AOR 2012-08

Repledge

Turning Political Contributions into Charitable Donations

March 1, 2012

Anthony Herman, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Repledge Advisory Opinion Request

Dear Mr. Herman:

Pursuant to 2 U.S.C. § 437f and 11 C.F.R. § 112, I, Eric M. Zolt, on behalf of Repledge ("Repledge") and my co-founders, Jonathan DiBenedetto and Noah Ornstein, requests an advisory opinion with respect to eight questions regarding the application of the Federal Election Campaign Act (FECA) to Repledge's operation of a web-based platform that allows individuals to remove pledged dollars in equal amounts from opposing candidates for federal office (the candidate's principal campaign committee, the ("federal committees")) and direct those dollars to nonprofit, tax-exempt Section 501(c)(3) organizations ("charities").

Repledge will provide a web-based platform that creates a virtual meeting place where supporters of opposing federal candidates can agree to refrain from making political contributions to federal committees, and instead direct the funds to charities. This virtual meeting place will allow individuals who register with Repledge ("members") to pledge money to a federal candidate, and at the same time designate the charity that will receive funds if the pledge is matched by supporters of the opposing candidate.

Repledge seeks to confirm that its business plan to provide a platform to allow its members to make pledges in the name of federal candidates, and to make contributions to federal candidates when the pledge is not matched, will comply with FECA and Commission regulations. Specifically, Repledge requests the Commission's opinion as to the following questions.

1. Would a monetary pledge from a member to a federal committee and charity, which is pre-approved by a third-party payment processor, charged to a member's credit card, and which eventually results in a contribution to a federal committee or a donation to a charity (depending on whether the pledge is matched by a supporter of an opposing candidate or party), constitute a "contribution" under 2 U.S.C. § 431(8)?

    a. Would such a pledge constitute a "contribution" under 2 U.S.C. § 431(8) at the time the pledge is made through Repledge, subject to the 10-day forwarding requirement established by 11 C.F.R. § 102.8(a)?

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b. Would any portion of such a pledge that results in a donation to a charity (because all or part of the pledge is matched by a supporter of an opposing candidate or party) nevertheless constitute a "contribution" for the purposes of the contribution limits established by 2 U.S.C. § 441a(a)?[1]

2. Would Repledge's receipt of a small transaction percentage-based fee constitute the receipt of a "contribution" by Repledge under 2 U.S.C. § 431(8)?

3. If a monetary pledge from a Repledge member to a federal committee or Repledge's receipt of a small percentage-based transaction fee would constitute a "contribution" under 2 U.S.C. § 431(8), is Repledge's "major purpose" influencing federal candidate elections such that it would be required to organize and register as a "political committee" under 2 U.S.C. §§ 431(4), 432 and 433 when and if it exceeded the $1,000 contribution threshold established by 2 U.S.C. § 431(4)?

4. Would payment of a small percentage-based transaction fee to Repledge constitute a contribution to the recipient federal committee?

5. Would a Repledge member's contributions to federal committees result in impermissible corporate contributions from Repledge to those committees under 2 U.S.C. § 441b?

6. Would a Repledge member's contributions to federal committees violate the prohibition on a corporation "facilitating the making of contributions to candidates or political committees" in 11 C.F.R. § 114.2(f)(1)?

7. Would a Repledge member's contributions to federal committees violate the prohibition on a corporation "acting as a conduit for contributions earmarked to candidates" in 11 C.F.R. § 110.6(b)(2)(ii)?

8. Would a Repledge member's contributions to federal committees subject Repledge to any reporting requirements of FECA or Commission regulations, including but not limited to the "conduit and intermediary" reporting requirements established by 11 C.F.R. § 110.6(c)?

[1] For example, if an individual pledged $1,000 to a federal candidate and charity, and $700 of that pledge was matched by supporters of the opposing candidate, resulting in a $700 donation to the charity and a $300 contribution to the candidate, would the $700 portion of the pledge that was donated to the charity constitute a "contribution" to the candidate for purposes of the $2,500 limit on contributions from that individual to the candidate under 2 U.S.C. § 441a(a)(1)(A)?

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BACKGROUND

Repledge will operate as either a non-profit or for-profit corporation with a mission to allow individuals to maximize the social impact of their political contributions by removing equally pledged dollars from political campaigns and redirecting the funds to charitable purposes. Repledge will charge a commercially reasonable percentage-based transaction fee that will be set to cover operating costs plus a reasonable profit (currently estimated at 1% of amounts pledged). Transaction costs associated with credit card transactions will be effectively borne by the final recipients of the funds (charities or political campaigns), as the recipients will receive funds net of processing costs from credit card transactions.

