



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 30, 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2018-05

Graham M. Wilson, Esq.
Emma Olson Sharkey, Esq.
Perkins Coie LLP
700 13th Street, NW, Suite 600
Washington, DC 20005-3960

Dear Mr. Wilson and Ms. Olson Sharkey:

We are responding to your advisory opinion request on behalf of CaringCent, LLC concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the requestor’s proposal to offer contribution-processing services to political committees. The Commission concludes that the requestor’s provision of these services would not constitute a contribution from the requestor to a political committee and would not cause the requestor to be subject to any registration or reporting requirements with the Commission. Moreover, by providing these services, CaringCent, LLC would not be acting as a conduit or an intermediary. Finally, the proposed services comply with the provisions of the Act and Commission regulations concerning the forwarding of contributions to political committees.

Background

The facts presented in this advisory opinion are based on your letter received on March 16, 2018 and your email dated March 22, 2018.

CaringCent, LLC (“CaringCent”) is a limited liability company that has elected to be treated as a corporation for federal tax purposes. Advisory Opinion Request at AOR001. The requestor currently provides donation-processing services to non-profit and charitable organizations through two platforms, “Round-Up” and “Micro-Pledge,” AOR010, and plans to provide corresponding contribution-processing services to political committees through the same platforms. AOR001, AOR010. Through the Round-Up platform, a political committee will

invite individuals to “round up” their credit or debit card purchases and contribute the difference to the political committee. AOR001. Through the Micro-Pledge platform, a political committee will invite individuals to pledge contributions of a set amount every time a specified event occurs, such as when a candidate’s name appears in a tweet made by his or her opponent. *Id.* CaringCent will make its platforms available to political committees regardless of “party or partisan affiliation.” AOR002.

A political committee will sign up for either the Round-Up or the Micro-Pledge platform by creating an account through the platform’s website and agreeing to the terms of service. *Id.* After validating the political committee’s information against the Commission’s database, CaringCent will send the political committee an activation email. *Id.* Once the political committee has completed its registration, it will receive a unique URL, which it can share with potential contributors. *Id.*

When contributors sign up to make contributions using a political committee’s unique URL, they will be directed to a webpage to enter their credit or debit card information and contribution preferences, including a cap on their monthly contributions (by default, set at \$75 per month). *Id.* Contributors must enter their name, mailing address, occupation, and the name of their employer.¹ AOR003.

When contributors sign up through the Round-Up platform, each time they make a purchase, CaringCent will tabulate the rounded-up amount as a pledged contribution from the contributor to the political committee. AOR002. Contributors who wish to contribute to more than one political committee will be required to create a separate account for each political committee and will be able to set separate contribution preferences for each account. *Id.*

When contributors sign up through the Micro-Pledge platform, they will select a triggering event as one of their contribution preferences.² AOR003. Each time the triggering event occurs, CaringCent will tabulate the amount pledged as a contribution from the contributor to the political committee. *Id.* Contributors who wish to make contributions to more than one political committee, or to pledge contributions based on more than one triggering event, will be required to create a separate account for each political committee or each triggering event and will be able to set separate contribution preferences for each account. *Id.*

¹ Contributors will also be required to affirmatively agree to the following statement:

This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution. I am making this contribution with my own personal purchase method and not with a corporate or business purchase method or a method issued to another person. I am at least eighteen years old. I am a U.S citizen or lawfully admitted permanent resident (*i.e.* green card holder).

AOR003.

² CaringCent plans to allow flexibility in the type of event a political committee will be able to use to trigger a pledge, as long as the event is public and verifiable. AOR003.

For both platforms, CaringCent will work with data aggregators to determine each contributor's total pledged contributions. For the Round-Up platform, CaringCent will receive authorization from the contributor's credit card company or bank to view the amounts, dates, and times of the relevant credit or debit card purchases. AOR004. Third-party data aggregators will also provide data on social media activity to calculate the total number of events triggering pledged contributions. AOR004, AOR010. At the end of every month, or at alternative times agreed upon between CaringCent and its clients, CaringCent will calculate the total pledged contributions generated through each platform for each contributor and charge the contributor's credit or debit card for the total amount of the contributions. AOR002-003. During the registration process, political committees will select their per-year or per-election contribution limit, as applicable. AOR004. CaringCent will not allow a contributor to exceed the contribution limit to a political committee through CaringCent's platforms. *Id.*

Contributors will be able to change their contribution preferences, including the contribution cap, or suspend or cancel their enrollment, at any point in the process prior to CaringCent charging their credit or debit card, even if the contributor has already accumulated pledged contributions. AOR002-003, AOR009. CaringCent will not exercise any direction or control over the transfers, which will be made according to contributors' designations. AOR005.

