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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO 19-13-A
AGENDA ITEM
For Meeting of April 11, 2019

April 4, 2019

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
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Subject: Draft AO 2019-04 (Prytany, LLC) 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 April 10, 2019.

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 <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2019-04

2

3 Mr. Jeffrey L. Hardin, Esq.

4

4 786 Stephanie Circle

5

5 Great Falls, VA 22066

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7

7 Dear Mr. Hardin:

DRAFT A

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8 We are responding to your advisory opinion request on behalf of Prytany LLC

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9 (“Prytany”) regarding the application of the Federal Election Campaign Act, 52 U.S.C.

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10 §§ 30101-45 (the “Act”), and Commission regulations to Prytany’s online contribution

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11 processing platform. The Commission concludes that Prytany may provide contribution-

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12 processing services through its platform as described in the request without making any

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13 contributions or incurring any reporting obligations.

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14 ***Background***

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15 The facts presented in this advisory opinion are based on your letter received on

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16 February 28, 2019 and the Prytany User Agreement (the “User Agreement”) attached

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17 thereto.

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18 Prytany is a non-partisan, for-profit, limited liability company that has elected to

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19 be treated as a partnership under the Internal Revenue Code for federal tax purposes.

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20 Advisory Opinion Request at AOR001. Prytany has developed an online platform (the

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21 “Platform”) accessible by internet-connected devices that enables individuals to make

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22 contributions to principal campaign committees and national political party committees

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23 that have enrolled with Prytany. *Id.* Users can also utilize the Platform’s social

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24 networking functions to engage in group messaging, information sharing, and

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25 solicitations for contributions. *Id.* Only principal campaign committees and national

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26 political party committees registered with the Commission are permitted to receive

1 contributions through the Platform. AOR002. No other entities or organizations will be
2 permitted to register with Prytany. *Id.* Prytany does not restrict access to the Platform
3 based on a committee's political affiliation. *Id.*

4 *A. Enrolling with the Platform*

5 To make contributions through the Platform, a contributor must accept the User
6 Agreement (thereby agreeing to adhere to Prytany's terms of service and creating a
7 contractual relationship between such individual and Prytany) and provide Prytany with
8 his or her full name, email address, mobile telephone number, mailing address, date of
9 birth, occupation and employer.¹ AOR003. In some cases, Prytany may require an
10 individual user to provide his or her social security number or a scanned image of a
11 government issued identification card to verify the individual's identity. *Id.*

12 Principal campaign committees and national party committees must also enroll
13 with Prytany in order to use the Platform. AOR004. To enroll, a political committee
14 must accept the User Agreement (thereby agreeing to adhere to Prytany's terms of

¹ Contributors will also be required to agree to the following statements before making a contribution:

(1) I am a U.S. citizen or lawfully admitted permanent resident (*i.e.*, green card holder); (2) 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; (3) I am making this contribution with my own personal credit card or personal bank account and not with a corporate or business credit card or a card issued to another person; (4) I am at least eighteen years old or (5) if I am under eighteen years of age: The decision to contribute is made knowingly and voluntarily by myself; The funds, goods or services contributed are owned or controlled by the minor, proceeds from a trust for which I am a beneficiary or funds withdrawn by the me from a financial account opened and maintained in my name; and, the contribution is not made using funds given to me as a gift for the purpose of making the contribution, and is not in any way controlled by another individual; (6) I am not a federal contractor; and (7) the name on record at Prytany is my legal name and may be used for reporting this contribution to the FEC.

1 service and creating a contractual relationship between such committee and Prytany) and
2 Prytany will use the Commission’s database to confirm that the political committee is
3 registered with the Commission. *Id.* Once a committee has enrolled with Prytany (an
4 “Enrolled Committee”), that Enrolled Committee may receive contributions made
5 through the Platform, manage the content on its Platform landing page, and message or
6 solicit contributions from Prytany’s individual users. AOR004. In consideration of these
7 benefits, each Enrolled Committee agrees to pay Prytany certain fees, described further
8 below.

