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2016 JUN 17 PM 12:12

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June 17, 2016

Daniel A. Petalas, Esq.
Acting General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Ronald M. Jacobs
OFFICE OF GENERAL
COUNSEL
T 202.344.8215
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rmjacobs@venable.com

Re: Advisory Opinion Request

Dear Mr. Petalas:

eBundler.com, LLC respectfully requests that the Federal Election Commission ("FEC") issue an advisory opinion approving its online fundraising service. 52 U.S.C. § 30108 and 11 C.F.R. § 112.1. eBundler.com, LLC (the "Company") has developed an online service that allows individuals to donate to, and fundraise for, federal, state, and local candidates for elected office, political committees, nonprofits, and other organizations. Individuals conduct this activity through one platform ("Donorship"). In addition, the Company provides campaign fundraising services to political committees and organizations through a second platform ("eBundler"). As a non-partisan, for-profit corporation, the Company will charge a commercially reasonable fee for its web-based platforms that encourage public participation in politics and to facilitate fundraising efforts of small donors. The Company asks several questions about the permissibility of its system under the Federal Election Campaign Act ("Act") for use with federal candidates and political committees.

I. Factual Discussion of the Proposed Online Platforms and Services

The Company has developed a system to allow individuals to bundle contributions for candidates and causes they support without a complex process, using their existing online contacts. Individuals can support candidates of their choosing through the Donorship platform, regardless of whether a candidate, political committee, or other organization has signed up to use the eBundler system. Bundling has traditionally been the domain of the politically connected and elite, and Donorship will let citizens harness their own web-based social networks to raise funds quickly and easily for the campaigns they support.

Although they do not have to sign up for the Company's services to be the recipient of contributions bundled through Donorship, campaigns, PACs, ballot initiatives, and non-profit organizations may contract with the Company's eBundler system for additional services that enhance what individuals are able to do. In particular, eBundler gives

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fundraising entities the tools to track individual bundlers' progress, catalogue new contributors, and direct message their contributors through the platform.

A. Donorship: Bringing Bundling to the People

The Donorship platform brings traditional bundling principles to the digital era and enables individuals to maximize their impact on the causes and races they support by leveraging their online social and professional networks to increase total contributions. Donorship users can either search or browse for the specific candidate, campaign, or causes (such as nonprofits or ballot committees) they wish to support.¹ The user can then filter his or her results by location or office sought.² Once a user selects a candidate/organization, he or she is redirected to a landing page for that candidate/organization. This page is either a generic page created by the Company using publicly available sources for candidates or political committees that have not registered with eBundler, or a page augmented and customized by the candidate or PAC if registered with eBundler. The landing pages allow the user to view information about the candidate/organization, the candidate/organization's stance on issues, and publicly available campaign advertisements, if available.

There are several methods by which an individual Donorship user may support a candidate. The user may contribute to the candidate, fundraise, or do both.³ The donation process is straightforward and similar to how users would contribute to a candidate's campaign directly through the campaign website.⁴ Funds contributed to the candidate will be processed as described in Section I.C., below.

Donorship then introduces a novel "bundling" function that brings the power of bundling contributions to ordinary citizens. Any user can harness Donorship's bundling tool, regardless of whether he or she makes contributions through the program. Donorship's bundling tool allows the user to import a contact list from an existing online account such as Outlook, Gmail, or LinkedIn.⁵ From this imported list, the user can select contacts to solicit

¹ Attachment 1.

² Attachment 2.

³ Attachment 3.

⁴ The user is prompted to enter the amount of their donation, their contact information, employer and occupation, and credit card information. Federal and state disclaimers will be displayed to contributors, as appropriate.

⁵ When prompted to select contacts to be solicited, the platform will display a notice informing users that soliciting foreign nationals for contributions or donations to federal, state, or local elections are prohibited and that soliciting federal contractors for federal contributions is prohibited. See Attachment 4.

