



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission
Staff Director
General Counsel
Press Office
Public Disclosure

FROM: Commission Secretary 

DATE: May 24, 2012

SUBJECT: Comments on Draft AO 2012-17
(Red Blue T LLC, Armour Media, Inc.,
and m-Qube, Inc.)

Transmitted herewith is a timely submitted comment from Robert F. Bauer on behalf of Obama for America.

Draft Advisory Opinion 2012-17 is on the May 24, 2012 open meeting agenda.

Attachment



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May 24, 2012

VIA FACSIMILE (202) 208-333 AND (202) 219-3923

Office of the Commission Secretary
Shawn Woodhead Werth
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
Anthony Herman, General Counsel
Kevin Deeley, Acting Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: **Advisory Opinion 2012-17, Drafts A and B**

Dear Ms. Werth:

I write on behalf of Obama for America to provide comments on Advisory Opinion 2012-17, Drafts A and B. We urge the Commission to adopt Draft B and approve the proposed plan to facilitate the making of small donations through text messaging.

Campaign finance policy debates are marked by strong differences of opinion, but agreement seems widespread on the creative uses of emerging technologies. When the Commission considered the public matching of online credit card contributions, which was a relatively novel practice at the time, it affirmed that "[w]here possible, the Commission has interpreted the Act

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and its regulations in a manner consistent with contemporary technological innovations, including ... the performance of committee transactions, where the use of the technology would not compromise the intent of the Act or regulations." See Advisory Opinion 1999-9 (June 10, 1999).¹ Among innovations, those with the potential of encouraging and easing the means of small donor participation are highly favored. It is fair to say that, in the light of developments in contemporary campaign finance law, this objective is more urgent than ever before.

The Federal Election Campaign Act of 1971, as amended, has long freed campaigns to accept the smallest dollar donations, at \$50 dollars or less, with little regulatory impediment. 2 U.S.C. § 432(c) (2012). In a different time, this was known as "pass the hat" money. Now "the hat" is a mobile device through which an appeal for funds can circulate in an instant—in this case, by text message—to a willing audience of small donors. These circumstances do not trigger the core statutory concerns with corruption or its appearance.

To the extent that various regulatory requirements must be addressed, such as those for screening and forwarding the small contributions, the Requesters proposes various measures to minimize the risk of violations. There are considerably more safeguards under the proposed plan than applied, and could ever have been applied, to a traditional "pass the hat" event. Draft B shows how these measures bring the proposal into compliance with the relevant Commission rules.

While Draft A makes the opposite case, it does not make it conclusively or successfully. What these Drafts present is a choice: between a regulatory approach that favors the adaptation of new technologies to small donor giving, and that one that discourages it. The Commission has consistently and appropriately supported the first of these approaches to embrace innovation, as a matter of policy and practice. See, e.g., Internet Communications, 71 Fed. Reg. 18589 (April 12, 2006). It should do so again here.

¹ See also Advisory Opinions 1999-36 (Campaign Advantage) (determining that contributions received through an electronic check system are eligible for Federal matching funds); 1999-03 (Microsoft PAC) (permitting use of "electronic signatures" by restricted class employees to make contributions through payroll deduction); 1995-09 (NewtWatch) (permitting use of credit cards to make contributions through the Internet); 1990-01 (Digital Corrections) (permitting use of 900 line services to make contributions through telephone calls); 1989-26 (Bond for Congress) (permitting automatic funds transfers from contributors' bank accounts to a committee account); 1978-68 (Seith for Senate) (permitting use of credit cards to make contributions).

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We urge the adoption of Draft B and the plan for text message, small donor contributions. There is no better time.

Very truly yours,

A handwritten signature in black ink, appearing to read 'RFB', followed by a horizontal line extending to the right.

Robert F. Bauer

General Counsel, Obama for America