Repledge's principal business activity is to provide "Fund Drives" through its website. Fund Drives are platforms in which individuals may come together and match funds for opposing candidates and redirect their collective donations to charity. Fund Drives are open to all members of the website who have registered and will generally be 7-14 days in duration. Each contributing donor to the Fund Drive selects a charity from a dropdown list of charities set forth on the Repledge webpage to which their proportion of funds that are to be "Repledged" to charity will be transferred.

Repledge will require individual participants in Fund Drives to register as members. Members will pledge funds in a Fund Drive through a payment processor company, such as PayPal or WePay. Members will make pledges by first entering their credit card information through the payment processor and choosing the amount they choose to pledge. The payment processor will pre-approve the amounts pledged for the remaining period of the Fund Drive, but the amounts will not be charged to the member's credit card account until the end of the Fund Drive. At the end of the Fund Drive, the payment processor will charge the member's credit card and Repledge will notify the payment processor of the allocation of funds among the listed charities and the federal committee (the principal campaign committee of the candidate) based on percentage of the funds that were matched by supporters of the opposing candidate and the percentage of funds that were unmatched.[2] After taking out its processing fee, the payment processor sets up unique accounts for all potential recipients (all the listed charities, the political committees, and Repledge (for its percentage-based transaction fee)). The payment processor then notifies the recipients that the funds are available to be withdrawn from these unique accounts by the recipients. The funds transferred as political contributions or charitable donations will not be deposited in, or pass through, any Repledge account. Repledge will disclose all transaction and processing fees and disclose the amounts distributed to the respective charities and political committees.

[2] Assume, for example, that a member pledged $1,000 to the candidate. The Member would provide their credit card information to the payment processor, and the payment processor would pre-approve the pledged amount for the remainder of the Fund Drive. Assume further that 70% of the member's pledge was matched by supporters of the opposing candidate and that 30% of the pledge was unmatched. At the end of the Fund Drive, the payment processor would charge the member's credit card account for $1,000 and Repledge would provide instructions as to how to allocate the funds among the listed charities and the political committees. Repledge would receive its transaction fee (estimated at 1% of the gross amounts pledged [$10]) and the payment processor would receive their processing fee (estimated at 5% of amounts pledged [$50]), leaving $940 of the initial $1000 pledge available for distribution to the charities and political committees. The remaining $940 would then be transferred 70% to the charity designated by the member and 30% to the candidate's principal campaign committee.

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Repledge will facilitate compliance with the contribution limitations and prohibitions established by FECA and Commission regulations. Repledge will not allow members to pledge funds in excess of any contribution limits imposed on contributions from individuals to candidates for federal office. Repledge will require all members to check a box on the website pledge/contribution form, prior to donating, to confirm that the following statements are true and accurate:

1. I am a United States citizen or a lawfully admitted permanent resident of the United States.
2. This contribution is not made from the general treasury funds of a corporation, labor organization or national bank.
3. This contribution is not made from the treasury of an entity or person who is a federal contractor.
4. This contribution is not made from the funds of a political action committee.
5. This contribution is not made from the funds of an individual registered as a federal lobbyist or a foreign agent, or an entity that is a federally registered lobbying firm or foreign agent.
6. I am not a minor under the age of 16.
7. The funds I am donating are not being provided to me by another person or entity for the purpose of making this contribution.

Repledge will inform members of the contribution amount limits established by 2 U.S.C. § 441a. In addition to payment processing information, Repledge will require members to provide information that a recipient federal committee must maintain or report, including the member's name, mailing address, employer and occupation, pursuant to 2 U.S.C. §§ 431(13), 434(b)(3)(A) and 11 C.F.R. § 104.8(a). Repledge's website pledge/contribution form will state:

> Candidates and committees registered with the Federal Election Commission are required to use their best efforts to collect and report the name, address, employer and occupation of all individuals whose contributions to a federal committee exceed $200 in an election cycle. We require you to enter this information so that we can provide it to those recipients of your contributions. This helps ensure that your contribution will be accepted.