9 *B. Fees*

10 Users of the Platform may be assessed three types of fees: 1) a per-contribution
11 transaction fee paid by an Enrolled Committee; 2) an annual membership fee paid by an
12 Enrolled Committee; and 3) third-party processing fees that may be paid by contributors.
13 AOR005-006.

14 Enrolled Committees that receive contributions through the Platform will pay
15 Prytany a transaction fee of three percent of each contribution received by the Enrolled
16 Committee. AOR006. All Enrolled Committees will pay Prytany an annual membership
17 fee of \$250, payable within 30 days of the anniversary of the date that such Enrolled
18 Committees accepted the User Agreement.² *Id.* These fees “are considered by Prytany to
19 be commercially reasonable” and “are intended to cover Prytany’s expenses relating to its

² Any transaction fees paid by the Enrolled Committee during the prior year will be aggregated and credited towards the \$250 annual membership fee. If the aggregate amount of three percent transaction fees paid by that Committee during the prior year is \$250 or more, then the entire annual membership fee will be waived. AOR006.

1 development, maintenance and operation of the Platform and to provide a reasonable
2 profit to Prytany.” AOR007.

3 Individual users are not required to pay any fee to Prytany to enroll with or access
4 the Platform. *See generally* AOR001-006. However, if a contributor makes a
5 contribution using a credit or debit card, the contributor will incur a processing fee in the
6 amount of 2.9% of the amount of the contribution, as well as a one-time transaction fee of
7 \$0.30. AOR005. These processing fees are payable by the contributor to Prytany’s third-
8 party payment processor and are in addition to (rather than deducted from) the total
9 amount of the contribution. *Id.* Thus, these processing fees are not reported to the
10 Enrolled Committee as part of the contribution. *Id.* Contributions also may be made by
11 ACH bank transfer; such contributions do not incur any third-party payment processing
12 fees. *Id.*

13 C. Contribution Forwarding Process

14 Enrolled contributors may use the Platform to make one-time or recurring
15 contributions or pledges for future contributions to Enrolled Committees.³ AOR002. To
16 facilitate the transfer of funds between contributors and Enrolled Committees, Prytany’s
17 third-party payment processor will create and maintain segregated sub-accounts for each
18 contributor, each Enrolled Committee, and Prytany. AOR008. After a contributor has

³ The Platform does not allow contributors to make contributions to non-enrolled candidate or party committees. AOR004. Prytany will create “generic and brief” landing pages on the Platform for non-enrolled committees. *Id.* If a contributor attempts to make a contribution to a non-enrolled committee, Prytany will not initiate a funds transfer and will treat the attempted contribution as a commitment by such contributor to make a contribution if and when the non-enrolled committee becomes an Enrolled Committee. *Id.* Further, non-enrolled committees are unable to access the Platform and utilize its services, such as managing its landing page and messaging with the Platform’s individual users. *Id.*

1 initiated a contribution via the Platform, the full amount of the contribution (plus any
2 third-party fees for using a debit or credit card) is deducted from the contributor's bank
3 account or charged to the contributor's credit card and credited to the contributor's sub-
4 account by Prytany's third-party payment processor. AOR005. At this point, Prytany
5 and the third-party payment processor screen the transaction to identify any potential
6 issues, including excessive contributions, foreign sources, and fraud. *Id.* The Platform
7 also prohibits contributors from making contributions using the Platform that will exceed
8 the contribution limits set by the Commission. AOR007.

9 After the transaction has been cleared, the third-party payment processor will
10 debit the amount of the contribution from the contributor's sub-account and will transfer
11 the contribution amount, less Prytany's three percent transaction fee, to the recipient
12 Enrolled Committee's sub-account.⁴ AOR005-006. The third-party payment processor
13 will simultaneously credit Prytany's sub-account in the amount of three percent of the
14 contribution. *Id.* Prytany's three percent transaction fee is included in the total amount
15 of the contribution as reported by Prytany to the Enrolled Committee and is separately
16 reported by Prytany to the Enrolled Committee as an expenditure from that committee to
17 Prytany.⁵ AOR006.

