

August 17, 2017

**By Electronic Mail**

Erin Chlopak, Esq.  
Acting Associate General Counsel  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

**RECEIVED**

*By Office of General Counsel at 8:42 am, Aug 17, 2017*

Re: Comments on Advisory Opinion 2017-06, Drafts A and B

Dear Ms. Chlopak,

The Campaign Legal Center respectfully submits these comments on Drafts A and B of Advisory Opinion 2017-06 (Stein).

Consider the following advisory opinion request:

*Dear Federal Election Commission,*

*I seek an advisory opinion on behalf my clients, Charles and David Pepsi. My clients intend to create an LLC — Americans for Prospering LLC (“AFP”) — that will provide a contribution-processing service. Specifically, AFP will solicit individuals for contributions to certain Republican candidates and party committees and then transmit those contributions to the recipients (less a processing fee). AFP believes that it can maximize the contributions it raises, and thereby maximize its fees, by enabling its contributors to give only in competitive races and only to the candidates whom the Pepsis believe best reflect the political values of their desired customers. The list of potential recipients will be hand-selected by AFP to further this goal of transmitting the greatest possible quantity of contributions to Republican candidates in critical elections. Due to the current political climate, it will not be commercially possible for AFP to transmit or offer to transmit contributions to Democrat candidates or parties.*

*When customers agree to participate in AFP’s program, AFP will round up each contributors’ next banking transaction to the nearest \$100,000, with the rounded-up difference being distributed among AFP’s selected recipients within contribution limits. AFP will provide no services to the recipient committees, except to send them as much money as possible while excluding all of their competitors. Thus, AFP will be akin to “widely available delivery services, such as United Parcel Service, or an electronic bill-pay service, such as those provided by banks,” to the extent that UPS and banks allow their customers to send money only to particular candidates or parties whom UPS or the banks preselect.*

*AFP will not exercise direction or control over the funds that its customers authorize AFP to send to the specific recipients that AFP has chosen.*

*While the instant request might seem on its face to violate, inter alia, the ban on corporate facilitation of contributions, the Commission expressly stated in Advisory Opinion 2017-06 (Stein) that a materially identical plan was compliant with the Act and Commission regulations “in all . . . respects.” Thus, not only must the Commission approve our request on its face, but the Commission also must not inquire as to any other facts, such as whether AFP will be established, financed, maintained, or controlled by any committee, whether AFP will coordinate its activities with the recipient committees, etc.*

*In sum, as you did in Advisory Opinion 2017-06 (Stein), please confirm that our proposal complies with every provision of FECA and Commission regulations.*

\* \* \*

We recommend that the Commission reject answer 2 in Drafts A and B.<sup>1</sup> The key portion of that answer states:

The [requestors have] determined that featuring Democratic candidates in swing districts on the App is the most marketable way for it to provide a service to users, by helping them identify which candidates will benefit most from their contributions. AOR007. Limiting the pool of recipient committees as proposed thus does not raise concerns that the [requestors are] selecting the committees to influence the outcome of an election.

Draft A at 9; Draft B at 10. In other words, according to Drafts A and B, the fact that the requestors will try to generate the greatest possible volume of contributions to their hand-selected recipients means that the requestors are not trying “to influence the outcome of an election.”

This conclusion does not follow from its stated premise, and it is telling that the drafts cite no authority for it. As the hypothetical request above demonstrates, the requestors’ desire to maximize contributions to swing-state Democrats is completely consistent with an intent to further the election of those candidates, and it renders the concept of “commercially reasonable criteria” (Draft A at 9; Draft B at 10) so expansive as to be meaningless. For these reasons, the activity proposed in AOR 2017-06 and above is well outside the bounds of electronic bill-paying, check delivery, and other *bona fide* commercial payment processing.

Sincerely,

/s/ Adav Noti

Adav Noti  
Senior Director, Trial Litigation and Strategy

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<sup>1</sup> We also recommend narrowing the response to question 4 to indicate that the Commission is opining only on the regulations specifically discussed therein, not “all” provisions of the Act and Commission regulations.