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LEGAL ANALYSIS

1. **Would a monetary pledge from a member to a federal committee and charity, which is verified by a third-party payment processor, charged to a member's credit card, and which eventually results in a contribution a federal committee or a donation to a charity (depending on whether the pledge is matched by a supporter of an opposing candidate or party), constitute a "contribution" under 2 U.S.C. § 431(8)?**
    a. **Would such a pledge constitute a "contribution" under 2 U.S.C. § 431(8) at the time the pledge is made through Repledge, subject to the 10-day forwarding requirement established by 11 C.F.R. § 102.8(a)?**
    b. **Would any portion of such a pledge that results in a donation to a charity (because all or part of the pledge is matched by a supporter of an opposing candidate or party) nevertheless constitute a "contribution" for the purposes of the contribution limits established by 2 U.S.C. § 441a(a)?**[3]

FECA defines "contribution" to include any "gift, 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); *see also* 11 C.F.R. § 100.52. The federal law definition of "contribution" does not include a pledge, which may or may not eventually result in a gift of money to a candidate or party for the purpose of influencing a federal election. This is particularly true in the context of Repledge's business, which is to reduce the level of campaign contributions to candidates and parties. A pledge that may result in either a contribution to a federal committee or in a donation to a charity, depending on the willingness of others to pledge funds in a Fund Drive, is too speculative at the time it is made to be treated as a "contribution" under federal law.

Furthermore, a payment processor will not charge any funds to a member's credit card account until the end of a Fund Drive and the funds (except for Repledge's transaction fee and the payment processor's processing fee) are available only for distribution to designated charities and political committees at the end of a Fund Drive.

For these reasons, the Commission should opine that a monetary pledge from a member to a federal committee and charity does not constitute a "contribution" under 2 U.S.C. § 431(8) at the time of the pledge.

For these same reasons, the Commission should opine that such a pledge does not constitute a "contribution" received by Repledge, subject to the 10-day forwarding requirement established by 11 C.F.R. § 102.8(a).

[3] For example, if an individual pledged $1,000 to a federal candidate and charity, and $700 of that pledge was matched by supporters of the opposing candidate or party, resulting in a $700 donation to the charity and a $300 contribution to the candidate, would the $700 portion of the pledge that was donated to the charity constitute a "contribution" to the candidate for purposes of the $2,500 limit on contributions from that individual to the candidate under 2 U.S.C. § 441a(a)(1)(A)?

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Furthermore, for these same reasons, the Commission should opine that any portion of such a pledge that results in a donation to a charity does not constitute a "contribution" for the purposes of contribution limits at 2 U.S.C. § 441a(a).

2. Would Repledge's receipt of a small percentage-based transaction fee constitute the receipt of a "contribution" by Repledge under 2 U.S.C. § 431(8)?

The Commission has consistently opined that the receipt of a fee by a company, like Repledge, that processes contributions to federal committees, does not constitute the receipt of a "contribution" by such company.

Most recently, in Advisory Opinion (AO) 2011-06, the Commission responded to a nearly identical question from a company called Democracy Engine and its connected political committee, which proposed collecting and forwarding contributions from "subscribers" to federal committees and collecting "convenience fees" from "subscribers" in the process. Democracy Engine asked the Commission whether subscriber's payment of a convenience fee to Democracy Engine would constitute a contribution to the company's political committee or to any other recipient committee. The Commission responded, "[n]o, a subscriber's payment to [Democracy Engine, LLC] of the convenience fee would not constitute a contribution to [Democracy Engine's connected committee] or any other recipient political committee." AO 2011-06 at 6.

The Commission reasoned that Democracy Engine was providing a service to its subscribers and its subscribers were simply paying for that service. *Id.* The Commission noted that where a company provides services to a federal committee, the committee is required to pay for those services, *see id.* (citing AO 2007-04 (Alitalia)), but that in that instance as well, the company is simply being paid for a service and is not the recipient of a "contribution."

Repledge is likewise providing a service to its members and is being paid for that service. For these reasons, the Commission should opine that Repledge's receipt of a small percentage-based transaction fee does not constitute the receipt of a "contribution" under 2 U.S.C. § 431(8) (*i.e.*, a gift of money for the purpose of influencing a federal election).

3. If a monetary pledge from a Repledge member to a federal committee or Repledge's receipt of a small percentage-based transaction fee would constitute a "contribution" under 2 U.S.C. § 431(8), is Repledge's "major purpose" influencing federal candidate elections such that it would be required to organize and register as a "political committee" under 2 U.S.C. §§ 431(4), 432 and 433 when and if it exceeded the $1,000 contribution threshold established by 2 U.S.C. § 431(4)?