⁴ The transfer of the contribution to the recipient Enrolled Committee's sub-account will occur "typically within one business day and in any event within 10 days after the date that the [contributor's] sub-account was credited." AOR005.

⁵ By way of example, suppose that Contributor A desires to contribute \$100 to Enrolled Committee 1 via credit card. Prytany's third-party payment processor will charge Contributor A \$103.20 (\$100 plus a 2.9% processing charge and a one-time \$0.30 transaction charge for using a credit card) and will credit \$100 to Contributor A's sub-account. No later than 10 days thereafter, if the transaction is cleared by Prytany and the third-party payment processor, the processor will simultaneously debit \$100 from Contributor A's sub-account, credit \$97 to Enrolled Committee 1's sub-account, and credit \$3 to Prytany's sub-account. The report provided by the Platform to Enrolled Committee 1 will show a \$100.00 contribution received and a \$3 expenditure paid by Enrolled Committee 1 to Prytany.

1 ***Questions Presented***

2 1. *May individuals use the Platform to make contributions and pledges to*
3 *Enrolled Committees, and may Enrolled Committees receive such contributions, without*
4 *Prytany's making impermissible contributions to such Enrolled Committees?*

5 2. *May Enrolled Committees use the Platform to send solicitations and other*
6 *messages to users, and to receive messages from users, without Prytany's making*
7 *impermissible contributions to such Enrolled Committees?*

8 3. *Do Prytany's activities subject it to any reporting requirements under the*
9 *Act?*

10 ***Legal Analysis and Conclusions***

11 1. *May individuals use the Platform to make contributions and pledges to*
12 *Enrolled Committees, and may Enrolled Committees receive such contributions, without*
13 *Prytany's making impermissible contributions to such Enrolled Committees?*

14 Yes, Prytany may provide contribution-processing services to individual users and
15 Enrolled Committees through the Platform as described in the request without making
16 contributions to the recipient Enrolled Committees.

17 A "contribution" includes any "gift, subscription, loan, advance, or deposit of
18 money or anything of value made by any person for the purpose of influencing any
19 election for Federal office . . ." 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

20 "Anything of value" includes all in-kind contributions, such as the provision of goods and
21 services without charge or at a charge that is less than the usual and normal charge. *See*
22 11 C.F.R. § 100.52(d)(1). The "usual and normal charge" for services is the

1 commercially reasonable prevailing rate at the time the services were rendered. *See* 11
2 C.F.R. § 100.52(d)(2).

3 The Commission has determined that the provision of contribution-processing
4 services to a political committee by a commercial vendor does not constitute a
5 contribution to the political committee. *See, e.g.*, Advisory Opinion 2018-05
6 (CaringCent) at 4-5; Advisory Opinion 2016-08 (eBundler.com) at 6-7; Advisory
7 Opinion 2012-09 (Points for Politics) at 5-6; Advisory Opinion 2007-04 (Atlatl) at 3-4.
8 In these advisory opinions, the Commission determined that commercial vendors meet
9 the following criteria: (1) render services in the ordinary course of business and at the
10 usual and normal charge; (2) forward contributions through a segregated account to
11 candidates and political committees; and (3) employ adequate screening procedures to
12 ensure that they were not forwarding illegal contributions. *See, e.g.*, Advisory Opinion
13 2018-05 (CaringCent) at 4-5; Advisory Opinion 2016-08 (eBundler.com) at 6-7;
14 Advisory Opinion 2012-09 (Points for Politics) at 5-6; Advisory Opinion 2007-04
15 (Atlatl) at 3-4.

