities, as described in the request, would involve only the publication, promotion, and sale of Representative Ryan’s book, not any fundraising activity or solicitations for political contributions for Representative Ryan, Ryan for Congress, or Prosperity Action. AOR at 16. Such publication, promotion, and sale — especially as conducted by a “long established and prominent publisher” that “publishes a wide variety of different types of books, both political and non-political,” id. at 1, 16 — are genuine commercial activity on their face. There is no indication in the request that the Publisher seeks to influence a federal election. All of Representative Ryan’s books will be sold at usual and normal sales prices (including standard bulk discounts, where applicable). See id. at 2, 16. Based on these representations, the Commission concludes that the Publisher’s publication of Representative Ryan’s book and payment of the related promotional costs described in the request are bona fide commercial activity, and thus they are outside the scope of the Act’s regulation.4 This response constitutes an advisory opinion concerning the application of FECA 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 requestors may not rely on that conclusion as support for their

---

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

On behalf of the Commission,

Lee E. Goodman
Chairman