

**RECEIVED**

By Office of the Commission Secretary at 1:41 pm, Feb 18, 2021



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 21-08-A**  
**AGENDA ITEM**  
**For meeting of February 25, 2021**

February 18, 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

Joseph Wenzinger *JPW*  
Attorney

Subject: Draft AO 2021-02 (FEN-PAC) Draft A

Attached is a proposed draft of the subject advisory opinion.

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 February, 24, 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 2021-02

2

3 Mr. Harrison Hiner

**DRAFT A**

4 Executive Director

5 Full Employment Now-Political Action Committee (FEN-PAC)

6 P.O. Box 142544

7 Austin, TX 78714

8

9 Dear Mr. Hiner:

10 We are responding to your advisory opinion request on behalf of the Full Employment  
11 Now-Political Action Committee (“FEN-PAC”), concerning the application of the Federal  
12 Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to  
13 using aggregate data about FEN-PAC’s contributors in communications with Members of  
14 Congress and Congressional candidates. Because the Act and Commission regulations do not  
15 prohibit such use of aggregate data, the Commission concludes that your proposal is permissible.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter received on  
18 January 4, 2021 on behalf of FEN-PAC, and on public disclosure reports FEN-PAC filed with  
19 the Commission.

20 FEN-PAC is an independent expenditure-only political committee<sup>1</sup> that engages  
21 Members of Congress and Congressional candidates to advocate on certain legislative and policy  
22 issues. Advisory Opinion Request at AOR001. In your request, you explain that in such  
23 communications FEN-PAC proposes to inform Members and candidates of the number of FEN-  
24 PAC’s contributors who live in their state or district and the collective dollar amount that they  
25 contribute to FEN-PAC. *Id.* You describe two scenarios:

26 Scenario #1

---

<sup>1</sup> Full Employment Now-Political Action Committee, Statement of Organization, FEC Form 1 (Aug. 12, 2020), <https://docquery.fec.gov/pdf/826/202008129261297826/202008129261297826.pdf>.

1 Hello Rep. #####, this is Harrison Hiner with FEN-PAC. FEN-PAC is an  
2 independent expenditure committee, super PAC. We are asking you to sign our  
3 pledge to support affordable healthcare. This issue is very important to our  
4 donors who live in your district. FEN-PAC has approximately 1,000 individual  
5 donors who live in your district and give a collective amount of \$400,000 because  
6 they support [] affordable healthcare. Will you sign FEN-PAC's pledge to  
7 support affordable healthcare?  
8

9 Scenario #2

10 Hello, my name is Joe Smith. I am a constituent who lives in Rep. #####'s  
11 district and I also donate to FEN-PAC. I and 1,000 other donors who live in your  
12 district donate to FEN-PAC because we support affordable healthcare. Will Rep.  
13 ##### support the affordable healthcare bill H.R. 1234?<sup>2</sup>  
14

15 *Id.*

16 You ask two questions regarding the permissibility of this proposal under the Act and

17 Commission regulations.

18 ***Questions Presented***

19 1. *May FEN-PAC, in communications advocating for a legislative issue or policy,*  
20 *inform a Member of Congress or Congressional candidate on the number of FEN-PAC's*  
21 *contributors who live in the relevant state or district and the collective dollar amount they give?*

22 2. *If the answer to Question #1 is yes, should FEN-PAC contact the Member of*  
23 *Congress's office or campaign?*

---

<sup>2</sup> You do not ask, and the Commission does not address, whether individuals contacting a Member or candidate as described in Scenario #2 is permissible under the Act and Commission regulations. Such a question would be a third-party question that the Commission would be unable to address. *See* 11 C.F.R. § 112.1(b).

1 ***Legal Analysis and Conclusions***

2           1.       *May FEN-PAC, in communications advocating for a legislative issue or policy,*  
3 *inform a Member of Congress or Congressional candidate on the number of its contributors who*  
4 *live in the relevant state or district and the collective dollar amount they give?*

5           Yes, FEN-PAC may inform a Member of Congress or Congressional candidate of the  
6 number of FEN-PAC’s contributors who live in the relevant state or district and the collective  
7 dollar amount that they give to FEN-PAC, because such use of aggregate data does not violate  
8 the Act and Commission regulations.