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contributions from on behalf of the user's selected candidate. After sending a message to the user's recipients—either the standard form letter created by the campaign/organization or with an additional custom addendum from the user—the request process is complete and the user can track the total contributions made in response to that specific request for that campaign.⁶ Users may bundle contributions for multiple campaigns simultaneously. Finally, the system uses a novel concept of an “Impact Score.” The “Impact Score” shows not only what the individual has directly raised from his or her contacts, but includes contributions given as a result of solicitations from people who themselves became bundlers after they were asked to give by the original individual. Thus, a user can see the value of contributions from multiple levels below his or her initial outreach. From his or her homepage, the user can see how much money has been raised as a result of the user's efforts, watch their “Impact Score” grow, and measure the overall effect that he or she has had on the particular candidate or cause's fundraising effort.

Through these innovative tools, Donorship facilitates and encourages an individual to tap into his or her online network to support a candidate or cause, thus enabling ordinary citizens to maximize their voice in the political process. If a campaign is not registered with eBundler, as described in the next section, users of Donorship may still fundraise for this entity, but the information on the campaign's landing page may be pulled from publicly available sources, rather than featuring personalized messages from the campaign. The method of processing contributions from Donorship also differs because the service relationship exists between the Company and the Donorship users, individually, rather than with the campaign or recipient entity.

B. eBundler and Contribution Recipients

The eBundler platform serves organizations and political committees.⁷ An organization need not sign up with eBundler to receive any contributions made to the organization through Donorship. However, organizations or political committees that do register with eBundler receive specific fundraising services, which include being able to personalize their landing pages on Donorship, track the contributions received through the site, gain access to new donor information resulting from Donorship users' efforts, and the ability to create and send mailings to their new donors directly through eBundler. As registered users of eBundler,

⁶ Attachment 5.

⁷ At this time the Company does not plan to provide its service to separate segregated funds (“SSFs”) because SSFs can only solicit their restricted class. The Company will allow individuals to raise funds for non-connected PACs and non-federal accounts of organizations that are not subject to the SSF rules.

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Campaigns may also set tiered bundler levels for Donorship users to strive for in order to achieve public recognition by the campaigns.⁸ This collaborative method increases total contributions to campaigns, and gives Donorship users a sense of greater political impact in their favored campaigns. As with other professional fundraising services, the campaign or organization that registers with eBundler would receive their bundled contributions from Donorship, vis-à-vis a contractual relationship with the Company, as discussed below.

C. Processing Contributions

The processing of contributions made through Donorship will vary depending on whether the recipient committee has previously registered and established an account with eBundler. When a candidate, campaign, PAC, or other entity registers with eBundler, the Company will verify the identity of the entity and the bank account information associated with the campaign. The Company and the campaign enter into a contractual relationship for contribution processing services. Under this agreement, the Company will process the contributions, transmit contributions to a campaign within a ten-day period, and deposit them in their entirety into the campaign's account.⁹ The campaign will then pay a commercially reasonable fee to the Company, which includes the costs associated with processing online payments (e.g., card processors and financial institution costs associated with the transaction), the Company's development and maintenance cost for Donorship and eBundler, and a reasonable profit to the Company.

As noted above, however, a campaign does not have to register with eBundler in order to receive contributions made to them through Donorship. Where a campaign is not registered with the Company, a portion of the user's contribution is first deducted to satisfy the Company's fees and expenses. The remaining portion of the contribution is then transmitted to the unregistered campaign within ten days. Prior to submitting their contribution, Donorship users will be notified of the fee arrangement through a disclaimer. The fee covers financial institutional costs, operating expenses, and provides a reasonable profit to the Company.

For all contributions made through Donorship, the user will be asked to affirm various statements establishing that the individual is making contribution in accordance with the

⁸ Attachment 6.

⁹ Regardless of whether the campaign is registered with eBundler, all federal contributions will be processed and forwarded to the appropriate political committee within ten days as required by Commission regulations. 11 C.F.R. § 102.8(a).

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Act. All contributors will also be required to provide their personal information required for FEC reporting, and will be notified that any contributions aggregating over \$200 will be publicly reported by the recipient political committee to the FEC.

II. Questions Presented

Question 1: May eBundler.com, LLC provide its web-based contribution and bundling platform, *Donorship*, to process and forward users' contributions to candidates without making impermissible contributions to federal candidates?

Question 2: May eBundler.com, LLC provide its web-based contribution and bundling platform, *eBundler*, to political committees to allow them to track information related to "bundled" contributions and to solicit contributions from individual *Donorship* users?

