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November 10, 1999

Lawrence Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 1999-36

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Re: Advisory Opinion Request—Campaign Advantage—Online Contributions  
by Check

Dear Mr. Noble:

On behalf of Campaign Advantage, a division of Science Writers, Inc., the undersigned respectfully request an advisory opinion, pursuant to 11 C.F.R. § 112.1, to the effect that the process for making a contribution by check online, over the Internet, to be offered by Campaign Advantage, will result in a contribution which (1) meets the requirements of the Federal Election Campaign Act of 1971 (the "Act") and the Commission's regulations, including 11 C.F.R. §§ 110.4(c) and 104.8(c) and (2) is treated as being made by a signed, written instrument for purposes of the Presidential Primary Matching Fund system, 11 C.F.R. §§ 9034.2(b) and (c).

**FACTUAL BACKGROUND**

Campaign Advantage is a division of Science Writers, Inc., a Maryland corporation providing web sites, systems publications and technical requirements analysis to a range of government, corporate and non-profit clients. The company's Campaign Advantage division designs and provides online solutions for Democratic candidates and progressive organizations, offering to such campaigns and organizations services including the design and maintenance of web sites; secure online fundraising; electronic voter contact; online volunteer recruitment; and training and seminars.

In addition to offering candidates a system of fundraising online via credit card, Campaign Advantage plans to offer candidates, including presidential candidates and other candidates for federal office, a system for receiving contributions online, over the Internet, via electronic check using electronic funds transfer. Campaign Advantage has

been retained by the authorized committees of certain candidates for federal office who wish to solicit contributions online, via the Internet, through the use of on-line checking.

The system to be offered by Campaign Advantage will work as follows:

1. The option of contributing to the campaign via electronic check will be built into the campaign's web site. Prior to offering this option, the campaign will enter an agreement with Campaign Advantage and with the electronic payment processing company, eMoney.NET™, authorizing use of the system described below.
2. The candidate's web site will then offer a potential donor the option of contributing online to the candidate's campaign by credit card or by check.
3. If the donor clicks on the "online check" option, a contribution form will appear on the screen. See sample form attached hereto. This form will include, in the case of all federal candidates, the disclaimer language required by the Commission's rules, including the "best efforts" language prescribed by 11 C.F.R. § 104.7(b)(1). The form will also set out language informing the prospective donor of the source restrictions and contribution limits of the Federal Election Campaign Act of 1971, as amended (the "Act"), using the language set forth in Advisory Opinion 1995-9, CCH Fed. Elec. Camp. Fin. Guide ¶ 6146 (1995) and in Advisory Opinion 1999-9, CCH Fed. Elec. Camp. Fin. Guide ¶ 6291 (1999).

To contribute, the donor will have to complete the form on the web site. The form will require the donor to provide his or her first and last name; address; city, state and zip code; e-mail address; occupation and employer; and either a social security number or driver's license number. If the donor fails to provide any of the required information, or leaves any of the fields blank, the web site will reject the form and prompt the prospective donor to provide the missing information.

4. In a series of instant steps not visible to the donor, the donor's web browser is then redirected to the encrypted web site of eMoney.NET™, an Internet payments processing company. The donor is then asked to "proceed" with payment.

5. The site informs the donor that he or she is receiving a digital signature authentication code via the e-mail address the donor submitted. This digital signature authentication code is received within a few seconds via e-mail. The site displays a check form in which the donor can enter his or her check number (i.e., the next check number from his or her checkbook). The donor should also, for the sake of good recordkeeping, write "void" on the paper check bearing this check number. The donor is also asked to enter the ABA routing number; account number; bank name; and the digital signature authentication code.

6. The donor then enters this information on the form, including the digital signature authentication code.

7. The form will ask the donor to check a series of boxes attesting that his or her contribution is made with funds within the source restrictions and contribution limits of the Act, using the language set forth in A.O. 1995-9 and A.O. 1999-9. Specifically, the contributor will be required to attest that he or she is a U.S. citizen or legal permanent resident residing in the U.S.; that he or she is contributing his or her own personal funds; that he or she is not a minor; that the funds do not come from the general treasury funds of a corporation, labor organization or national bank; and that the donor is not a federal contractor. As in A.O. 1995-9 and A.O. 1999-9, the failure to check any of the attestation boxes will cause the web site to reject the form, and display a message noting the applicable source restriction. The site will then prompt the donor to answer the question. If any question is answered in a way that disqualifies the contribution, the site will inform the donor that he or she is ineligible to contribute. The site will then prompt the donor to correct any missing or inaccurate information, or to cancel the transaction.