CaringCent will send the money to a merchant account separate from CaringCent's treasury funds and used solely to deposit contributions to federal political committees. AOR004. Within one day of charging a contributor's credit or debit card, CaringCent's merchant bank account will process an automated transfer of the funds to the recipient political committee designated by the contributor, less a fee retained by CaringCent. *Id.* The amount of the fee will cover CaringCent's operational costs associated with transferring contributors' funds, as well as a "reasonable profit," AOR005, and will represent the "usual and normal charge" for its services, AOR006. CaringCent may charge different fees to political committees than it charges to its non-political clients, but any variation in fees will be based on business considerations and will not be based on any political considerations. AOR010.

At the same time that CaringCent's software charges contributors' credit or debit cards, the software will automatically generate a spreadsheet record of all contributors' itemized contributions for the month and year to date. *Id.* CaringCent will keep a separate record of the contributions designated to each political committee and will send each recipient political committee a monthly itemized spreadsheet of all contributions to that political committee, including the date, time, and amount of each contribution and the information each contributor provided when signing up with CaringCent (*e.g.*, name, address, occupation, and employer). *Id.* The itemized record of contributions that CaringCent will provide to political committees will include the total amount of contributions from each contributor, as well as the amount of the fees deducted and retained by CaringCent. *Id.* CaringCent expects that political committees will report the entire amount of each contribution (including the fee) as a contribution from the contributor and then will report the fee as a payment for the services rendered by CaringCent. AOR005. CaringCent also will automatically email a confirmation to each contributor after the contribution is processed (within the first five business days of the month following the relevant contribution period). *Id.*

Questions Presented

1. *May CaringCent provide its contribution-processing services to political committees without making impermissible contributions?*
2. *Will CaringCent's contribution-processing services cause it to have any registration or reporting obligations to the Commission?*
3. *Will CaringCent, by providing contribution-processing services, be acting as a conduit or intermediary?*
4. *Will CaringCent's contribution-processing services comply with the Act and Commission regulations with respect to the forwarding of contributions to political committees?*

Legal Analysis and Conclusion

1. *May CaringCent provide its contribution-processing services to political committees without making impermissible contributions?*

Yes, CaringCent may provide the proposed services without making a contribution to a political committee.

The Act and Commission regulations prohibit corporations from making contributions to federal candidates and political committees that make contributions to federal candidates. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).³ A “contribution” includes any “direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value” 52 U.S.C. § 30118(b)(2); 11 C.F.R. § 114.2(b); *see also* 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a). “Anything of value” includes all in-kind contributions, such as the provision of goods and services without charge or at a charge that is less than the usual and normal charge. *See* 11 C.F.R. § 100.52(d)(1). The “usual and normal charge” for services is the commercially reasonable prevailing rate at the time the services were rendered. *See* 11 C.F.R. § 100.52(d)(2).

The Commission has determined that the provision of contribution-processing services to a political committee by a commercial vendor does not constitute a contribution to the political committee. *See, e.g.,* Advisory Opinion 2016-08 (eBundler.com) at 6-7; Advisory Opinion 2012-09 (Points for Politics) at 5-6; Advisory Opinion 2007-04 (Atlatl) at 3-4. In these advisory opinions, the Commission determined that commercial vendors rendered services in the ordinary course of business and at the usual and normal charge; forwarded contributions through a segregated account to candidates and political committees; and employed adequate screening

³ Corporations may, however, make contributions to nonconnected political committees that make only independent expenditures, *see, e.g.,* Advisory Opinion 2011-11 (Colbert); *Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*), and to non-contribution accounts of hybrid political committees, *see* FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>.

procedures to ensure that they were not forwarding illegal contributions. *See, e.g.*, Advisory Opinion 2016-08 (eBundler.com) at 6-7; Advisory Opinion 2012-09 (Points for Politics) at 5-6; Advisory Opinion 2007-04 (Atlatl) at 3-4.

Here, the requestor's proposal to provide contribution-processing services to political committees satisfies all three criteria. First, the requestor will be providing its services in the ordinary course of its business as a for-profit LLC that currently offers web-based donation-processing services to non-profit and charitable organizations. AOR001, AOR010. In providing its services, the requestor will charge a commercially reasonable fee at the "ordinary and usual charge" for its services. AOR006. The fee will be included in the total amount of the contribution as reported by CaringCent to the recipient political committee, and CaringCent expects that political committees will report the entire amount (including the fee) as a contribution from the contributor and then report the fee as payment for the services rendered by CaringCent. AOR004-005. Although CaringCent may charge different fees to political committee clients than it charges to non-political clients, any variation in fees will be based on business considerations and will not be based on political considerations. AOR010. Second, the requestor will transfer contributions made through both its Round-Up and Micro-Pledge platforms from a segregated account within 10 days of receipt. AOR004. And, third, the requestor will screen contributions to ensure both that they are not excessive and that they are not from prohibited sources: CaringCent will not allow a contributor to exceed the contribution limit applicable to the recipient political committee through CaringCent's platforms; and all contributors wishing to make a contribution to a political committee will be required to attest to statements verifying their eligibility under federal law to make contributions. *Id.*

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

2. *Will CaringCent's contribution-processing services cause it to have any registration or reporting obligations to the Commission?*
3. *Will CaringCent, by providing contribution-processing services, be acting as a conduit or intermediary?*

No, the proposed activities will not subject CaringCent to any registration or reporting requirements under the Act and Commission regulations, including those requirements applicable to conduits or intermediaries.⁴

The Act and Commission regulations require all political committees to register with the Commission by filing a Statement of Organization. 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(d). Additionally, the "treasurer of a political committee shall file reports of receipts and disbursements." *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1.