Question 3: Would eBundler.com, LLC's proposed plan subject it to any reporting requirements under the Act?

III. Discussion

Question 1: May eBundler.com, LLC provide its web-based contribution and bundling platform, Donorship, to process and forward users' contributions to candidates without making impermissible contributions to federal candidates?

As discussed above, the Company's Donorship platform provides two features to users: the ability of users to directly contribute to candidates via the candidates' Donorship pages and the ability of users to solicit their own personal network for contributions. Both are permissible under the Act.

The first feature of Donorship is clearly permissible under the Act because it is a web-based contribution platform that provides a service to the users in the same manner as those already approved by the Commission.¹⁰ Like those other web-based platforms, the users who make contributions do so through Donorship on the basis of a contract between the user and the Company—the Company processes contributions as a service to contributors without receiving compensation from the recipient political committees. As the Commission has concluded, processing users' contributions to a political committee does not result in an

¹⁰ See Advisory Ops. 2015-15 (WeSupportThat.com) at 3 – 5; 2014-07 (Crowdpac) at 5 – 6; 2012-22 (skimmerhat) at 4 – 6.

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impermissible corporate contribution because the vendor, here the Company, is not providing services or anything else of value to the recipient political committees.¹¹

Similarly, the second feature of Donorship, the bundling feature for individual users, is permissible under the Act. Like with the web-based contribution feature, the Company provides the bundling service to the user, not the political committee. That the Donorship function allows users to both make contributions and bundle others' does not change the basic principle that no contribution is made when a company contracts with a user to provide a service to that user. First, users are provided with an option that allows them to import contact lists from their email or social media accounts, thus saving the user the time and hassle of doing so manually. Second, users can track how much they have "bundled" for each candidate. This feature empowers individual contributors to gauge the effectiveness of their solicitations, visibly see the impact of their efforts, and thank those who have donated or send reminders to those who have not. The fees the Company charges donors cover the costs of development and operation. Because the "bundling" features available to users through Donorship provide services to the contributor, and not the political committee, and because the Company charges what it has determined to be a commercially reasonable fee to those users, the establishment and implementation of these bundling features does not result in an impermissible contribution by the Company.

Question 2: May eBundler.com, LLC provide its web-based contribution and bundling platform, eBundler, to political committees to allow them to track information related to "bundled" contributions and to solicit contributions from individual users?

Political committees and organizations need not be registered users of the eBundler platform to receive contributions from Donorship users. Registered users, however, receive a number of benefits. As described above, political committees and organizations that register to use eBundler contract with the Company and pay a fee for the Company's services. This fee includes the costs for processing online payments (*e.g.*, card processors and financial institution costs associated with the transaction), the Company's costs to establish and maintain the Donorship and eBundler platforms, and a reasonable profit to the Company. By charging the political committee or organization the fee for the use of eBundler, the Company

¹¹ Advisory Op. 2011-16 (Democracy Engine) at 4. Also, as discussed below, when the Company provides a service to a registered political committee, those services are not an impermissible corporate contribution under the Act because the Company serves as a commercial vendor.

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acts as a commercial vendor in providing a service in the ordinary course of its business at the usual and normal charge.¹²

The Company's provision of its eBundler platform to political committees or organizations satisfies the three requirements for a commercial vendor as articulated in Advisory Opinion 2012-09 (Points for Politics). First, the Company renders its eBundler services in the ordinary course of business and offers the services for the ordinary and usual charge. That is, the Company provides these services at commercially reasonable terms to political committees; it does not provide them for free or at a below-market value. Second, the Company will forward the contributions to political committees through an account separate from the Company's own operational accounts. Third, as described above, the Company has in place adequate screening functions to ensure that the contributions made are permissible under the Act.

By providing its eBundler platform at the usual and normal fee to political committees and organizations, the Company serves as a commercial vendor and therefore does not make an impermissible contribution to its political committee users. The eBundler platform conforms to the requirements of the Act.

Question 3: Would eBundler.com, LLC's proposed plan subject it to any reporting requirements under the Act?