9           Under the Act, a political committee must report the name, mailing address, occupation,  
10 and employer of any individual who contributes more than \$200 to the committee in a calendar  
11 year. 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A); 11 C.F.R. §§ 100.12, 104.8(a). The Act also  
12 requires the Commission to make these reports available for public inspection and copying.  
13 *See* 52 U.S.C. § 30111(a)(4); *see also* 52 U.S.C. § 30112 (requiring Commission to make all  
14 reports publicly available online). In enacting these requirements, Congress was concerned  
15 about “protect[ing] the privacy of the generally very public-spirited citizens who may make a  
16 contribution to a political campaign or political party.” 117 Cong. Rec. S30057 (daily ed.  
17 Aug. 5, 1971) (statement of Sen. Bellmon). Accordingly, the Act prohibits any information  
18 copied from Commission reports from being “sold or used by any person for the purpose of  
19 soliciting contributions or for commercial purposes.” 52 U.S.C. § 30111(a)(4), *see also* 11  
20 C.F.R. § 104.15(a).

21           The Commission has never determined that this provision applies to a political  
22 committee’s use of aggregate contributor data that is included in its own reports filed with the

1 Commission. Moreover, the Commission has concluded expressly that aggregated data and data  
2 that does not contain individual contributors' contact information do not implicate the privacy  
3 concerns at the heart of the provision. Advisory Opinion 2017-08 (Point Bridge Capital) at 3;  
4 *see also FEC v. Political Contributions Data, Inc.*, 943 F.2d 190, 197-98 (2d Cir. 1991) (holding  
5 that section 30111(a)(4) prohibits uses that "could infringe on the contributors' privacy  
6 interests"). Thus, the Commission has repeatedly approved the use of aggregated contribution  
7 data obtained from reports filed with the Commission, as long as the data is not used to solicit  
8 contributions and cannot be so used by third parties to whom that data is provided. *See, e.g.*,  
9 Advisory Opinion 2017-08 (Point Bridge Capital) (approving use of aggregated contribution and  
10 expenditure data to score political leanings of companies); Advisory Opinion 2015-12 (Ethiq)  
11 (approving use of aggregate contribution data to match users to candidates and corporations that  
12 share their values). In Advisory Opinion 2014-07 (Crowdpac), particularly, the Commission  
13 permitted a corporation to use aggregate contribution data to display on its website the total  
14 number of contributors to a particular candidate's committee and the total amount of  
15 contributions the candidate had raised.

16 Here, FEN-PAC would use aggregate data, specifically the number of contributors to  
17 FEN-PAC who live in a Member or candidate's state or district as well as the collective amount  
18 given by those contributors, in advocating the Member or candidate on certain legislative and  
19 policy issues. FEN-PAC would not disclose any contributor's contact information, nor would  
20 FEN-PAC or any third parties use any individual contributor information to solicit contributions  
21 or to sell other products or services. Because FEN-PAC would only use aggregated, non-

1 personally identifiable contribution data, the Act's sale-or-use prohibition does not apply to its  
2 proposal. Accordingly, FEN-PAC may use aggregated data as described in the request.

3         2.         *If the answer to Question #1 is yes, should FEN-PAC contact the Member of*  
4 *Congress's office or campaign in making its communications?*

5         Neither the Act nor the Commission's regulations prohibit a political committee from  
6 contacting a Member of Congress at the Member's official or campaign office in order to  
7 advocate on behalf of a legislative or policy issue. Therefore, FEN-PAC may contact either the  
8 Member of Congress's office or his or her campaign in providing the aggregated, non-personally  
9 identifiable contribution data as described in the request.<sup>3</sup>

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

---

<sup>3</sup> For purposes of its analysis in this advisory opinion, the Commission expresses no opinion as to the legality of the proposed activity under any other potentially relevant federal laws or regulations, as any such laws would lie beyond the Commission's jurisdiction. For the same reason, the Commission expresses no opinion concerning any aspects of your proposal that fall within the jurisdiction of the House Ethics Committee, General Counsel of the House of Representatives, Senate Select Committee on Ethics, or Office of Senate Legal Counsel.

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

3 On behalf of the Commission,

4

5

6

7

8

Shana M. Broussard  
Chair