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For meeting of August 16, 2016

August 4, 2016

MEMORANDUM

TO: The Commission

FROM: Daniel A. Petalas *DAP by AN*
Acting General Counsel

Adav Noti *AN*
Acting Associate General Counsel

Neven F. Stipanovic *NFS by AN*
Acting Assistant General Counsel

Esther D. Gyory *EDG*
Attorney

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

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on August 15, 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 A

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 email dated June 29, 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 solicit¹ 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.² 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

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” 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.

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. Individuals will be prompted to enter the amount of their contribution, their
6 contact information, employer, occupation, and credit card information. AOR002. Individuals
7 will be notified of the contribution limits and that any contributions aggregating over \$200 will
8 be publicly reported by the recipient political committee to the Commission. AOR005,
9 AOR016. The *Donorship* platform will reject a single contribution that exceeds the federal
10 limits. AOR016.

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

18 2. *Fundraising*

19 The *Donorship* platform will also provide a tool for an individual to fundraise for a
20 political committee by soliciting the individual’s online contacts. The fundraising tool will allow
21 an individual to import a contact list from an existing online account such as Outlook, Gmail, or
22 LinkedIn. AOR002. The individual will then be able to select contacts to solicit for

1 contributions to the individual's selected recipient political committee.³ The individual will use
2 the fundraising tool to send a solicitation form letter through email to the user's selected
3 contacts. If the intended recipient political committee is a political committee client, the political
4 committee client will be able to draft a form letter for use by individuals who wish to fundraise
5 through *Donorship*. AOR003. If the recipient political committee is not a political committee
6 client, the requestor will provide a boilerplate solicitation email. AOR015. In both cases, the
7 individual will be able to add a personalized message to the email. AOR003, AOR015. The
8 request states that although individuals and political committee clients may engage in express
9 advocacy through the platforms, the requestor itself will not make independent expenditures or
10 engage in express advocacy. AOR007.

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

16 **B. eBundler Online Committee Fundraising Platform**

17 The *eBundler* platform will allow political committee clients⁴ to personalize their landing
18 pages on the *Donorship* platform, to track contributions they receive through *Donorship*, to
19 obtain donor information from individuals using the fundraising tool, and to contact donors
20 directly through *eBundler*. AOR003. Political committee clients also will be able to publicly

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.

1 recognize individuals whose fundraising efforts through the *Donorship* platform reach certain
2 “bundler levels.” AOR004. The *eBundler* and *Donorship* platforms will work in tandem, with
3 the requestor processing and forwarding contributions to the political committee client through
4 the *Donorship* platform.

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

11 C. Fees

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

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

8 ***Questions Presented***

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

16 ***Legal Analysis and Conclusions***

- 17 1) *May the requestor provide its web-based platform, Donorship, to process and forward*
18 *individuals' contributions to federal candidates without making impermissible contributions to*
19 *federal candidates?*
- 20 2) *May the requestor provide its web-based platform, eBundler, to political committees to allow*
21 *them to track information related to contributions and to solicit contributions from individual*
22 *Donorship users?*

23 Yes, the requestor may provide the proposed processing, forwarding, tracking, and

1 solicitation services, and the provision of such services would not constitute contributions.

2 The Act and Commission regulations define a contribution as including “any gift,
3 subscription, loan, advance, or deposit of money or anything of value made by any person for the
4 purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R.
5 § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2). “Anything of value” includes all in-kind
6 contributions, such as the provision of goods and services without charge or at a charge that is
7 less than the usual and normal charge. *See* 11 C.F.R. § 100.52(d)(1). The “usual and normal
8 charge” for services is the commercially reasonable prevailing rate at the time the services were
9 rendered. *See* 11 C.F.R. § 100.52(d)(2).

10 Every person who receives a contribution for a political committee that is not an
11 authorized committee must forward such a contribution within 10 or 30 days of receiving it,
12 depending upon the size of the contribution. 52 U.S.C. § 30102(b)(2)(A)-(B); 11 C.F.R.
13 § 102.8(b)(1)-(2). Every person who receives a contribution for an authorized political
14 committee must forward the contribution and any required information about the contribution to
15 the committee’s treasurer within 10 days of receipt. 52 U.S.C. § 30102(b)(1); 11 C.F.R.
16 § 102.8(a).

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

23

1 *Services to Contributors*

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

11 Like prior requestors, the requestor here will forward contributions at the contributors’
12 direction to the contributors’ desired political committees and charge the contributors a
13 “commercially reasonable” fee for this service. AOR006. In addition, the requestor will require
14 contributors to certify their eligibility to make contributions under federal law, will provide
15 contributor identification to recipient political committees, and will transfer contributions
16 through a bank account separate from its operational funds.