The Company would not be subject to any reporting requirements under the Act.¹³ Although all users may express their views through the Donorship and eBundler platforms, some of which may include express advocacy, the Company itself will not make independent expenditures or engage in express advocacy.¹⁴ Consequently, it will not need to file independent expenditure reports with the Commission.¹⁵ Because all communications will be online, no communication, whether by the Company or by users, would constitute an electioneering communication.¹⁶ Moreover, neither the Company nor any user utilizing the "bundling" feature will exercise direction or control over others' contributions, so no conduit

¹² 11 C.F.R. § 114.2(f)(1); *see also* 11 C.F.R. § 116.1(c) (describing commercial vendor for purposes of debts owed by political committees).

¹³ 52 U.S.C. § 30104; 11 C.F.R. § 104 *et seq.*

¹⁴ *See* 52 U.S.C. § 30101(17) (defining independent expenditure); 11 C.F.R. § 100.16 (same); 11 C.F.R. § 100.22 (defining express advocacy).

¹⁵ 52 U.S.C. § 30104(c).

¹⁶ 52 U.S.C. § 30104(f); 11 C.F.R. § 100.29.

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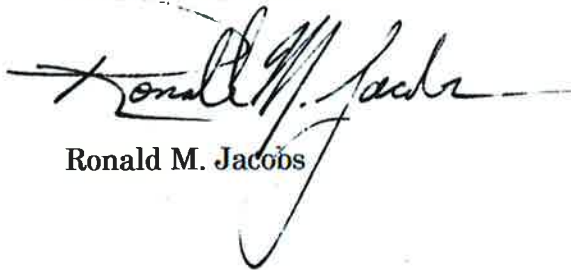
contribution reports will need to be filed pursuant to the Act.¹⁷ Finally, to the extent that political committees or organizations make solicitations through the eBundler platform, they will be responsible for including the necessary disclaimers.

IV. Conclusion

eBundler.com, LLC has developed a novel way for individuals to harness their online connections to support their preferred candidate or causes. By bringing “bundling” to the people, eBundler is helping to forge a closer connection between Americans and their elected officials. Although the concept and program is itself unique, it is not without precedent. The program is another example of web-based fundraising platform that has been carefully designed to comply with all provisions of the Act. As such, eBundler respectfully requests that the Commission approve its Donorship and eBundler web-based fundraising platforms through the issuance of an Advisory Opinion.

Should you have any questions or need additional information, please do not hesitate to contact me at 202-344-8215 or rmjacobs@venable.com. Thank you very much for your time and attention to this matter.