⁴ The Commission's response is limited to the requestor's proposed contribution-processing services. The Commission does not opine on any reporting or other requirements that may be implicated by activities not described in the request, such as the reporting of independent expenditures or electioneering communications. *See, e.g.*, 52 U.S.C. § 30104(c)(1), (f)(1); 11 C.F.R. §§ 109.10(b), 104.20(b).

The Commission concludes that based on the facts set forth in the request, the requestor will be a commercial service provider, not a political committee, and therefore will not be subject to the Act's reporting requirements for political committees. *See* Advisory Opinion 2012-22 (skimmerhat) at 9 (reaching same conclusion in response to request by corporation proposing to collect and forward earmarked contributions to federal candidates); *see also* 52 U.S.C. §§ 30104(4) (defining "political committee"), 30103(a), (b) (setting forth registration requirements of political committees), 30104(a), (b) (setting forth reporting requirements of political committees).

The Act and Commission regulations also require intermediaries or conduits of earmarked contributions to report the original source of such a contribution and the recipient candidate or authorized committee. 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c)(1). Commission regulations clarify, however, that "a commercial fundraising firm retained by the candidate or the candidate's authorized committee to assist in fundraising" is not a "conduit or intermediary." 11 C.F.R. § 110.6(b)(2)(i)(D). Because the requestor will act as a commercial vendor when it provides its services to its political committee clients, the requestor will also qualify as a "commercial fundraising firm" for purposes of that regulation. *See* Advisory Opinion 2016-08 (eBundler.com) at 8 (concluding that limited liability company providing contribution-forwarding services to political committees would be acting as commercial fundraising firm rather than conduit). As a commercial fundraising firm, the requestor will not be subject to the reporting requirements applicable to conduits and intermediaries in connection with its proposed activities.

4. *Will CaringCent's contribution-processing services comply with the Act and Commission regulations with respect to the forwarding of contributions to political committees?*

Yes, the proposed contribution-processing services comply with the Act and Commission regulations concerning the forwarding of contributions to political committees.

Every person who receives a contribution for a political committee that is not an authorized committee must forward such contribution to the committee's treasurer within 10 or 30 days of receiving it, depending upon the amount of the contribution. 52 U.S.C. § 30102(b)(2)(A)-(B); 11 C.F.R. § 102.8(b)(1)-(2). Contributions of \$50 or less must be forwarded within 30 days of receipt, while contributions exceeding \$50 must be forwarded within 10 days of receipt. 52 U.S.C. § 30102(b)(2)(A)-(B); 11 C.F.R. § 102.8(b)(1)-(2). Every person who receives a contribution for an authorized political committee must forward the contribution and any required information about the contribution to the committee's treasurer within 10 days of receipt. 52 U.S.C. § 30102(b)(1); 11 C.F.R. §§ 102.8(a), 100.12.

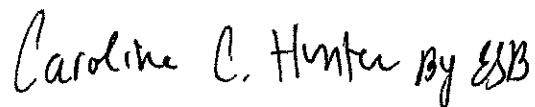
The requestor will forward all contributions to a designated recipient political committee within 10 days after the contributors' funds are transferred to the requestor's merchant account. AOR004. The requestor will also collect contributors' names, addresses, occupations, and employers, and provide this information to the designated recipient political committee, along with an itemized record of all contributions to that committee, to enable the committee to meet its own reporting obligations under the Act and Commission regulations. AOR004, AOR010.

Moreover, consistent with previous advisory opinions approving of proposals involving the forwarding of contributions, the requestor here will screen for impermissible and excessive contributions, and will require contributors to affirm that they are using their own, permissible funds for their contributions. *See, e.g.*, Advisory Opinion 2017-06 (Stein and Gottlieb) at 8. The requestor also will maintain contributors' funds in an account separate from the requestor's own treasury funds and from funds designated for recipients other than federal political committees. AOR004; *see, e.g.*, Advisory Opinion 2016-08 (eBundler.com) at 6-7.

Accordingly, the proposed contribution-processing services are consistent with the requirements of the Act and Commission regulations concerning the forwarding of contributions to political committees.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. 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 requestor may not rely on that conclusion as support for its 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* 52 U.S.C. § 30108(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. The advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in black ink that reads "Caroline C. Hunter by ESB". The signature is written in a cursive, slightly slanted style.

Caroline C. Hunter
Chair