For the reasons stated above, Repledge urges the Commission to opine that Repledge providing a platform for monetary pledges from members and receipt of a small percentage-based transaction fees would not constitute a "contribution" under federal law.

However, even if the Commission concludes that a Repledge member's pledge and/or receipt of a small percentage-based transaction fees constitutes the receipt of "contributions," we

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respectfully urge the Commission to opine that Repledge does not have the "major purpose" of influencing federal candidate elections such that it would be required to organize and register as a "political committee" under 2 U.S.C. §§ 431(4), 432 and 433 when and if it exceeded the $1,000 contribution threshold established by 2 U.S.C. § 431(4).

FECA defines "political committee" to include "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). The Commission has explained that:

> To address constitutional concerns raised when FECA was adopted, the Supreme Court added two additional requirements that affect the statutory definition of political committee. First, the Supreme Court held, when applied to communications made independently of a candidate or a candidate's committee, the term "expenditure" includes only "expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." *Buckley v. Valeo*, 424 U.S. 1, 44, 80 (1976). Second, the Supreme Court mandated that an additional hurdle was necessary to avoid Constitutional vagueness concerns; only organizations whose "major purpose" is the nomination or election of a Federal candidate can be considered "political committees" under the Act. *Id.* at 79. The court deemed this necessary to avoid the regulation of activity "encompassing both issue discussion and advocacy of a political result." *See, e.g., Buckley*, 424 U.S. at 79; *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986) ("*MCFL*").

Political Committee Status, Supplemental Explanation & Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) (footnote omitted).

The Commission has concluded that applying the "major purpose" doctrine requires a case-by-case analysis of an organization's conduct to determine whether an organization's (1) extensive independent expenditures; (2) public statements; (3) organizing documents; (4) solicitations and materials distributed to donors or other information establish the organization's major purpose as influencing federal elections. *Id.* at 5601-02.

Under this analytical framework, it is clear that Repledge does not meet the *Buckley* Court's and the Commission's "major purpose" test. Repledge will make no independent expenditures and will not solicit contributions to influence federal elections.

As set forth on our webpage, www.repledge.com, Repledge's mission is as follows:

> Our mission is to provide individuals an opportunity to increase the social impact of their political contributions and to express dissatisfaction with the amount of money being spent in political campaigns. Repledge allows individuals to remove money from the political system in a bipartisan manner without placing their candidate at a competitive disadvantage and to direct funds to more worthy charitable causes.

For all of these reasons, the Commission should opine that Repledge's "major purpose" is not influencing federal candidate elections such that it would be required to organize and register as

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a "political committee" under 2 U.S.C. §§ 431(4), 432 and 433 when and if it exceeded the $1,000 contribution threshold established by 2 U.S.C. § 431(4).

4. Would payment of a small percentage-based transaction fee to Repledge constitute a contribution to the recipient federal committee?

The Commission has consistently opined that a fee paid by a donor to a vendor that processes a contribution to a federal committee does not constitute a contribution to the federal committee, so long as the donor is paying for services rendered to the donor and the recipient federal committee is paying for any services rendered to the federal committee.

In Advisory Opinion 2011-06 (Democracy Engine), the Commission was asked: "Would a subscriber's payment to the Vendor of the convenience fee constitute a contribution to the Committee or any other recipient political committee?" AO 2011-06 at 6. The Commission responded: "No, a subscriber's payment to the Vendor of the convenience fee would not constitute a contribution to the Committee or any other recipient political committee [,]" *id.*, and explained:

> [T]he Commission has distinguished between situations in which a company provides services to recipient political committees, and situations in which a company provides services to its subscribers. In Advisory Opinion 2007-04 (Atlatl), the Commission concluded that the amount of contributions to political committees must include fees paid by contributors to the company that processed the contributions, where the contractual relationship was between the company and the recipient political committee. In contrast, in Advisory Opinion 2006-08 (Brooks), the Commission concluded that the amount of the contributions would not include processing fees paid by contributors. In so concluding, the Commission noted that the services provided by the vendor in Advisory Opinion 2006-08 (Brooks) were "at the request and for the benefit of the contributors, not of the recipient political committees," and thus did not "relieve the recipient political committees of a financial burden they would otherwise have had to pay for themselves." Advisory Opinion 2007-04 (Atlatl). For this reason, the services provided to contributors were not considered to be contributions to the recipient political committees.

