

August 23, 2017

By Electronic Mail

Erin Chlopak, Esq.
Acting Associate General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Comments on Advisory Opinion 2017-06, Drafts A and B

Dear Ms. Chlopak,

The Campaign Legal Center has reviewed the audio recording of the Commission's open meeting of August 17, 2017, which was posted on the Commission's website on August 22. We respectfully offer these supplemental comments regarding Drafts A and B of Advisory Opinion 2017-06 in light of the open meeting discussion.

Requestors suggested at the meeting that it is "quite clear" the Commission has previously approved proposals like their own. That is not correct. Requestors and Drafts A and B rely (AOR006; Draft A at 8-9; Draft B at 9) on advisory opinions regarding corporations that provide vendor services *to committees*. See Advisory Opinion 2012-28 (CTIA) at 3 (approving proposal to process contributions as paid service to committees); Advisory Opinion 2012-26 (Cooper for Congress) (same); Advisory Opinion 2006-34 (Working Assets) (same); 1994-30 (Conservative Concepts) (same).¹ But as the requestors themselves assert in their AOR, "**The App Provides Services to Users, Not to Political Committees**" (AOR005 (emphasis in original)), and a decade of Commission precedent establishes that there is a fundamental and legally significant difference between providing services to contributors and to recipient committees. See Advisory Opinion 2011-06 (Democracy Engine) (noting that this distinction arises from Advisory Opinion 2007-04 (Atlatl) and Advisory Opinion 2006-08 (Brooks)); see also AOR005 (citing Advisory Opinion 2015-08 (Repledge) as "distinguishing between companies that process contributions as a service to contributors and companies that process contributions as a service to recipient political committees"). Because requestors vehemently insist they are not providing services to political committees, the advisory opinions they cite have no bearing on this matter.

In terms of relevant authorities, the Commission has considered many contributor-side payment-processing AOs since the seminal Advisory Opinion 2011-06 (Democracy Engine), and in *none* of those matters has the Commission approved a corporation's proposal to process payments to a partisan set of recipients selected by the corporation. See Advisory Opinion 2015-

¹ The AOR also cites Advisory Opinion 2006-08 (Brooks), with the parenthetical "(limiting the parties and PAC it works with based on criteria important to the success of the vendor's business)." AOR006. What this parenthetical refers to is not clear, as the proposal approved in Advisory Opinion 2006-08 (Brooks) does not appear to have involved limits on the "Federal candidates and political committees" to whom that requestor planned to disburse funds. See *id.* at 1 n.1, 2-3.

15 (WeSupportThat.com) (approving proposal to allow “users . . . to make contributions via the website to any federal candidate”); Advisory Opinion Request 2015-11 (FYP) (deadlocking on proposal to provide contribution-processing service that would transmit only to “political committees that share [requestor’s] users’ ideology and values”); Advisory Opinion 2015-08 (Repledge) (approving proposal to process contributions to opposing major-party candidates); Advisory Opinion Request 2015-03 (Democracy Rules) (deadlocking on proposal to process contributions where processor would make “unilateral decisions” about eligible recipients); Advisory Opinion 2014-07 (Crowdpac) (approving proposal to process contributions to “each federal candidate who has registered an authorized committee with the Commission”); Advisory Opinion 2012-22 (skimmerhat) (approving proposal to transmit contributions to “[e]very Federal candidate”); Advisory Opinion 2011-09 (Giving Sphere) (approving proposal to process contributions to “all active political committees registered with the Commission”). Accordingly, the conclusion offered by Drafts A and B has no support in Commission precedent.

As we noted in our prior comment, requestors’ proposal would allow corporations to solicit and transmit contributions from the general public to the corporations’ favored candidates. The Commission has never considered this to be mere payment processing, and for good reason: It is unlawful. 11 C.F.R. § 114.2.

Sincerely,

/s/ Adav Noti

Adav Noti
Senior Director, Trial Litigation and Strategy