16 Here, Prytany's business model satisfies all three criteria. First, Prytany is
17 providing its contribution-processing services and social media platform to individual
18 users and Enrolled Committees in the ordinary course of business as a for-profit LLC.
19 AOR001-002, AOR008. Prytany charges Enrolled Committees a \$250 annual
20 membership fee, as well as a three percent transaction fee for its services that is deducted
21 from the amount initially paid by the contributor and included in the total amount of the

1 contribution as reported by Prytany to the recipient Enrolled Committee. AOR006-007.⁶
2 Prytany states that these fees are commercially reasonable because they cover Prytany's
3 cost of service and yield a reasonable profit. AOR007-008.

4 Second, Prytany, through its third-party payment processor, forwards
5 contributions from a contributor's segregated account to the Enrolled Committee within
6 10 days of receipt.⁷ AOR005, AOR008. And, third, Prytany and its payment processor
7 screen contributions to ensure both that they are not excessive and that they are not from
8 prohibited sources: Prytany does not allow a contributor to exceed the applicable
9 contribution limit for any recipient Enrolled Committee through the Platform; and all
10 contributors wishing to make a contribution to an Enrolled Committee are required to
11 attest to statements verifying their eligibility under federal law to make contributions.
12 AOR003, AOR009.

13 Because Prytany satisfies the three aforementioned criteria, it provides its
14 contribution-processing services to Enrolled Committees as a commercial vendor. As
15 such, Prytany does not make contributions to the recipient Enrolled Committees.

16 2. *May Enrolled Committees use the Platform to send solicitations and other*
17 *messages to users, and to receive messages from users, without Prytany's making*
18 *impermissible contributions to such Enrolled Committees?*

⁶ Prytany states that an Enrolled Committee will report the entire amount (including Prytany's three percent transaction fee) as a contribution from the contributor and it will also report the three percent transaction fee as an expenditure for the services rendered by Prytany. AOR007-008. This practice is consistent with Commission regulations and prior advisory opinions. 11 C.F.R. § 104.13(a) (requiring that recipient political committee report amount of in-kind contribution as contribution and also as expenditure); *see also* Advisory Opinion 2018-05 (CaringCent) at 5.

⁷ Forwarding procedures are discussed in further detail below.

1 Yes, Enrolled Committees may use the Platform’s social networking functions to
2 communicate with users of the Platform without Prytany’s making any contributions to
3 those Enrolled Committees.

4 As explained above, a “contribution” includes the provision of goods and services
5 without charge or at a charge that is less than the usual and normal charge. *See* 11 C.F.R.
6 § 100.52(d)(1). The “usual and normal charge” for services is the commercially
7 reasonable prevailing rate at the time the services were rendered. *See* 11 C.F.R.
8 § 100.52(d)(2). As described above, Prytany charges all Enrolled Committees a \$250
9 annual membership fee as well as a three percent transaction fee for its services. These
10 fees cover Prytany’s expenses, which include the development and maintenance of the
11 Platform, and allow Prytany to generate a reasonable profit. AOR006-007. Under this
12 fee structure, an Enrolled Committee will pay a commercially reasonable fee of \$250
13 annually for its access to and usage of the Platform’s social networking services, even if
14 the Enrolled Committee does not receive any contributions through the Platform and thus
15 pays Prytany no per-transaction fees.

16 Accordingly, because Prytany provides its social networking services to all
17 Enrolled Committees for a commercially reasonable rate, regardless of whether an
18 Enrolled Committee actually receives any contributions through the Platform, Enrolled
19 Committees’ use of those services to communicate with users does not result in
20 contributions to those committees from Prytany.

21 3. *Do Prytany’s activities subject it to any reporting requirements under the*
22 *Act?*

1 Prytany’s activities do not subject it to any reporting requirements under the Act
2 or Commission regulations. However, Prytany is subject to requirements for timely
3 forwarding of contributions and the relevant contributor information to political
4 committees.