AO 2011-06 at 6. The Commission went on to opine that, like the contribution-processing corporation in Brooks, Democracy Engine was "offering services at the request and for the benefit of its subscribers, and not the recipient political committees." *Id.* "Therefore," according to the Commission:

> [B]ecause the payment of the convenience fee will not relieve the Committee or any other recipient political committee of a financial burden that it would otherwise have had to pay for itself, the payment of the convenience fee by the subscribers will not constitute a contribution by the subscribers to the Committee or any other recipient political committee.

Id.

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Like the contribution-processing corporations in Advisory Opinions 2006-08 and 2011-06, Repledge will offer its "services at the request and for the benefit of its [members], and not the recipient political committees." AO 2011-06 at 6. If anything, Repledge is offering a disservice to federal committees—attempting to reduce political contributions and increase charitable donations by supporters. Nevertheless, to the extent federal committees receive the benefit of a contribution from a Repledge member, the federal committees (and the recipient charitable organizations) will receive funds net of any transaction costs associated with credit card fees and net of the Repledge transaction fee. In this way, neither Repledge nor its members are "reliev[ing] the recipient political committees of a financial burden they would otherwise have had to pay for themselves." *Id.* (citing Advisory Opinion 2007-04 (Atlatl)).

For these reasons, we urge the Commission to opine that payment of a small percentage-based fee by the donor to Repledge would not constitute a contribution to the recipient federal committee.

5. **Would a Repledge member's contributions to federal committees result in impermissible corporate contributions from Repledge to those committees under 2 U.S.C. § 441b?**

The Commission has consistently opined that a vendor's processing of members' contributions to federal committees does not result in an impermissible corporate contribution from the vendor to the federal committee. Most recently, for example, GivingSphere asked the Commission whether "transmitting its customers' contributions to political committees would constitute impermissible corporate in-kind contributions by GivingSphere." AO 2011-19 at 7. The Commission opined that GivingSphere's transmission of contributions from its customers to political committees would not constitute an in-kind contribution from GivingSphere to the committees, explaining:

> Companies that process contributions to political committees as a service to the political committees must be compensated for those services by the political committees to avoid making in-kind contributions. Companies that process contributions as a service to the contributors, however, do not need to be compensated for these services by the recipient political committees because the companies are not providing any services or anything of value to the recipient political committees.

Id. (citing AO 2011-06 and 2006-08).

Similarly, in Advisory Opinion 2011-06, Democracy Engine asked the Commission whether its "services in processing subscribers' contributions to the Committee and other recipient political committees result in impermissible corporate contributions by the Vendor to those political committees." AO 2011-06 at 4. The Commission replied "[n]o, the Vendor's services in processing subscribers' contributions to the Committee and other recipient political committees would not result in impermissible corporate contributions by the Vendor to those political committees because the Vendor is not providing services or anything else of value to the Committee or any other recipient political committee. *Id.* The Commission reasoned that, though FECA and Commission regulations prohibit corporations from making a contribution in connection with a federal election, the provision of services to a federal committee is not a

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"contribution" so long as the committee pays the usual and normal charge for the service provided. *Id.*; *see also* 2 U.S.C. §§ 431(8)(A)(i), 441b(a), 441b(b)(2) and 11 C.F.R. §§ 100.52(a), 100.52(d), 114.2(b)(1). The Commission explained:

> In determining whether a company that processes contributions to a political committee is itself making a contribution to that political committee, the Commission has previously distinguished between companies that provide services to political committees and companies that provide services to subscribers. *See* Advisory Opinions 2007-04 (Atlatl) and 2006-08 (Brooks). In Advisory Opinion 2006-08 (Brooks), a company wished to process contributions from its subscribers to political committees, among other services. The company proposed to accept funds from its subscribers, which it would deposit into a merchant account and later disburse to candidates and political committees at the direction of its subscribers. The company did not anticipate entering into any contractual relationship with the recipient political committees. The Commission determined that the company would be providing services to its individual subscribers, and likened these services to companies that provide "delivery services, bill-paying services, or check writing services."
>
> In Advisory Opinion 2007-04 (Atlatl), by contrast, a company wishing to process online credit card contributions to political committees proposed a system under which an individual contributor would go to a political committee's website and then click on a link that would take the individual to the company's website, where the individual could then make an online contribution to the political committee. The company proposed to enter into agreements with the recipient political committees and to negotiate with the political committees to determine the amount of a convenience fee to be paid to it by individual contributers. The Commission concluded that this situation differed materially from the one presented in Advisory Opinion 2006-08 (Brooks) because, in Advisory Opinion 2006-08 (Brooks), the services provided by the vendor were "at the request and for the benefit of the contributors, not of the recipient political committees."