Respectfully submitted,

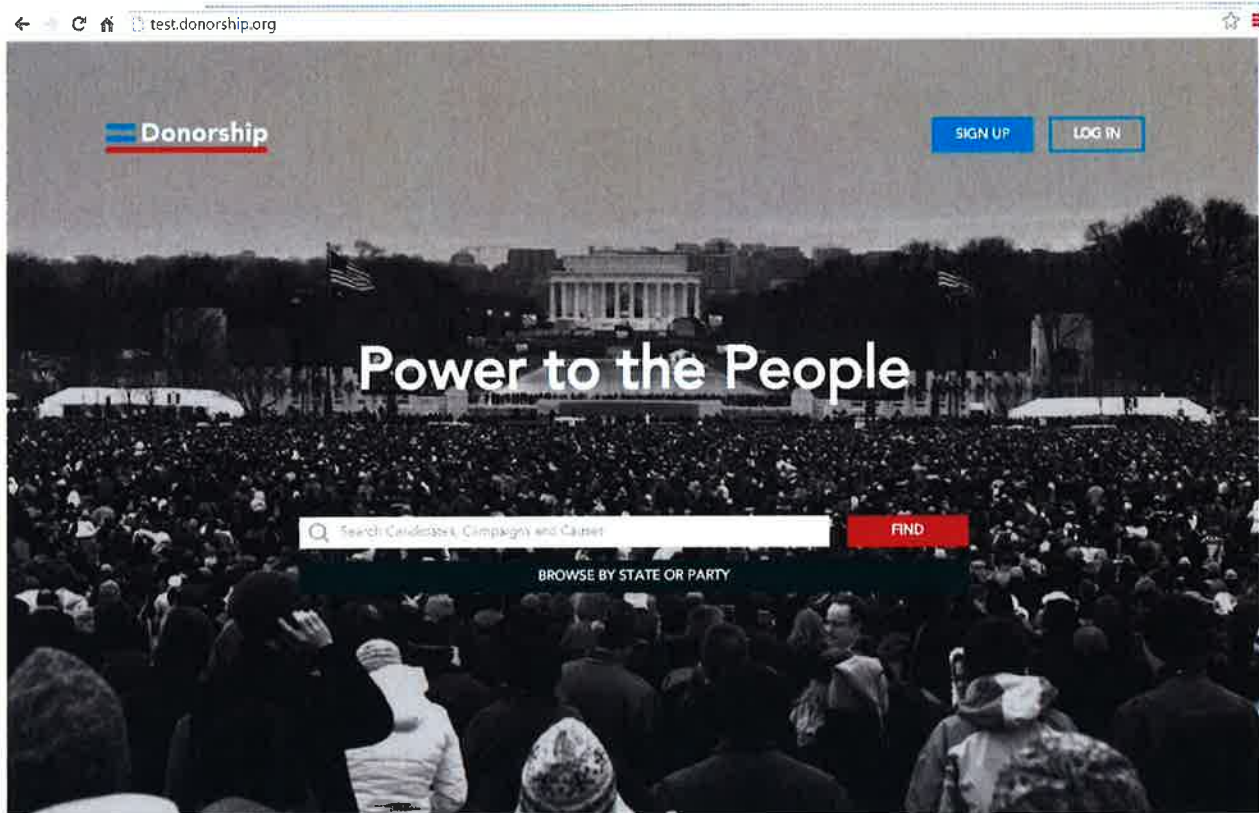


Ronald M. Jacobs

¹⁷ 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6.

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Attachment 1



Attachment 2

test.donorship.org/app/candidate-search/

Donorship SIGN UP LOG IN

Search: 1106 results for your search

Alphabetically 1 / 111 >

Filters:

Select a state: --Select--

Choose city: --Select--

Choose office: --Select--

Pick a party:

- DEMOCRAT
- REPUBLICAN
- LIBERTARIAN
- INDEPENDENT
- OTHER

CLEAR ALL FILTERS

NAME	OFFICE	PARTY
RALPH LEE ABRAHAM		REPUBLICAN
KHATCHIK ACHADJIAN		REPUBLICAN
ALMA SHEALEY ADAMS		DEMOCRAT
DAVID ANDREW ADAMS		REPUBLICAN
SANDY ADAMS		REPUBLICAN
DESMUND DOUGLAS ADAMS		DEMOCRAT
BOYCE ADAMS		REPUBLICAN
SAM ADCOCK		REPUBLICAN
ROBERT BROWN ADERHOLT		REPUBLICAN
AMBER LASHELLE ADLER		DEMOCRAT

