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FEC ID # C00529743
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Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463
ao@fec.gov

Re: AO 2015-03 Democracy Rules

June 10, 2015

Dear Commissioners:

Please accept this comment regarding AOR 2015-03 Democracy Rules (DR) on behalf of Make Your Laws PAC, Inc. (MYL PAC) and Make Your Laws Advocacy, Inc. (MYL C4).

In this AOR, Democracy Rules (a 501(c)(4)) requests the Commission's permission to act as a conduit for its members' contributions to support or oppose certain elections based on issues.

While we applaud Democracy Rules' intent, we must oppose their request and ask the Commission to deny it.

MYL PAC and MYL C4 strongly support all grassroots political activity, and enabling ordinary people to control political power is one our core goals. Because transparency of our political process is necessary for the public to make informed decisions about policy, we strongly support the clear and public disclosure of political contributions and expenditures.

However, what DR requests is a violation of the FECA. DR is not a general purpose fundraising firm; it is an issue advocacy organization.

While its goals are set by its members (AOR p. 4), binding votes of its membership result in actions performed by DR itself. The same is true for direction provided by DR's trustees, such as which recipient will benefit from funds raised (*ibid*).

In addition, DR admits that it will exercise direction and control over certain aspects of the contribution process — for instance, if contributions "conflict" (AOR p. 5).

DR laudably disclaims acting on behalf of any candidate or restricted¹ recipient; it states that it will act only on behalf of its members.

However, this posture precludes DR from being a "commercial vendor" defined in 11 CFR 110.6(b)(i)(B, D):

(i) For purposes of this section, the following persons shall not be considered to be conduits or intermediaries: ...

(B) A fundraising representative conducting joint fundraising with the candidate's authorized committee pursuant to 11 CFR 102.17 or 9034.8; ...

(D) A commercial fundraising firm retained by the candidate or the candidate's authorized committee to assist in fundraising; ...

A 501(c)(4) organization like DR cannot be a "commercial fundraising firm", and DR states that it is not a "fundraising representative" or otherwise retained by, or acting on behalf of, any candidate or authorized committee. DR does not provide neutral, commercial services irrespective of the recipient involved.

To the contrary, DR does not want to be in the "awkward position" (AOR p. 5) of contributing (or proxying contributions) both for *and* against a given issue (and by extension, a given candidate).

A true commercial vendor, such as PayPal, *must* do so. Indeed, the fact that it is *not* "awkward" for a commercial vendor to do so is an indication of their neutrality.

To qualify as an earmarked contribution under 11 CFR 110.6 or 11 CFR 102.8, even a permitted conduit (such as a PAC) *may not* exercise any "direction or control" over any received earmarked contribution, and *must* forward it to the designated recipient within 10 days of receipt.

A conduit has no discretion whatsoever, other than the actions *required* by 11 CFR 103.3(b) in holding and investigating potentially unlawful contributions. In particular, a conduit may not refuse to forward an earmarked contribution to the designated recipient, as DR proposes.

DR is a 501(c)(4) issue advocacy organization, not a commercial vendor. It delegates its positions on issues to the democratic vote of its members, which is laudable. Nevertheless, it does adopt those positions as its own and is therefore not acting as a neutral intermediary.

Although we have no reason to believe DR's intent is anything other than innocent, we are very concerned about the possible precedent that their proposed AO would establish. Contribution laundering through 501(c)(4) organizations is a serious problem already, and in our opinion

¹ e.g. PACs, parties, JFCs, etc

unlawful.²

If approved, DR's proposal would further weaken the regulations against such laundering, by making contributions which must lawfully be made through FECA-regulated entities, such as a PAC, through a non-regulated 501(c)(4) instead.

We therefore must urge the Commission to deny DR's request, consistent with AO 2006-08 Brooks, AO 2007-27 ActBlue, AO 2011-06 Democracy Engine, AOR 2012-08 Repledge, AO 2012-22 skimmerhat, and AO 2014-07 Crowdpac.

We suggest that DR's proposed activities *may* be permissible (with certain caveats that we do not reach here) if election related activity were handled entirely through a PAC. This could be either an SSF restricted to its members (or a non-affiliated PAC whose finances and formal control are properly segregated), and it must be acting with no "direction or control".³

There would also be no problem with any of this if DR limited itself purely to issue advocacy — but this request is specifically about contributions and expenditures for *election related* purposes.

We therefore suggest that the Commission direct DR regarding a potentially permissible structure for similar activity, as it did e.g. in discussions with the requester in *Repledge*.

I request to appear at any hearing on this issue, on behalf of MYL PAC and MYL C4.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,
Sai
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² Cf. our pending petition for rulemaking to prohibit contribution laundering:
<https://www.makeyourlaws.org/fec/laundrying>

³ In the spirit of transparency, we must note that it is our intention to act in a manner very similar to this — though with the proper legal structure and with absolute neutrality. We will be submitting an AOR regarding our proposed activity once our website is ready for operation.