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FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 8, 2021

ADVISORY OPINION 2021-04

Michael Lynn
Chief Financial Officer
Pray.com
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Dear Mr. Lynn:

We are responding to your request on behalf of Pray.com for an advisory opinion concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to Pray.com’s proposal to invite Members of Congress to produce five-minute audio and video statements discussing matters of faith that it will share with users of its digital platforms. The Commission concludes that the Act and Commission regulations would not prohibit Pray.com from posting the described statements on its digital platforms as proposed in the request, because the activity would not result in coordinated communications or otherwise provide a prohibited corporate in-kind contribution to participating Members who are also candidates for federal office (“Member-Candidates”).¹

Background

The facts presented in this advisory opinion are based on your letter received on February 18, 2021. Pray.com is a for-profit corporation and “a free mobile application”

¹ The request asks generally whether the proposed activities involving Members of Congress are permissible under relevant provisions of the Act and Commission regulations. *See* Advisory Opinion Request at AOR001. This advisory opinion, however, addresses only the proposed activities involving Members of Congress who are also candidates for federal office, because neither the Act nor Commission regulations apply to the activities described in the request involving individuals who are not candidates for federal office. *See* 11 C.F.R. § 112.1(a) (any person may request an advisory opinion “concerning the application of the Act . . . or any regulation prescribed by the Commission”). Additionally, the Commission expresses no opinion concerning any aspects of the proposed activities 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.

and website that provide users with faith-based digital content.² Users of Pray.com’s platforms can access “faith-based audio content” and “connect directly with faith leaders and explore faith communities.”³ The mobile application is free to download. Sixty percent of the digital content is available through the application and website at no cost; the remaining 40% of Pray.com’s digital content, however, is only accessible with a paid subscription.

Pray.com proposes to feature audio and video statements by Members “on the subject of prayer” and other matters of faith on its digital platforms.⁴ Pray.com will invite all Members, irrespective of party, to record and submit a five-minute, self-narrated segment for its platforms. Pray.com will encourage participating Members to respond to a list of prepared prompts, including “[w]hat does the power of prayer mean to you?” and “[w]hat is your favorite Bible verse and why?”⁵ Members will have “full creative approval” over their own segments; “however, Pray.com will reserve the right to edit the [recorded] message if the Member deviates from the topic of the script regarding prayer.”⁶ Members’ statements will be accessible to all Pray.com users for free; access will not be limited to paid subscribers. Pray.com may also include Members’ statements in its advertisements on various media (including social media and television) “as a way to showcase the breadth of content offered on the Pray.com platform.”⁷

Question Presented⁸

Will Pray.com’s posting of Member-Candidates’ statements on its digital platforms be a “coordinated communication” or otherwise provide a prohibited corporate in-kind contribution to the participating Member-Candidates?

Legal Analysis and Conclusion

No, Pray.com’s posting of Member-Candidates’ statements on its digital platforms will not be a “coordinated communication” or otherwise provide a prohibited corporate in-kind contribution to the participating Member-Candidates.

² AOR001.

³ *Id.*

⁴ *Id.*

⁵ *Id.* Pray.com’s other prompts for participants to address include: (1) “Who are you, where are you from, and where do you live today”; (2) “Give us a quick high-level overview of what you do”; (3) “Why is faith a requirement for successful leadership?”; and (4) “What positive message of hope and encouragement can you give to people during these challenging times?”.

⁶ *Id.*

⁷ AOR001-02.

⁸ The Commission does not address any “personal use” issues potentially arising under the Act or Commission regulations if Members use campaign devices to record and submit their statements, as such issues are both hypothetical and concern the activities of third parties and therefore do not qualify as an advisory opinion request. *See* 11 C.F.R. § 112.1(b).

The Act and Commission regulations prohibit corporations from making contributions to candidates.⁹ A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹⁰ For corporations, the term “contribution” also includes “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any [federal] election.”¹¹ “Anything of value” encompasses all in-kind contributions, including the provision of goods or services without charge or at less than the usual and normal charge.¹²

Under the Act and Commission regulations, a third-party’s payment for a communication coordinated with a candidate, a candidate’s authorized committee, or their agents is an in-kind contribution to the candidate.¹³ Any person prohibited from making contributions or expenditures under the Act or Commission regulations is thus prohibited from paying for a coordinated communication.¹⁴ Because the Act prohibits corporations from making contributions to candidates, corporations may not pay for coordinated communications.¹⁵

To determine whether a communication constitutes a “coordinated communication” with a candidate, Commission regulations prescribe a three-prong test.¹⁶ First, the communication must be paid for, in whole or in part, by a person other than the candidate or the candidate’s authorized committee (the “payment prong”).¹⁷ Second, the communication must satisfy one of five content standards (the “content prong”).¹⁸ Finally, the communication must satisfy one of five conduct standards (the “conduct prong”).¹⁹

In this instance, a Member-Candidate’s statement would not be a “coordinated communication” because it would not satisfy the content prong. This prong of the coordinated communication analysis applies only to communications that are either a

⁹ See 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b)(1).

¹⁰ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

¹¹ 52 U.S.C. § 30118(b)(2); 11 C.F.R. § 114.1(a)(1).

¹² 11 C.F.R. § 100.52(d)(1).

¹³ See 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. §§ 109.21(a), (b)(1).

¹⁴ 11 C.F.R. § 109.22.

¹⁵ *Id.*

¹⁶ See *id.* § 109.21(a).

¹⁷ *Id.* § 109.21(a)(1).

¹⁸ *Id.* §§ 109.21(a)(2), (c).

¹⁹ *Id.* §§ 109.21(a)(3), (d)(1)-(5).

