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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 21-34-B
AGENDA ITEM
For meeting of September 30, 2021

September 22, 2021

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by NFS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

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Attorney

Subject: AO 2021-09 (Certified Voter) Draft B

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

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 September 29, 2021.

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 2021-09

2

3 Chris Truax, Esq.
4 Chief Executive Officer
5 Certified Voter, LLC
6 P.O. Box 2127
7 La Mesa, CA 91943

DRAFT B

8 Dear Mr. Truax:

9 We are responding to your request for an advisory opinion on behalf of Certified
10 Voter, LLC (“Certified Voter”) concerning the application of the Federal Election
11 Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to
12 Certified Voter’s proposal to sell its sponsored advertisement services to political
13 committees. The Commission concludes that Certified Voter may provide these services
14 for a commercially reasonable fee as proposed because in doing so it does not make any
15 in-kind contribution to client political committees.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter received on
18 August 16, 2021. Advisory Opinion Request (“AOR”) at AOR001. Certified Voter is a
19 limited liability company that proposes to offer a commercial service to political
20 committees by creating, storing, and distributing custom sponsored advertisements
21 (“sponsored ads”) that identify and can be shared by the committees’ contributors. *Id.*

22 The request describes Certified Voter’s services as follows: a political committee
23 that retains Certified Voter’s services would send a fundraising solicitation to the
24 committee’s donors. This solicitation would notify supporters that if they contribute a
25 certain minimum amount to the committee, they would be offered the option to receive a
26 customized sponsored ad from the campaign. A supporter would then be directed to the

1 committee’s website where they would make the contribution¹ and, if they choose to
2 receive a sponsored ad, select the advertisement they wish to customize from one or more
3 video advertisements that “have already been created [and paid for] by” the committee.²

4 AOR001. Next, the committee would transmit to Certified Voter the contributor’s
5 information along with the contributor’s chosen advertisement. Certified Voter’s
6 “system” would use this information to generate a sponsored ad by inserting a “brief
7 message” at either the beginning or end of the committee’s video advertisement.

8 AOR001-02. This message would include a “voice-over indicating the [advertisement]
9 has been sponsored” and “a page of text consisting of the name of the ‘sponsor,’ the
10 sponsor’s hometown and, possibly, other identifying information such as [the sponsor’s]
11 social media address.” AOR001. Finally, Certified Voter would deliver the sponsored ad
12 to the committee. You “anticipate that the sponsored ad [would] then [be] shared” with
13 the contributor, who would be encouraged “to share the sponsored ad with friends and
14 family via social media.” AOR002. Distribution and use of the sponsored ad after it is
15 transmitted by Certified Voter to the committee, however, “is strictly within the control
16 of” the committee and, presumably, the recipient contributor. *Id.*

17 You further “anticipate that the entire sponsored ad process will, from the
18 [contributor’s] point of view, take place entirely within the website of the campaign or

¹ The request clarifies that contributors who choose to receive a sponsored ad “will not be paying directly for [political] advertising.” Contributions made by those who wish to receive a sponsored ad will be used by the recipient political committees “as it deems appropriate just as with any other contribution.” AOR002.

² The request stipulates and the Commission assumes for purposes of this advisory opinion that all political advertisements produced by political committees will comply with all applicable legal requirements (including, without limitation, disclaimer requirements) under the Act and Commission regulations. AOR001.

1 PAC.” *Id.* Certified Voter will exclusively act behind-the-scenes as a “commercial
2 vendor” that digitally generates sponsored ads for its political committee customers at “a
3 commercially-reasonable fee.”³ AOR001.

4 ***Question Presented***

5 *Is Certified Voter’s proposal to sell sponsored advertisement services to political*
6 *committees for a commercially reasonable fee permissible under the Act and Commission*
7 *regulations?*

8 ***Legal Analysis and Conclusion***

9 Yes, Certified Voter may sell sponsored advertisement services to political
10 committees for a commercially reasonable fee as proposed because in doing so it would
11 not make an in-kind contribution to any committee.

12 The Act and Commission regulations prohibit corporations, including limited
13 liability companies that have elected to be treated as corporations for federal tax
14 purposes, from making a “contribution,” which includes “any direct or indirect payment,
15 distribution, loan, advance, deposit, or gift of money, or any services, or anything of
16 value . . . to any candidate, campaign committee, or political party or organization, in
17 connection with any [federal] election.” 52 U.S.C. § 30118(a), (b)(2); 11 C.F.R.
18 § 114.2(b); 11 C.F.R. § 110.1(g)(3); *see also* 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R.
19 § 100.52(a). “[A]nything of value” includes all in-kind contributions, such as the
20 provision of goods and services without charge or at less than the “usual and normal
21 charge.” *See* 11 C.F.R. § 100.52(d)(1). Commission regulations define “usual and

³ *See* AOR001-02 (“During this entire process, [contributors] will be interacting with the campaign or PAC rather than directly with Certified Voter.”).

1 normal charge” as the price of goods in the market from which they ordinarily would
2 have been purchased at the time of the contribution, or the commercially reasonable rate
3 prevailing at the time the services were rendered. *See* 11 C.F.R. § 100.52(d)(2).

4 In sum, the questions of whether Certified Voter’s activities would result in a
5 contribution under the Act and Commission regulations turn on whether its political
6 committee customers would pay Certified Voter the usual and normal charge (or other
7 consideration of equal value) for its ordinary services as a commercial vendor.⁴

8 Certified Voter intends to provide a specific service to political committees:
9 attaching custom sponsorship statements identifying certain individual contributors to the
10 committees to political advertisements that have already been produced and paid for by
11 these committees. AOR001-02. In exchange for this service, the request states that
12 political committees will pay Certified Voter a “commercially-reasonable” fee. AOR001.
13 The request further states that Certified Voter will conduct its business “as a commercial
14 vendor” to its customers, and will not “act[] as a campaign or PAC in this process.”
15 AOR001. Because the requestor will provide its services to client committees at a
16 “commercially reasonable” fee, it is not providing goods or services at less than the
17 “usual or normal charge” and is not making an in-kind contribution to its political
18 committee customers.

⁴ *See* Advisory Opinion 2014-09 (Reed Marketing) at 3 (corporation developing and marketing affinity credit card program between banks and political committees is commercial vendor within the meaning of the Act and Commission regulations if its political committee customers pay “the usual and normal charge (or other consideration of equal value) for [its] ordinary services as a commercial vendor”); Advisory Opinion 2010-06 (Famos) at 6 (same). *See also* Advisory Opinion 2007-04 (Atlatl) at 3-4 (corporation processing credit card contributions for political committees is commercial vendor, in part, because it provides these services in the ordinary course of business and at the usual and normal charge).

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

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On behalf of the Commission,

Shana M. Broussard
Chair