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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 22-43-A**  
**AGENDA ITEM**  
**For meeting of August 31, 2022**

August 24, 2022

**MEMORANDUM**

TO: The Commission

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

Neven F. Stipanovic *NFS*  
Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

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Attorney

Subject: AO 2022-11 (SDD PAC) - Draft A

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 12:00pm (Eastern Time) on August 30, 2022.

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 2022-11

2

3 Jonathan S. Berkon, Esq.  
4 Courtney T. Weisman, Esq.  
5 Elias Law Group  
6 10 G Street NE, Suite 600  
7 Washington, DC 20002

**DRAFT A**

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10 Dear Mr. Berkon and Ms. Weisman:

11 We are responding to the advisory opinion request that you submitted on behalf of State  
12 Democracy Defenders PAC (“SDD PAC”), asking whether state political parties and their chairs  
13 may solicit unlimited contributions for SDD PAC under the Federal Election Campaign Act, 52  
14 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations. The Commission concludes that  
15 state party committees and their chairs may solicit and direct nonfederal funds to SDD PAC’s  
16 non-contribution account as proposed under 11 C.F.R. § 300.37(a)(3)(i), because SDD PAC is a  
17 “political committee” as defined in 11 C.F.R. § 100.5.

18 ***Background***

19 The facts presented in this advisory opinion are based on your advisory opinion request  
20 received on June 6, 2022 (“AOR”) and public disclosure reports filed with the Commission.

21 SDD PAC is registered with the Commission as a nonconnected political committee that  
22 holds both contribution and non-contribution accounts.<sup>1</sup> SDD PAC is also registered as a  
23 political committee in Michigan and Arizona, and it plans to register as a political committee in  
24 other states, to the extent required by each state’s laws. SDD PAC is not established, financed,  
25 maintained, or controlled by any state party committee or their agents.

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<sup>1</sup> See SDD PAC, Statement of Organization, FEC Form 1 (Apr. 12, 2022),  
<https://docquery.fec.gov/pdf/655/202204129496069655/202204129496069655.pdf>.

1           SDD PAC states that its “mission is to raise funds from donors across the country and  
2 donate these funds to state party committee *nonfederal accounts*—consistent with state campaign  
3 finance laws—to facilitate their vital grassroots, pro-democracy work.”<sup>2</sup> SDD PAC will draw on  
4 its colleagues’ and consultants’ “trusted relationships with national donors,” allowing those  
5 donors to make contributions to SDD PAC that it will, in turn, distribute to the nonfederal  
6 accounts of state party committees of its choosing.<sup>3</sup> SDD PAC will not accept contributions  
7 earmarked for specific state party committees, but will itself decide how to spend the funds it  
8 receives. In states where it is more efficient for donors to fund directly the state party  
9 committees’ nonfederal accounts, SDD PAC will encourage such donations. SDD PAC will also  
10 make monetary and in-kind donations to state and local candidates.

11           SDD PAC may hire staff and run programs to “add to research and innovation.”<sup>4</sup> To the  
12 extent that any of these programs’ expenses or any other goods or services provided by SDD  
13 PAC to state party committees constitute in-kind contributions under federal or state law, SDD  
14 PAC will either report these amounts as in-kind contributions or will require payment by the  
15 state party committees at the usual and normal charge.

16           SDD PAC states that “[t]o be successful, SDD PAC requires fundraising assistance from  
17 state party committees and their chairs.”<sup>5</sup> Accordingly, SDD PAC seeks to allow state party  
18 committees and their chairs to solicit unlimited funds for SDD PAC’s non-contribution account.<sup>6</sup>

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<sup>2</sup> AOR002.

<sup>3</sup> *Id.*

<sup>4</sup> AOR003.

<sup>5</sup> *Id.*

<sup>6</sup> The Commission assumes for the purposes of this advisory opinion that state party committees and their chairs that solicit funds for SDD PAC will do so in accordance with applicable state laws. *See* AOR003 (state party

1           SDD PAC will not sponsor public communications that promote, support, attack, or  
2           oppose candidates for federal office, nor will SDD PAC donations to state party committees be  
3           used for such communications. SDD PAC will not make contributions to any federal candidates  
4           or to the federal accounts of any political party committees. SDD PAC will not accept or solicit  
5           contributions from federal contractors, foreign nationals, national banks, or corporations  
6           chartered by Congress.