AO 2011-06 at 5.

The Commission went on to conclude that Democracy Engine's situation was "materially indistinguishable" from the situation in the Brooks Advisory Opinion 2006-08, because Democracy Engine did not "propose to enter into any contractual relationship with any of the recipient political committees, except possibly for the limited purpose of effectuating authorized clearinghouse transfers." *Id.* "Instead," the Commission explained, Democracy Engine planned "to enter into agreements with each of its subscribers and to process contributions at the request of its subscribers from the [Democracy Engine's] own website." *Id.* Because Democracy Engine would "process contributions at the request and for the benefit of its subscribers, and not the recipient political committees, [Democracy Engine's] services are akin to delivery services, bill paying services, or check writing services for its subscribers, just as in Advisory Opinion 2006-08 (Brooks)." *Id.* The Commission concluded that because Democracy Engine would be "providing services only to the subscribers, and not to any political committee, the Democracy

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Engine's proposal would not result in impermissible contributions by the Vendor to any political committee." *Id.* at 5-6.

Repledge's legal posture is materially indistinguishable from that of Brooks, Democracy Engine and GivingSphere. Repledge does not "propose to enter into any contractual relationship with any of the recipient political committees, except possibly for the limited purpose of effectuating authorized clearinghouse transfers." *Id.* at 5. Repledge will be providing services only to its members and not to federal political committees, except for the limited act of transferring member information to federal committees when members make contributions to those committees and supporting the payment processor's processing of the member's contribution. For these reasons, we urge the Commission to opine that Repledge's support of members' contributions to federal committees would not result in impermissible corporate contributions from Repledge to those committees under 2 U.S.C. § 441b.

6. Would a Repledge member's contributions to federal committees violate the prohibition on a corporation "facilitating the making of contributions to candidates or political committees" in 11 C.F.R. § 114.2(f)(1)?

Corporations are generally prohibited from facilitating the making or contributions to candidates or political committees. *See* 11 C.F.R. § 114.2(f)(1). Facilitation means using corporate resources to engage in fundraising activities in connection with any federal election. *Id.* However, a corporation does not facilitate the making of a contribution to a candidate if it provides goods or services in the ordinary course of business as a commercial vendor at the usual and normal charge. *Id.* Repledge's support of contributions to federal committees would not violate the prohibition on corporate facilitation of contributions because it meets this "commercial vendor" exception.

In Advisory Opinion 2004-19 (DollarVote), for example, the Commission made clear that a corporation transferring contributions to a federal committee is operating permissibly as a "commercial vendor" under 11 C.F.R. § 114.2(f)(1) if "(1) its services are rendered for the usual and normal charge paid by authorized candidate committees; (2) DollarVote forwards earmarked contributions to candidates through separate merchant accounts; and (3) DollarVote's website incorporates adequate screening procedures to ensure it is not forwarding illegal contributions." AO 2004-19 at 4 (citing AO 2002-07 (Careau)).

Regarding the first prong of the "commercial vendor" exception, DollarVote planned to charge donors an annual fee. DollarVote also intended to charge recipient candidates a fee once per election to participate in its system by formally promising to support specific policy positions and gaining contributions in exchange for their promises, as well as a percentage-based transaction fee for each contribution received. DollarVote represented these payments as the "usual and normal charge" for such services. The Commission recognized that DollarVote's activities were somewhat novel and the Commission made "no finding with regard to what comparable marketplace activities would provide a measure for 'usual and normal charge,'" but concluded, based on DollarVote's representations, that it would be in a commercially reasonable relationship with candidate committees, if it receive[d] the usual and normal charge for such services" as represented by DollarVote. AO 2004-19 at 4.

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Regarding the second prong of the "commercial vendor" exception, DollarVote proposed ensuring that contributions would not be mingled with its treasury funds by routing the contributions through a separate merchant account. This, the Commission opined, met the second prong of the "commercial vendor" exception. *Id.*

Finally, DollarVote assured the Commission that its screening and verification procedures for electronic payments would meet the standards established in previous advisory opinion—and the Commission accepted this assurance. *Id.* (citing AOs 1999-09 (Bradley for President) and 199-22 (Aristotle Publishing)).