17 The requestor’s proposal to provide services to contributors differs from those previously
18 approved by the Commission only in that the requestor’s proposed platform will also include a
19 fundraising tool designed to “facilitate[] and encourage[] an individual to tap into his or her
20 online network to support a candidate or cause.” AOR003. This difference, however, is not
21 material. The fundraising tool will merely generate a boilerplate, customizable email that an
22 individual user of the *Donorship* platform will be able to send to his or her contacts. AOR006,

1 AOR015. Because the requestor will provide that boilerplate for solicitations to any recipient⁵
2 — and because the individual user, not the requestor, will have complete control over whether to
3 send the solicitation and its content — the fundraising tool “does not raise concerns that the
4 requestor is selecting candidate recipients to influence the outcome of the election.” Advisory
5 Opinion 2015-15 (WeSupportThat.com) at 5 (approving website listing candidate activities to
6 motivate individuals to make contributions through website); *see also* Advisory Opinion 2014-07
7 (Crowdpac) at 1-2 (approving website providing publicly available information about candidates
8 “to make it easier for voters to find and support candidates who share their priorities and
9 positions on issues” and to make contributions to them); Advisory Opinion 2012-22
10 (skimmerhat) at 1 (approving website enabling users to “find candidates with whom they have
11 shared values” based on “geographic location, ideological similarities, or single-issue positions”
12 and to make contributions to them).

13 Accordingly, the provision of contribution processing services to individual contributors
14 as described in the request will not result in the requestor making contributions.⁶

15 *Services to Political Committee Clients*

16 The Commission has determined that a vendor providing contribution processing services
17 to a political committee as a commercial vendor does not make a contribution to the political

⁵ Political committee clients will be able to draft their own boilerplate solicitation emails that an individual wishing to fundraise on behalf of that political committee will be able to use. Because the clients will pay the requestor for the ability to create such emails, this service is analyzed below in the context of the requestor’s commercial vendor activities.

⁶ The request indicates that the landing pages for recipient political committees may contain “publicly available campaign advertisements, if available.” AOR002. The request does not ask, and the Commission does not opine on, whether the content of the landing pages would constitute a contribution from the requestor to a political committee. The Commission notes, however, that unless certain exceptions apply, “the financing of the dissemination, distribution, or republication . . . of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate’s authorized committee, or an agent of either of the foregoing shall be considered a contribution.” 11 C.F.R. § 109.23.

1 committee. *See, e.g.*, Advisory Opinion 2012-09 (Points for Politics) at 5-6; Advisory Opinion
2 2007-04 (Atlatl) at 3-4; Advisory Opinion 2004-19 (Dollar Vote) at 4. For the requestor to be
3 acting as a commercial vendor, it must satisfy three criteria: First, the service must be rendered
4 in the ordinary course of business at the usual and normal charge; second, the vendor must
5 forward contributions to candidates and political committees through segregated accounts; and
6 third, the vendor must employ adequate screening procedures to ensure that it is not forwarding
7 illegal contributions. *See, e.g.*, Advisory Opinion 2012-09 (Points for Politics) at 5-6; Advisory
8 Opinion 2007-04 (Atlatl) at 3-4; Advisory Opinion 2004-19 (Dollar Vote) at 4.

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

21 Second, the requestor will transfer contributions made through the *Donorship* platform
22 from a segregated account within 10 days of receipt. Thus, the contributions will not become or
23 be commingled with the requestor's funds.

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

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

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

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

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

17 The requestor will not engage in express advocacy or otherwise make independent
18 expenditures. AOR007. Thus, it will not be subject to the reporting requirements for persons
19 making independent expenditures. *See* 52 U.S.C. § 30101(17) (defining “independent
20 expenditure”); 11 C.F.R. §§ 100.16(a) (same). Nor will the requestor be making contributions,
21 as described in the answers to Questions 1 and 2, above. Therefore, requestor will not be a
22 political committee, and it will not be subject to the reporting requirements for political
23 committees. *See* 52 U.S.C. § 30101(4) (defining “political committee”); 11 C.F.R. § 100.5(a)

1 (same). Moreover, given that all relevant communications will take place on the internet, the
2 requestor's proposal will not implicate the reporting requirements for persons making
3 electioneering communications. *See* 52 U.S.C. § 30104(f)(3)(A)(i) (defining "electioneering
4 communications"); 11 C.F.R. § 100.29 (same).

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

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

