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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 21-34-C**  
**AGENDA ITEM**  
**For meeting of September 30, 2021**  
**SUBMITTED LATE**

September 29, 2021

**MEMORANDUM**

TO: The Commission

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

Neven F. Stipanovic *NFS*  
Associate General Counsel

Robert Knop *RMK*  
Assistant General Counsel

Kevin M. Paulsen *KMP*  
Attorney

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

Attached is a proposed draft of the subject advisory opinion.

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 C**

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 letters received on  
18 August 16, 2021, Advisory Opinion Request (“AOR”) at AOR001, and September 27  
19 2021. AOR Supp. at 001. Certified Voter is a limited liability company that proposes to  
20 offer a commercial service to political committees by creating, storing, and distributing  
21 custom sponsored advertisements (“sponsored ads”) that identify and can be shared by  
22 the committees’ contributors. *Id.*

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

1 customized sponsored ad from the campaign. A supporter would then be directed to the  
2 committee's website where they would make the contribution<sup>1</sup> and, if they choose to  
3 receive a sponsored ad, select the advertisement they wish to customize from one or more  
4 video advertisements that "have already been created [and paid for] by" the committee.<sup>2</sup>

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

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

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<sup>1</sup> 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.

<sup>2</sup> 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           You further “anticipate that the entire sponsored ad process will, from the  
2   [contributor’s] point of view, take place entirely within the website of the campaign or  
3   PAC.” *Id.* Certified Voter will exclusively act behind-the-scenes as a “commercial  
4   vendor” that digitally generates sponsored ads for its political committee customers at “a  
5   commercially-reasonable fee.”<sup>3</sup> AOR001.

6   ***Question Presented***

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

10   ***Legal Analysis and Conclusion***

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

14           The Act and Commission regulations prohibit corporations, including limited  
15   liability companies that have elected to be treated as corporations for federal tax  
16   purposes, from making a “contribution,” which includes “any direct or indirect payment,  
17   distribution, loan, advance, deposit, or gift of money, or any services, or anything of  
18   value . . . to any candidate, campaign committee, or political party or organization, in  
19   connection with any [federal] election.” 52 U.S.C. § 30118(a), (b)(2); 11 C.F.R.  
20   § 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.

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<sup>3</sup>       *See* AOR001-02 (“During this entire process, [contributors] will be interacting with the campaign or PAC rather than directly with Certified Voter.”). The Commission is not opining on any activity involving Certified Voter collecting, processing, or forwarding contributions to political committees. *See* AOR Supp. at 001.

1 § 100.52(a). “[A]nything of value” includes all in-kind contributions, such as the  
2 provision of goods and services without charge or at less than the “usual and normal  
3 charge.” *See* 11 C.F.R. § 100.52(d)(1). Commission regulations define “usual and  
4 normal charge” as the price of goods in the market from which they ordinarily would  
5 have been purchased at the time of the contribution, or the commercially reasonable rate  
6 prevailing at the time the services were rendered. *See* 11 C.F.R. § 100.52(d)(2).

7 In sum, the question of whether Certified Voter’s activities would result in a  
8 contribution under the Act and Commission regulations turn on whether its political  
9 committee customers would pay Certified Voter the usual and normal charge (or other  
10 consideration of equal value) for its services.

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

19 This response constitutes an advisory opinion concerning the application of the  
20 Act and Commission regulations to the specific transaction or activity set forth in your  
21 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change  
22 in any of the facts or assumptions presented, and such facts or assumptions are material to  
23 a conclusion presented in this advisory opinion, then the requestor may not rely on that

1 conclusion as support for its proposed activity. Any person involved in any specific  
2 transaction or activity which is indistinguishable in all its material aspects from the  
3 transaction or activity with respect to which this advisory opinion is rendered may rely on  
4 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or  
5 conclusions in this advisory opinion may be affected by subsequent developments in the  
6 law including, but not limited to, statutes, regulations, advisory opinions, and case law.  
7 Any advisory opinions cited herein are available on the Commission's website.

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On behalf of the Commission,

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Shana M. Broussard

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Chair