eBundler f

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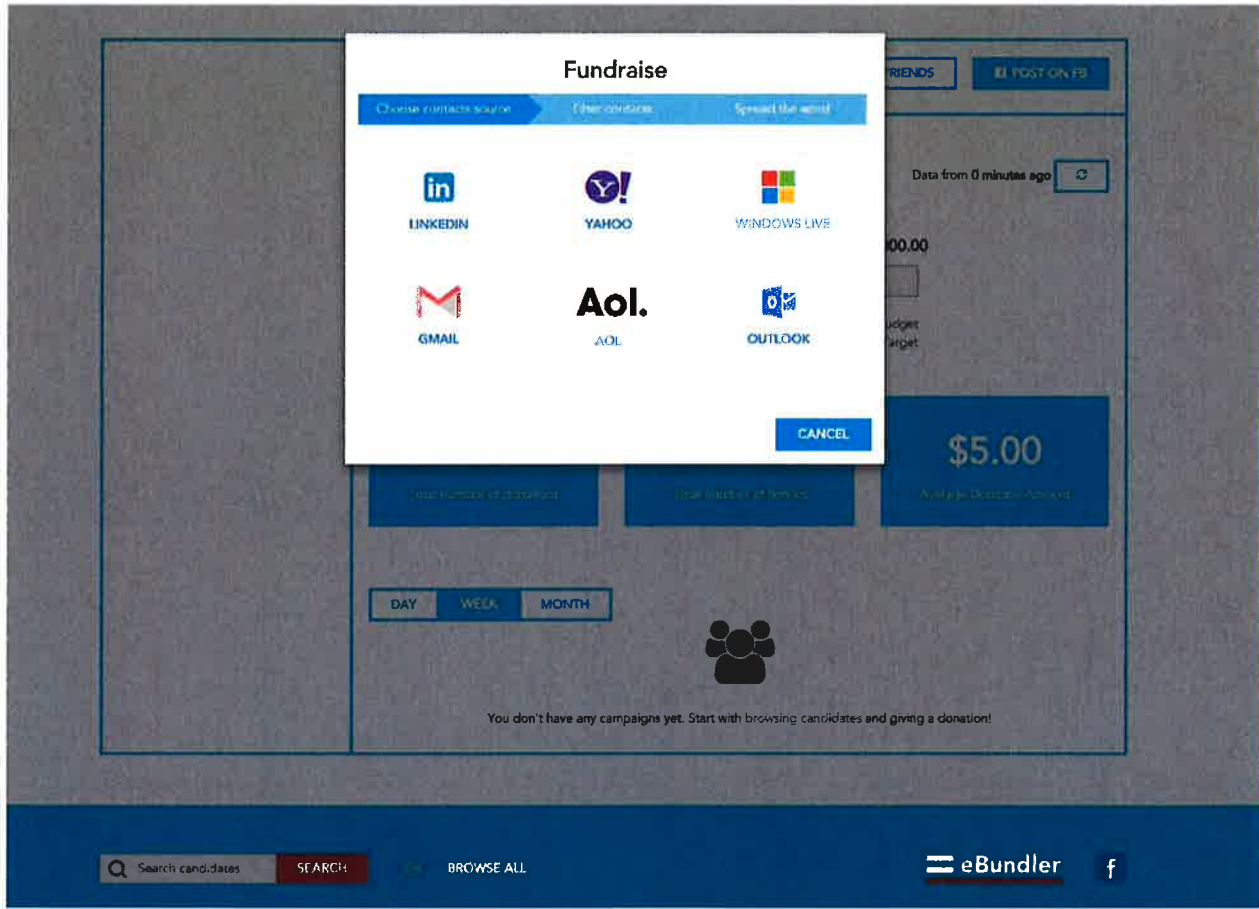
Attachment 3

The image shows a screenshot of a web form titled "Donate Today" on a blue background. The form is organized into three columns, labeled 1, 2, and 3 at the top. Column 1 contains buttons for 25, 175, and 1000. Column 2 contains buttons for 50, 300, and 2700. Column 3 contains buttons for 100 and 500. Below these columns is a white input field labeled "\$ Other amount". At the bottom of the form are two buttons: a red "NEXT" button and a white "I ONLY WANT TO FUNDRAISE" button.

1	2	3
25	50	100
175	300	500
1000	2700	
\$ Other amount		
NEXT		
I ONLY WANT TO FUNDRAISE		

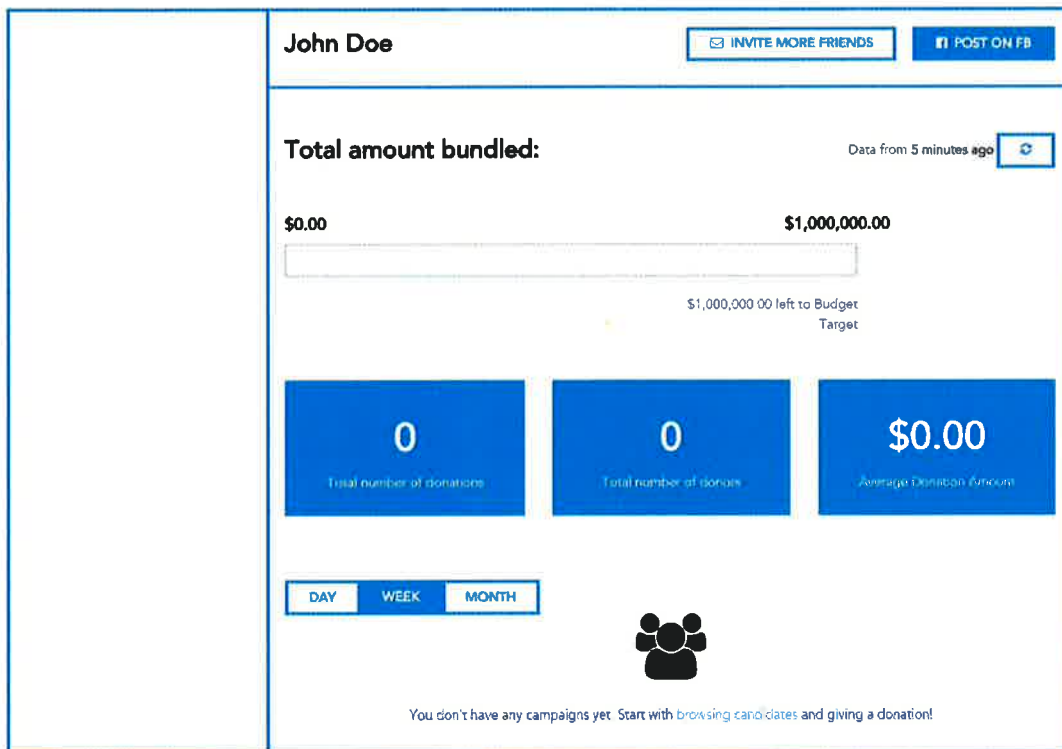
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Attachment 4