8. The donor is then asked to "submit contribution." When the donor clicks this button, if the contribution is excessive, the site will so inform the donor and request that an amount within the limit be entered into the check form.

9. At the option of the candidate, an additional screening process may be imposed, through transmission of the checking information to a check authorization system. This check authorization system uses a series of databases to determine whether the drawer of the check matches a list of bad check-writers on file, whether the checking account is open, and in many cases, whether the checking account belongs to the person whose name is being given and whether the driver's license number or social security number matches. This verification not only provides the candidate with some assurance that the electronic check will be honored, but will also serve as an additional screen to help ensure that the contribution is being made with the donor's own funds and otherwise meets the prohibitions of the Act. If the checking account cannot be verified through the check authorization system, or does not pass the system's verification screen, the web site will display to the donor, and an e-mail will also be sent to the donor with, a declined transaction number and a toll-free number to contact for further information.

10. If this additional screening option is used and the verification is successful, or if the additional screening option is not used but all of the information entered by the donor is in good order, then an Automated Clearing House ("ACH") debit entry is automatically and securely submitted through the system of a third party processor to a bank offering electronic funds transfer services. This "originating financial institution" has its own Federal Reserve System line account, allowing it to clear transactions with other banks over the "fed wire," which is the system banks use to settle with each other for items drawn on a bank and presented to that drawee bank for payment. The originating financial institution directly debits the bank account of the donor. Thereafter, after allowing for the typical 72-hour Hold in Lieu of Returns, the originating financial

institution directly credits the bank account of the campaign. This transaction works in essentially the same way as customer-authorized electronic funds transfers used by checking account customers to allow a mortgage company to withdraw the mortgage payment automatically from their account each month, or to authorize, e.g., a utility company to take the amount of the customer's utility bill out of the customer's checking account each month.

11. A confirmation of the transaction is generated to the donor, instantly, on the screen and via e-mail. The donor's web browser is then transferred back to the candidate's web site.

12. **The entire transaction, from the time the donor submits the contribution payment order form to the time confirmation of the payment transaction is received, takes on average only 8 to 15 seconds.** It must also be emphasized that all of the checking account and other information submitted by the donor on the payment order form is transmitted at all times over the Internet in encrypted form.

13. After the electronic check "clears," i.e., the campaign's account is credited, the campaign will receive, on a timely basis, in electronic form or on paper, all necessary information about the donation, including all required contributor information, date, amount, etc., for inclusion (electronically if possible) in the campaign's database used to generate its reports to the FEC. Confirmation that the electronic check has "cleared" is also received by the campaign directly from eMoney.NET™ via e-mail. The campaign also receives confirmation of the credit entry on its bank account statement, so that the electronic checking contribution can be included in the reconciliation of the campaign's bank account, for purposes of determining cash on hand, just like the clearing and crediting of any paper check.

14. For purposes of the itemized reporting of contributions pursuant to 11 C.F.R. §104.8, the campaign will report the date of the credit to its account as the date of receipt of the contribution, in accordance with the Commission's guidance in Advisory Opinion 1989-26, CCH Fed. Elec. Camp. Fin. Guide Transfer Binder ¶ 5974 (1989). For purposes of attribution of a contribution to a particular election, 11 C.F.R. §110.1(b)(6), a contribution made via electronic check will be considered "made" when the donor's account is debited, in accordance with A.O. 1989 note 2, CCH Fed. Elec. Camp. Fin. Guide Transfer Binder ¶ 5974 at p. 11,586.

15. For the use of this system, each participating campaign will pay certain fees to Campaign Advantage. For purposes of this request, the Commission may assume that these are the usual and normal charges for electronic checking transactions of this nature.