Similarly, Repledge's proposed activities meet the requirements of the "commercial vendor" exception. First, Repledge will charge a transaction fee that will be set to reflect operating costs plus a reasonable profit. In addition, any amounts transferred to political committees would be net of any charges associated with credit card transactions. Unlike DollarVote, however, Repledge will not facilitate interaction between candidates and contributors to increase the likelihood that candidates will receive contributions. On the contrary, the purpose of Repledge is to reduce the number and amount of contributions going to federal committees. Therefore, Repledge will be providing federal committees with the very limited service of providing a platform for sending contributions to federal committees that are not successfully diverted to charities. Accordingly, federal committees will pay the "usual and normal" transaction costs of processing contributions received by the federal committees.

Second, a payment processer will handle all transfers of funds from contributors to the federal committees or listed charities. Because Repledge will never have access to any funds transferred to federal committees there is no possibility for comingling of political contributions with Repledge treasury funds.

Finally, regarding the third prong of the "commercial vendor" exception, Repledge will require all members who make a pledge to attest that any political contribution that results from their pledge is permissible under FECA and Commission regulations. In this manner, Repledge will adequately screen to ensure that illegal contributions are not made through the Repledge platform.

7. Would a Repledge member's contributions to federal committees violate the prohibition on a corporation "acting as a conduit for contributions earmarked to candidates" in 11 C.F.R. § 110.6(b)(2)(ii)?

Corporations are generally prohibited from facilitating the making of contributions to candidates or political committees, *see* 11 C.F.R. § 114.2(f)(1), and Commission regulations state that any person prohibited from making contributions is also prohibited from acting as a conduit or intermediary for contributions earmarked to candidates. *See* 11 C.F.R. § 110.6(b)(2)(ii). Commission regulations define "conduit or intermediary" as "any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee[.]" 11 C.F.R. § 110.6(b)(2).

As explained above, we believe Repledge's activities will not result in its receipt of any "contributions," nor subsequent forwarding of any "contributions" received. Therefore, Repledge does not meet the regulatory definition of "conduit or intermediary." On this basis, we urge the

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Commission to opine that Repledge's providing a platform for members to make contributions to federal committees would not violate the prohibition on a corporation "acting as a conduit for contributions earmarked to candidates" in 11 C.F.R. § 110.6(b)(2)(ii).

8. **Would a Repledge member's contributions to federal committees subject Repledge to any reporting requirements of FECA or Commission regulations, including but not limited to the "conduit and intermediary" reporting requirements established by 11 C.F.R. § 110.6(c)?**

Under FECA and Commission regulations, a variety of activities trigger campaign finance reporting requirements. Political committees, for example, are required to file reports with the Commission pursuant to 2 U.S.C. § 434. "Conduits and intermediaries" are required by 11 C.F.R. § 110.6(c) to report the original source and the recipient committee to the Commission.

GivingSphere recently asked the Commission whether its proposed transmission of contributions from customers to political committees would require it to file any report with the Commission. *See* AO 2011-19 at 10. The Commission noted a variety of circumstances in which reports must be filed with the Commission (*e.g.*, political committee reporting, independent expenditure reporting, electioneering communication reporting) and opined that GivingSphere's proposed activity of transmitting contributions from customers to political committees would not subject GivingSphere to any reporting requirements. *Id.*

Similarly, for the reasons state above, Repledge urges the Commission to opine that the providing a platform for contributions to federal committees would not subject it to any reporting requirements under FECA or Commission regulations. Repledge will neither receive contributions, nor make expenditures, nor have as its major purpose influencing elections and, therefore, is not a "political committee" subject to reporting requirements under FECA and Commission regulations. Furthermore, given that Repledge will not "receive and forward" any contributions, it does not meet the regulatory definition of "conduit or intermediary" and, therefore, is not subject to the "conduit and intermediary" reporting requirements of 11 C.F.R. § 110.6.

CONCLUSION

Repledge respectfully requests the Commission's timely consideration of this advisory opinion request. Please do not hesitate to contact us if you have any questions or require additional information.

Sincerely,

Eric M. Zolt

Eric M. Zolt

On behalf of Repledge

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