5 The Act and Commission regulations require political committees to file reports
6 of all receipts and disbursements. *See* 52 U.S.C. § 30104(a)-(b); 11 C.F.R. §§ 104.1,
7 104.3(a)-(b). Specifically, political committees must report the identities of contributors
8 and the amounts and dates of contributions. *See* 11 C.F.R. § 104.3. The Act and
9 Commission regulations also require intermediaries or conduits of contributions
10 earmarked to candidates or their authorized committees to report the original source of
11 such contributions and the recipient candidate or authorized committee. 52 U.S.C.
12 § 30116(a)(8); 11 C.F.R. § 110.6(c)(l). Commission regulations clarify, however, that “a
13 commercial fundraising firm retained by the candidate or the candidate’s authorized
14 committee to assist in fundraising” is not a “conduit or intermediary” and therefore is not
15 subject to the reporting requirements applicable to conduits and intermediaries. 11
16 C.F.R. § 110.6(b)(2)(i)(D). Because Prytany will act as a commercial vendor when it
17 provides its services to Enrolled Committees, Prytany will also qualify as a “commercial
18 fundraising firm” for purposes of that regulation. *See* Advisory Opinion 2016-08
19 (eBundler.com) at 8 (concluding that because limited liability company providing
20 contribution-forwarding services to political committees would be acting as commercial
21 vendor, it would also qualify as commercial fundraising firm rather than conduit); *see*
22 *also* Advisory Opinion 2018-05 (CaringCent) at 6 (same). As a commercial fundraising

1 firm, Prytany is not subject to the reporting requirements applicable to conduits and
2 intermediaries for its proposed activities.

3 However, Prytany is subject to requirements concerning forwarding of
4 contributions. The Act and Commission regulations provide that any person that receives
5 contributions for a political committee must forward the contribution to the committee
6 within 10 days of receipt of the contribution, except that contributions of \$50 or less to
7 political committees other than authorized committees must be forwarded within 30 days
8 of receipt. 52 U.S.C. § 30102(b); 11 C.F.R. § 102.8. Any person or entity that receives a
9 contribution in excess of \$50 for a political committee must forward the name and
10 address of the contributor and the date of the contribution to the political committee, and
11 if the contribution is over \$200, that person or entity must also forward the contributor's
12 occupation and the name of their employer to the political committee. 52 U.S.C. §
13 30102(b); 11 C.F.R. § 102.8(a)-(b); *see also* 11 C.F.R. § 100.12.

14 Prytany, as a commercial vendor forwarding contributions to political
15 committees, is subject to these provisions of the Act and Commission regulations.
16 Prytany states that it forwards all contributions to the recipient political committees
17 within 10 days, AOR005, and requires individual users to provide their full names,
18 mailing addresses, occupations, and employers. AOR003. Prytany must forward this
19 contributor information to the political committees along with the contributions, as
20 required under 11 C.F.R. § 102.8. By adhering to these practices, Prytany will comply
21 with the applicable requirements for forwarding contributions to political committees.

1 ***Conclusion***

2 The Commission concludes that Prytany may provide contribution-processing
3 services through the Platform as described in the request without making any
4 contributions or incurring any reporting obligations.

5 This response constitutes an advisory opinion concerning the application of the
6 Act and Commission regulations to the specific transaction or activity set forth in your
7 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change
8 in any of the facts or assumptions presented, and such facts or assumptions are material to
9 a conclusion presented in this advisory opinion, then the requestor may not rely on that
10 conclusion as support for its proposed activity. Any person involved in any specific
11 transaction or activity which is indistinguishable in all its material aspects from the
12 transaction or activity with respect to which this advisory opinion is rendered may rely on
13 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or
14 conclusions in this advisory opinion may be affected by subsequent developments in the
15 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
16 Any advisory opinions cited herein are available on the Commission’s website.

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On behalf of the Commission,

Ellen L. Weintraub
Chair