## **LEGAL DISCUSSION**

### **A. General Application of Act and Commission Regulations**

In A.O. 1989-26, the Commission ruled that a campaign committee could arrange to have contributions made by means of automatic withdrawals from the contributors' bank accounts, where the campaign obtained a signed, written authorization form from each contributor. The Commission held that while "the Act prohibits contributions of currency which, in the aggregate, exceed \$100, it does not require that contributions be made only by check or similar draft. . . . The inclusion of 'deposit of money' within the cited definition [of "contribution"] indicates that if otherwise lawful contributions are made in the form of bank deposits into the account of a political committee, the fact that a check is not used would not in itself preclude the contribution." CCH Camp. Fin. Elec. Guide Transfer Binder ¶ 5974 at p. 11,585. The Commission required that this automatic deduction system be accompanied by certain safeguards, including maintenance of required contributor information; compliance with the Commission's regulations concerning designation of contributions for a particular election; and providing the contributor with the option of effectively revoking his or her deduction authorization at any time.

In the Campaign Advantage system, the donor must initiate a new transaction and complete the required form each time he or she desires to make a contribution. There is no need, therefore, to provide a contributor with the option of revoking an ongoing authorization. As in A.O. 1989-26, the Campaign Advantage system does provide for maintenance of all required contributor information and compliance with the Commission's regulations concerning designation of contributions for a particular election and re-attribution of a portion of a contribution to a spouse. Campaign Advantage will capture all information with respect to each contribution and transmit it, electronically or on paper, to the campaign committee, including all information required by 11 C.F.R. §§ 102.9 and 104.8.

In the case of the Campaign Advantage system, the electronic funds transfer is authorized by the contributor electronically, online, rather than by a separate, paper authorization form as in A.O. 1989-26. In Advisory Opinion 1999-3, CCH Fed. Elec. Camp. Fin. Guide ¶ 6283, however, the Commission ruled that use of a digital electronic signature, using a unique password, would comply with the Commission's guidelines requiring a written authorization by a solicited employee prior to the deduction of any contributions to a corporate SSF from the employee's paycheck pursuant to a payroll deduction or checkoff process. The Commission concluded that, "The electronic signature, like a written signature, is designed and functions as a unique identifier of the authorizing employee." CCH Fed. Elec. Camp. Fin. Guide ¶ 6283 at p. 12,424. In the

Campaign Advantage system, as noted, the donor is assigned a unique digital signature authentication code, via e-mail, which must be entered into the payment form before the transaction will be processed. As in A.O. 1999-3, this digital signature should satisfy the Commission's general requirement, in A.O. 1989-26, that a donor affirmatively indicate his or her desire to make a contribution via electronic funds transfer.

Further, the Campaign Advantage system complies with all of the requirements set forth by the Commission in A.O. 1995-9 and A.O. 1999-22, with respect to acceptance of credit card contributions over the Internet. The system will ensure that the "best efforts" regulations will be met, since no contribution will be processed without the required information concerning employer and occupation. As in A.O. 1995-9, the contributor will be required to attest that he or she is a U.S. citizen or legal permanent resident residing in the U.S.; that he or she is not a minor; that he or she is contributing his or her own personal funds; that the funds do not come from the general treasury funds of a corporation, labor organization or national bank; and that the donor is not a federal contractor.

For these reasons, the Commission should rule that the Campaign Advantage system for contributing to federal candidates via online check meets the requirements of the Act and the Commission's regulations with respect to the means of making contributions.

**B. Presidential Primary Matching Funds**

The Commission has promulgated new rules governing the eligibility of credit and debit card contributions to be matched under the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031 et seq. Final Rule and Transmittal to Congress, 64 Fed. Reg. 32394 (June 17, 1999). In order to qualify for matching funds, a contribution must be made by "written instrument." 11 C.F.R. § 9034.2(a)(1) Under the Commission's new rules, a "written instrument" includes, "in the case of such a contribution made over the Internet, an electronic record of the transaction created and transmitted by the cardholder, and including the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form by the recipient candidate or candidate's committee." New 11 C.F.R. § 9034.2(b). In the case of the Campaign Advantage system, a complete electronic record of the transaction is created and transmitted by the donor, including account information and a unique digital electronic signature; that information is maintained electronically by eMoney.NET and, except for the digital signature, is transmitted to the candidate's committee; and all of that information can be reproduced in written form by the candidate committee. Accordingly, a contribution made via online check, using the Campaign Advantage system, should be held to qualify as being made by "written instrument" for purpose of section 9034.2(a) of the Commission's rules.