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Attachment 5



Attachment 6

Test (Test) -

Budget target	<h3 style="margin: 0;">Bundler Levels</h3> <div style="text-align: right; margin-bottom: 10px;">SAVE LEVELS</div> <div style="margin-bottom: 15px;"><h4>Level 1</h4><div style="text-align: right;">DELETE</div><p>Set a name: Prestige Fundraiser</p><p>From: 500 To: 800</p><div style="text-align: right;"><p>Add a badge:</p><div style="border: 1px solid #0070C0; padding: 2px; display: inline-block;">UPLOAD</div></div></div>
---------------	--

Level 2

[DELETE](#)

Set a name:
Major Donor

From: 800 **To:** 2000

Add a badge:

UPLOAD



Level 3

[DELETE](#)

Set a name:
Power Player

From: 2000 **To:** 3000

Add a badge:

UPLOAD

[+ ADD NEXT LEVEL](#)



RE: eBundler.com pre-AOR - follow-up to today's telephone call
Powers, William A.

to:
EGyory@fec.gov, Jacobs, Ronald M.
06/29/2016 09:45 PM

Cc:
"NStipanovic@fec.gov", "JWenzinger@fec.gov"

Hide Details

From: "Powers, William A." <WAPowers@Venable.com>

To: "EGyory@fec.gov" <EGyory@fec.gov>, "Jacobs, Ronald M." <RMJacobs@Venable.com>,

Cc: "NStipanovic@fec.gov" <NStipanovic@fec.gov>, "JWenzinger@fec.gov" <JWenzinger@fec.gov>

History: This message has been forwarded.

Dear Ms. Gyory and Mr. Wenzinger,

Please find below a summary of the information we discussed by phone on June 27, 2016. We have made some minor changes and clarifications to the descriptions provided in your email dated June 27, 2016. Please do not hesitate to contact us if you have any questions.

Kindest regards,
Bill

1. The requestor has elected to be treated as a partnership for tax purposes.
2. A contributor may make a contribution to any recipient political committee he or she wishes through the Donorship platform. If the political committee is not already in the requestor's database of recipient political committees, the requestor will add the political committee; however, the requestor intends to include as many political committees in the database up-front as possible (for example, because the requestor can easily identify the authorized committees of all candidates for U.S. House of Representatives, the requestor plans to add all of those political committees to its database of its own volition).
3. For any contributor intending to solicit contributions to a recipient political committee that is not registered with the requestor, the requestor will provide a boilerplate solicitation email to which the contributor can add a personalized note.
4. Fees paid by contributors (for contributions to recipient political committees not registered with the requestor) are not included in the total amount of the contribution as reported to the recipient political committee.
5. Recipient political committees that are registered with the requestor pay fees to the requestor according to a variable fee schedule based on a number of factors, including the number of new contributors.
6. The general fee structure for political committees and non-political committees is the same, although there may be variations for business reasons such as volume of contributions, the number of contributors identified, and other similar factors. These variations are not, in any way, based on political considerations.
7. If a user wants to make a donation through Donorship to a non-federal political committee or to a non-profit organization, the user will not be required to attest to statements to determine eligibility to make contributions under federal law (except to the extent that eligibility criteria are the same under state law). All contributions and donations will go into the same segregated account, which is separate from the Requestor's operating account. The requestor will keep itemized records of each contribution and donation using two methods. First, the website platform developed by requestor will track the contribution inside the Donorship and eBundler's environment. Second, the e-commerce vendor used by the requestor will track each contribution or donation by attaching a meta-tag to the transaction. Thus, requestor will at all times be able to identify the source and destination of the funds it processes. Although all contributions and donations will be processed through one account, the tracking system ensures that all funds intended for federal contributions are strictly from federally permissible sources. Should the Commission deem it necessary, requestor is prepared, in the alternative, to establish a separate account for federal contributions, and additional separate accounts for state and local contributions as needed to