7           ***Questions Presented***

8           1.       *Are state party committees and their chairs able to solicit and direct nonfederal*  
9           *funds to SDD PAC under 11 C.F.R. § 300.37(a)(3)(i) because SDD PAC is a “political*  
10           *committee” under 11 C.F.R. § 100.5?*

11           2.       *If the answer to Question 1 is “no”:*

12                   a.       *Are state party committees and their chairs able to solicit and direct*  
13                   *nonfederal funds to SDD PAC under 11 C.F.R. § 300.37(a)(3)(iv) if state party*  
14                   *committees pay for an appropriate share of SDD PAC’s federal disbursements under the*  
15                   *federal funds escrow method?*

16                   b.       *Alternatively, are state party committees and their chairs able to solicit*  
17                   *and direct nonfederal funds to SDD PAC under 11 C.F.R. § 300.37(a)(3)(iv) if SDD PAC*  
18                   *does not make any expenditures or disbursements in connection with an election for*  
19                   *federal office, including for federal election activity?*

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committees and their chairs will “solicit unlimited funds for SDD PAC’s non-contribution account *just as they do for their own committees*”) (emphasis added).

1           3.       *Which of the proposed activities set forth in Section III.3 are “in connection with*  
2 *an election for federal office”?* *The Commission only needs to answer this question if it does not*  
3 *answer Question 1 or 2(a) in the affirmative.*

4       ***Legal Analysis and Conclusions***

5           1.       *Are state party committees and their chairs able to solicit and direct nonfederal*  
6 *funds to SDD PAC under 11 C.F.R. § 300.37(a)(3)(i) because SDD PAC is a “political*  
7 *committee” under 11 C.F.R. § 100.5?*

8           Yes, state party committees and their chairs may solicit and direct nonfederal funds to  
9 SDD PAC’s non-contribution account as proposed under 11 C.F.R. § 300.37(a)(3)(i), because  
10 SDD PAC is a “political committee” as defined in 11 C.F.R. § 100.5.

11           The Bipartisan Campaign Reform Act of 2002 (“BCRA”) added to the Act “new  
12 restrictions and prohibitions on the receipt, solicitation, and use of certain types of non-Federal  
13 funds.”<sup>7</sup> Under the provisions of the Act added by BCRA, national party committees “may not  
14 solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any  
15 other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and  
16 reporting requirements of [the] Act.”<sup>8</sup> As distinct from national party committees, state party  
17 committees generally are not prohibited from soliciting or receiving funds that are outside the  
18 Act’s amount limitations and source prohibitions.<sup>9</sup> However, they must use federal funds for

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<sup>7</sup> Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064 (July 29, 2022).

<sup>8</sup> 52 U.S.C. § 30125(a)(1).

<sup>9</sup> *Id.* § 30125(b).

1 federal election activity, and they must use separate bank accounts to ensure that non-federal  
2 funds are not used for such activities.<sup>10</sup>

3 Further, though state party committees are generally not prohibited from soliciting and  
4 receiving non-federal funds, the Act provides that “[a] national, State, district, or local committee  
5 of a political party . . . and an officer or agent acting on behalf of any such party committee” may  
6 not solicit any funds for a tax-exempt organization “other than a political committee, a State,  
7 district, or local committee of a political party, or the authorized campaign committee of a  
8 candidate for State or local office.”<sup>11</sup> The Commission regulation implementing this provision  
9 further elaborates, providing that a party committee and its agents may not solicit any funds for a  
10 tax-exempt organization or one that has applied for such exemption, unless the organization is:

- 11 (i) A political committee under 11 C.F.R. § 100.5;
- 12 (ii) A State, district, or local committee of a political party;
- 13 (iii) The authorized campaign committee of a State or local candidate; *or*
- 14 (iv) A political committee under State law, that supports only State or local candidates  
15 and that does not make expenditures or disbursements in connection with an  
16 election for Federal office, including expenditures or disbursements for Federal  
17 election activity.<sup>12</sup>

18 As the Commission explained when it promulgated this regulation, the main purpose of  
19 BCRA was “to prohibit non-Federal funds from being used in connection with Federal

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<sup>10</sup> *Id.*; *see also* 11 C.F.R. § 300.30(b), (c). “Federal election activity” is defined at 11 C.F.R. § 100.24.

<sup>11</sup> 52 U.S.C. § 30125(d)(2); *see also* 11 C.F.R. § 300.37(a)(3).

<sup>12</sup> 11 C.F.R. § 300.37(a) (emphasis added).

1 elections.”<sup>13</sup> At that time, federal political committees could only accept federal funds, and thus  
2 there was no danger of circumventing the Act’s amount limitations or source prohibitions even if  
3 state and local party committees, who were otherwise not subject to such restrictions, solicited  
4 funds for them. Even now, when hybrid and independent expenditure-only political committees  
5 have been established and can accept unlimited funds from certain sources, they are subject to  
6 regulation concerning such funds that similarly prevents circumvention of the Act’s restrictions.