To qualify for matching funds, a contribution must also contain the "full name and signature of the contributor(s)." 11 C.F.R. § 9034.2(c). Under the Commission's

Lawrence M. Noble, Esq.

November 10, 1999

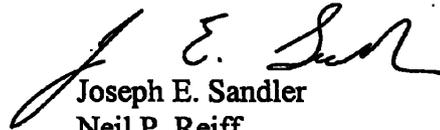
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new rules, a "signature" means, "in the case of such a contribution made over the Internet, the full name and card number of the cardholder who is the donor, entered and transmitted by the cardholder." New 11 C.F.R. § 9034.2(c). In the case of the Campaign Advantage system, the donor enters and transmits his or her full name and account information, in order to make the contribution. This donor-entered information, together with the unique digital signature which the donor receives by e-mail and must include with the account information, clearly comports with the intent of the new regulation and therefore should be held to constitute a "signature" for purposes of section 9034.2(c) of the Commission's rules.

For these reasons, the Commission is respectfully requested to rule that contributions made via online check, using the Campaign Advantage system described above, will qualify for matching funds under the Presidential Primary Matching Payment Account Act, assuming that all other requirements of the Act and the Commission's regulations, including recordkeeping and reporting requirements, are met.

Thank you for your time and attention to this request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. E. Sandler". The signature is written in a cursive style with a large initial "J" and "S".

Joseph E. Sandler

Neil P. Reiff

Counsel for Campaign Advantage

# John Smith for Senate

## Contribute Online by Check

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation, and name of employer of individuals whose donations exceed \$200 in a calendar year.

\*Required fields in red

### Contributor

First Name   
Last Name   
Middle Initial   
Title

### Spouse or Partner

First Name   
Last Name   
Middle Initial   
Title

### Contact Information

Street Address   
Address (cont.)   
City   
State and Zip    
Occupation   
Employer   
Work Phone   
Home Phone   
FAX   
E-mail address

### Account Holder Identification

Name printed on check

For your protection, we must verify your identity.

Please fill in one of the fields below:

Driver's license number

Social security number

After you click the Proceed button below and verification occurs, this identification data is deleted from our records. A few seconds later, you will receive your digital signature authentication code at the e-mail address you provided.

**Proceed**



[Privacy Policy](#)

[FEC Requirements](#)

## Write your check to the campaign

An individual may donate up to \$1,000 per election from his or her own personal funds.

Be sure to fill in all the white boxes on the secure check form below:

- Click here if your checking account name and address are the same name and address you entered on the previous page

|   |  |                      |                             |
|---|--|----------------------|-----------------------------|
| NAME  | <input type="text"/>                   | CHECK No.            | <input type="text"/>        |
| ADDRESS   | <input type="text"/>                   |                      |                             |
| CITY STATE ZIP  | <input type="text"/>                   | <input type="text"/> | <input type="text"/>        |
| Pay to the<br>Order of  | <i>John Smith for Senate Committee</i> | AMOUNT               | \$ <input type="text"/> .00 |
|   |  |                      | Dollars                     |
|  | TRANSIT No.                            | ACCOUNT No.          | Signature CODE              |
|   | <input type="text"/>                   | <input type="text"/> | <input type="text"/>        |

Enter the bank transit number, usually found at the bottom left of your check. For example:

⑆ 1 2 3 4 5 6 7 8 9 ⑆

Enter your account number as it appears on your check.

Enter the signature code that you just received via e-mail.

### Eligibility

Please check all four boxes to confirm that the statements below are true:

- I am making this donation from my own funds, not those of another, and from my personal checking account, and not from the checking account of a corporate or business entity.
- This contribution is not made from the general treasury funds of a corporation, labor organization, or national bank.
- I am at least 18 years of age, and I am a U.S. citizen or legal permanent resident of the U.S. residing in the U.S.
- I am not a federal government contractor.

If you do not want us to share your name with other organizations, please check here.

Submit Contribution

Reset

If you have questions about using this form, [contact us](#).

Secure online checks by Campaign Advantage in partnership with eMoney.NET

Contributions to John Smith are not tax-deductible. Paid for by John Smith for Senate Committee.