comply with relevant law.

8. The Donorship platform will reject a one-time excessive contribution. The Donorship page includes a disclaimer notifying contributors of the contribution limits, but Donorship does not provide contributors with a real-time look-up to determine whether a contributor would make an excessive contribution in the aggregate (especially in the case of a recipient political committee not registered with the requestor) because the Commission has concluded that such a feature may violate the Act. See Advisory Opinion 2004-24 (NGP).

[William A. Powers, Esq. | Venable LLP](#)

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WAPowers@Venable.com | www.Venable.com

*Admitted in Connecticut, New York, and Massachusetts;
Not yet admitted in the District of Columbia

From: EGyory@fec.gov [<mailto:EGyory@fec.gov>]

Sent: Monday, June 27, 2016 4:42 PM

To: Jacobs, Ronald M. <RMJacobs@Venable.com>; Powers, William A. <WAPowers@Venable.com>

Cc: NStipanovic@fec.gov; JWenzinger@fec.gov

Subject: eBundler.com pre-AOR - follow-up to today's telephone call

Dear Messrs Jacobs and Powers,

Thank you for taking the time to talk with us today and to answer our questions regarding your request for an advisory opinion submitted on behalf of eBundler.com LLC (the "requestor"). Below is a summary of information that you provided to us by phone. Please either confirm that the information below is accurate, or respond with any necessary corrections or clarifications.

1. The requestor has elected to be treated as a corporation for tax purposes.
2. A contributor may make a contribution to any recipient political committee he or she wishes through the Donorship platform. If the political committee is not already in the requestor's database of recipient political committees, the requestor will add the political committee; however, the requestor intends to include as many political committees in the database up-front as possible (for example, because the requestor can easily identify the authorized committees of all candidates for U.S. House of Representatives, the requestor plans to add all of those political committees to its database of its own volition).
3. For any contributor intending to solicit contributions to a recipient political committee that is not registered with the requestor, the requestor will provide a boilerplate solicitation email that the contributor can modify.
4. Fees paid by contributors (for contributions to recipient political committees not registered with the requestor) are not included in the total amount of the contribution as reported to the recipient political committee.
5. Recipient political committees that are registered with the requestor pay fees to the requestor according to a variable fee schedule based on a number of factors, including the number of new contributors.
6. The general fee structure for political committees and non-political committees is the same, although there may be variations in the fees charged to political committees vs. non-political committees. These variations are not based on political considerations.
7. If a user wants to make a donation through Donorship to a non-federal political committee or to a non-profit organization, the user will not be required to attest to statements to determine eligibility to make contributions

under federal law (except to the extent that eligibility criteria are the same under state law). All contributions and donations will go into the same segregated account. The requestor will keep itemized records of each contribution and donation, but will not have separate accounts for federal contributions and non-federal donations.

8. The Donorship platform will reject a one-time excessive contribution. The Donorship page includes a disclaimer notifying contributors of the contribution limits, but Donorship does not provide contributors with a real-time look-up to determine whether a contributor would make an excessive contribution in the aggregate (especially in the case of a recipient political committee not registered with the requestor).

Your response may be considered to be part of your advisory opinion request; if so, it will become a public record and it will be posted on the Commission's website. Please let me know if you have any questions.

Thank you,

Esther Gyory
Attorney, Policy Division
Office of General Counsel
Federal Election Commission
(202) 694-1650