“public communication”²⁰ or an “electioneering communication.”²¹ Communications made over the internet are expressly exempt from the definition of “public communication,” unless they are placed for a fee on another person’s website.²² Similarly, any communication “over the internet” cannot be an electioneering communication.²³ The request states that Pray.com proposes to disseminate Member-Candidates’ statements exclusively “over the internet” on Pray.com’s own website and digital application.²⁴ Therefore, because the activity described by the requestor would not involve the placement of Member-Candidates’ statements for a fee on another person’s website,²⁵ these communications will be neither public communications nor electioneering communications.²⁶ Accordingly, Pray.com’s dissemination of Member-Candidates’ statements on its mobile application and website as proposed will not constitute “coordinated communications” under 11 C.F.R. § 109.21.

Moreover, the Commission has previously considered whether for-profit corporations like Pray.com may post candidate-provided content on their own digital platforms without making an in-kind contribution to the candidates. In Advisory Opinion 2012-22 (skimmerhat) and Advisory Opinion 2014-07 (Crowdpac), for instance, the Commission considered whether corporations in the business of matching contributors to candidates through the corporations’ online platforms or websites would themselves make contributions by allowing candidates to post their biographical information and issue positions on those websites. The Commission concluded that no contributions would result where the corporations acted to advance their commercial interests rather

²⁰ *Id.* § 109.21(c)(2)-(5). A “public communication” is “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” *Id.* § 100.26; *see also* 52 U.S.C. § 30101(22).

²¹ 11 C.F.R. § 109.21(c)(1). The term “electioneering communication” applies only to communications that are “publicly distributed by a television station, radio station, cable television system, or satellite system.” *Id.* §§ 100.29(b)(1), (c)(1); *see also* 52 U.S.C. § 30104(f)(3)(A)(i).

²² 11 C.F.R. § 100.26.

²³ *Id.* § 100.29(c)(1).

²⁴ AOR001.

²⁵ The request indicates that Pray.com may consider using clips of Member-Candidates’ statements in its advertisements on various media platforms, including social media and television, but does not provide specific information on that activity. The Commission, therefore, does not opine on that activity, but notes that distributing Member-Candidates’ statements in paid advertising could potentially constitute coordinated communications or electioneering communications. *See* 11 C.F.R. §§ 100.29, 109.21. Pray.com is welcome to submit an advisory opinion request containing sufficient facts for the Commission to address any specific questions that it might have about the application of the Act and Commission regulations to such advertisements.

²⁶ *See* Advisory Opinion 2011-14 (Utah Bankers Association) at 4-5 (concluding that requestor’s communications exclusively on requestor’s own website and in its emails cannot be “coordinated communications” and their costs are not in-kind contributions).

than to influence a federal election.²⁷ Similarly, outside of the internet context, the Commission has previously determined that financing a candidate's platform for speech will not result in an in-kind contribution where the invitation to speak is based on an individual's status as a legislator rather than as a candidate, and the candidate's remarks do not contain express advocacy or solicit contributions.²⁸

Here, Pray.com proposes to invite all Members, irrespective of party and candidate status, to provide statements for its platforms. This fact indicates that invitees will be asked to participate due to their status as legislators rather than as candidates. Furthermore, Pray.com will provide participating Members with a list of questions and prompts that relate to general biographical and professional information and the Members' personal views on matters of faith — the very content that Pray.com is in the business of providing to its users. The posting of their statements would thus serve Pray.com's commercial interests by increasing the volume of its freely-accessible faith-based content and potentially attracting users from diverse ideological backgrounds to its platforms — some of whom, presumably, would then choose to become paid subscribers to access the platforms' "premium" content.²⁹ Moreover, Pray.com will reserve the right to edit audio or video content if the participating "Member deviates from the topic of the script regarding prayer."³⁰ Accordingly, the Commission concludes that Pray.com would not make corporate in-kind contributions to participating Member-Candidates by posting their statements on its digital platforms.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See id.* § 30108(c)(1)(B). Please note that the analysis or

²⁷ Advisory Opinion 2012-22 (skimmerhat) at 7-8 (internal citations omitted); Advisory Opinion 2014-07 (Crowdpac) at 8-9 (relying on Advisory Opinion 2012-22 (skimmerhat) for this proposition and noting that requestor's proposal "to allow candidates to provide content through videos, [rather than] through graphics or text, does not materially distinguish [its] proposal from those previously approved by the Commission"); *see also* Advisory Opinion 2015-12 (Ethiq) at 3 (finding no contribution resulted from corporation's compiling and displaying candidate information on its digital application to help users identify candidates to whom they might contribute).

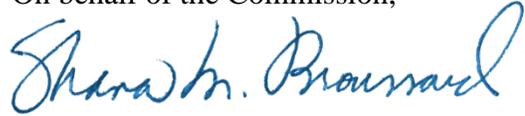
²⁸ *See* Advisory Opinion 1992-06 (Duke) at 3-4 (concluding that university's payment of honorarium and travel expenses to presidential candidate is not a contribution if candidate does not solicit contributions or support or discuss candidacy in speech); Advisory Opinion 1996-21 (National Right to Life Conventions) at 5 (concluding that no contribution resulted from non-profit's invitation for Members to give speeches on pro-life issues at convention because invitations were based on their roles as legislators, not candidates, and speeches staged in manner that did not allow candidates to expressly advocate or solicit contributions).

²⁹ *See* AOR001-02 (stating requestor's desire to utilize Member Statements to "showcase the breadth of [its] content").

³⁰ AOR001.

conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,



Shana M. Broussard
Chair