7         The four categories of tax-exempt organizations for which state party committees and  
8 their officers are not prohibited from soliciting funds are listed in the alternative. Therefore, if an  
9 organization falls within any one of the categories, a party committee and its officers may solicit  
10 funds for that organization regardless of whether it qualifies as any of the other types.

11 Accordingly, if SDD PAC qualifies as any one of the four types of committees listed in section  
12 300.37(a), state party committees and their chairs may solicit funds for SDD PAC.

13         SDD PAC registered with the Commission as a hybrid, nonconnected political  
14 committee.<sup>14</sup> As a hybrid committee, SDD PAC may accept federal funds, subject to the  
15 limitations and prohibitions that apply to all federal political committees, and it may accept  
16 unlimited funds from individuals, corporations, labor organizations, and certain political  
17 committees (*i.e.*, super PACs and hybrid PAC non-contribution accounts) subject to

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<sup>13</sup> Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. at 49,106.

<sup>14</sup> SDD PAC, Statement of Organization, FEC Form 1 at 2 (Apr. 12, 2022),  
<https://docquery.fec.gov/pdf/655/202204129496069655/202204129496069655.pdf>.

1 requirements for keeping such funds segregated from its federal funds.<sup>15</sup> SDD PAC must report  
2 all of its receipts and disbursements to the Commission on a regular basis.<sup>16</sup>

3 Federal political committees are one of the types of committees for which state party  
4 committees and their officers may solicit funds. Accordingly, because SDD PAC is a federal  
5 political committee, state party committees and their chairs may solicit funds for SDD PAC.  
6 Moreover, because state party committees and their chairs are generally not subject to amount  
7 limitations or source prohibitions, they may solicit funds for SDD PAC without regard to the  
8 amount limitations or source prohibitions of the Act.

9 The amounts and types of funds that SDD PAC can accept depend on the type of  
10 committee it is. SDD PAC represents, and its Statement of Organization confirms, that it is a  
11 “Carey PAC,” also known as a “hybrid PAC, ” that “intends to establish a separate bank account  
12 to deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor  
13 organizations, and/or other political committees,” that will not be used to make contributions to  
14 federal candidates or committees, in accordance with *Carey v. FEC*.<sup>17</sup> A hybrid committee may  
15 accept funds outside of the Act’s amount limitations and certain source prohibitions so long as it  
16 deposits such contributions into a non-contribution account that remains segregated from any  
17 accounts that receive federal funds for the purpose of making contributions to candidates.<sup>18</sup> A

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<sup>15</sup> FEC statement on *Carey v. FEC*: Reporting guidance for political committees that maintain a non-contribution account (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>.

<sup>16</sup> 52 U.S.C. § 30104; 11 C.F.R. §§ 103.3, 104.5.

<sup>17</sup> SDD PAC, Statement of Organization, FEC Form 1 at 5 (Apr. 12, 2022), <https://docquery.fec.gov/pdf/655/202204129496069655/202204129496069655.pdf>

<sup>18</sup> FEC statement on *Carey v. FEC*: Reporting guidance for political committees that maintain a non-contribution account (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>.

1 hybrid committee’s non-contribution account may be used “for the purpose of financing  
2 independent expenditures, other advertisements that refer to a Federal candidate, and generic  
3 voter drives.”<sup>19</sup> Because SDD PAC has registered with the Commission as a hybrid PAC, it may  
4 accept unlimited contributions from individuals, corporations, labor organizations, and certain  
5 other political committees in its non-contribution account.

6 Accordingly, the Commission concludes that state party committees and their chairs may  
7 solicit and direct nonfederal funds to SDD PAC’s non-contribution account under 11 C.F.R.  
8 § 300.37(a)(3)(i), because SDD PAC is a “political committee” as defined in 11 C.F.R. § 100.5.

9 Because the Commission answers Question 1 in the affirmative, it need not address  
10 Questions 2 and 3.

11 This response constitutes an advisory opinion concerning the application of the Act and  
12 Commission regulations to the specific transaction or activity set forth in your request. *See*  
13 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or  
14 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
15 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
16 proposed activity. Any person involved in any specific transaction or activity which is  
17 indistinguishable in all its material aspects from the transaction or activity with respect to which  
18 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
19 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
20 affected by subsequent developments in the law including, but not limited to, statutes,  
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<sup>19</sup> *Id.*

1 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
2 on the Commission's website.

3 On behalf of the Commission,

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Allen J. Dickerson  
Chairman