



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 27, 2022

ADVISORY OPINION 2022-03

Carol A. Laham, Esq.
Andrew G. Woodson, Esq.
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Dear Ms. Laham and Mr. Woodson:

We are responding to your advisory opinion request on behalf of Democracy Engine, LLC (“Democracy Engine” or “requestor”) concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to Democracy Engine’s proposal to sell a customized website to corporations or their separate segregated funds (“SSFs”). The proposed website would enable members of a corporation’s restricted class and the general public to make contributions through the website to candidates and political committees selected by the corporation or SSF. Democracy Engine further proposes to provide a corporation or SSF purchasing its service with real-time data about the names and states of residence of individuals making contributions through the website, as well as the amounts and ultimate recipients of those contributions.

The requestor asks two questions. First, the requestor asks whether a corporation may use Democracy Engine’s platform to communicate with its restricted class about contributing to candidates and committees, and then receive real-time data about any contributions made using the platform, without undertaking such activity through its corporate SSF. The Commission could not approve a response to the first question by the required four affirmative votes. *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

Second, the requestor asks whether a corporation or its SSF may use Democracy Engine’s platform to communicate to the general public about contributing to candidates and committees – excluding the corporation’s own PAC and any other SSF – and then receive real-time data about any contributions made using the platform. The Commission concludes that a corporate SSF client of Democracy Engine may solicit members of the general public to contribute to candidates or political committees through a website hosted by Democracy Engine and receive real-time data about contributions because that activity is not prohibited corporate facilitation, and the proposed activity is not covered by the Act’s sale or use prohibition. Finally, an SSF’s website hosted by Democracy

Engine and available to the general public must include disclaimers because the proposed customized website would be the website of a political committee.

Background

The facts presented in this advisory opinion are based on your letter dated April 1, 2022.

Democracy Engine is a for-profit limited liability company that offers web-based payment services to assist individuals to make contributions to political committees in the ordinary course of Democracy Engine's business. Advisory Opinion Request ("AOR") at AOR001.¹ Democracy Engine now proposes to sell a new service to corporations and corporate SSFs.

Democracy Engine proposes to charge a corporation or a corporate SSF a fee to create a customized website on their behalf. AOR002-3. Democracy Engine's corporate or corporate SSF client would solicit members of the corporation's restricted class and the general public to make contributions to candidates and political committees through a contribution function on that customized website, and Democracy Engine would provide its client with real-time data about resulting contributions. AOR001-3, 6-7.² The fee Democracy Engine would charge a corporation or corporate SSF is intended to cover the costs of Democracy Engine's services and provide Democracy Engine with "a commercially reasonable profit." AOR003.

Solicitations to make contributions through the customized website would be conducted as follows. The website would include a slate of candidates or political committees supported by the corporation or corporate SSF to whom members of the restricted class or general public may make contributions through the website. AOR002-3, 7. The request provides an example of how the website would appear to individuals who visit it. AOR002. This sample page states: "Support our candidates! These candidates are great on our issues!" and provides prospective contributors with various contribution amount options, including the option to fill in the contributor's own preferred contribution amount. AOR002. The corporation or SSF would determine "the overall content of this website," including to which candidates or political committees contributions may be made through the website, and would have "administrative rights" to change the public-facing content on the website. AOR003. Individuals could not make contributions through the website to any candidate or political committee beyond those selected by Democracy Engine's corporate or SSF client. AOR003.

To solicit members of the restricted class to make contributions through the customized website, a corporation would "email a link to this site to its restricted class,

¹ For tax purposes, Democracy Engine has elected treatment as a partnership, and its partners are all natural persons who are U.S. citizens. AOR001.

² In some instances, a corporation or corporate SSF may solicit the restricted class to make contributions to the corporation's own SSF through the Democracy Engine hosted website. AOR003.

along with a request that individuals consider supporting one or more candidates or committees identified on the site.” AOR003. Those communications would “include the appropriate disclaimers concerning voluntariness.” AOR003. Similarly, for solicitations to the general public, a corporation or corporate SSF would disseminate communications to the public asking them to make contributions through the customized website and would “determine the content of . . . any solicitations.” AOR007. Democracy Engine “expects that communications to the general public will be made independent of any campaign, and that the costs associated with such communications will be treated as independent expenditures by the corporation or its [SSF] and reported accordingly, and further that any solicitations will include the appropriate disclaimers identified by the Commission in Advisory Opinion 2011-14 (Utah Bankers Association).” AOR007.

An individual who clicks on the link in a corporation’s or SSF’s solicitation email would be taken to the customized website. AOR003, 7. If that individual chooses to make a contribution to one of the featured candidates or political committees through the customized website, the individual would be informed that by clicking the “donate” button, the individual confirms that he or she is a U.S. citizen or permanent resident, the contribution is from the individual’s own funds, the individual is not a federal contractor, and the individual is at least 18 years old. AOR004. In addition, the individual contributor would be required to provide his or her name, address, email address, employer, occupation, and credit card, debit card, or electronic check information. AOR005. Democracy Engine currently collects this information as part of its processing services to ensure that the ultimate recipient committees are provided “the data they need under the law” to file reports with the Commission and for Democracy Engine’s own accounting purposes. AOR007.³

An individual contributor would also be required to agree to Democracy Engine’s terms of service and privacy policy, which would be provided as links on the contribution page. AOR004. “[T]he Privacy Policy explains that an individual’s information may be shared not only with the recipient of an individual’s contribution, but also with those entities that utilize Democracy Engine’s Services and incorporate Democracy-Engine hosted websites into their communications.” AOR004.

Democracy Engine would deposit funds received from an individual contributor into a Democracy Engine account separate from its operating funds and transfer the funds to the recipient political committee within 10 days of receipt, after subtracting “a commercially reasonable convenience fee.” AOR005. At the time of the funds transfer, Democracy Engine would provide the recipient committee with the information necessary to properly report the contribution to the Commission. AOR005. Democracy Engine may enter into a limited agreement with the recipient committee to effectuate the

³ The request states that “[t]he platform incorporates safeguards to help ensure that individuals do not contribute more than the applicable monetary limit for a particular committee. Ultimately, however, compliance with the FEC’s contribution limits is up to the candidate and committees who will receive and report the contributions.” AOR003.

electronic transfer of funds but otherwise would not enter into any agreement with a recipient political committee. AOR006.

Democracy Engine plans to provide its corporation and corporate SSF clients with real-time data about contributions submitted through the client's customized website. AOR006-7. Democracy Engine's software allows corporations to obtain this information without using reports filed with the Commission. AOR006.

The request provides a sample display showing the information that would be provided to Democracy Engine's clients. AOR006-7. This display includes the contributor's name and state of residence, the date and amount of the individual's contribution, and the name of the candidate or committee receiving the contribution. AOR006-7. Democracy Engine would not place any limits on the use of this information by its clients, stating in the request that "corporations own the data and can use it as permitted by law and as subject to their . . . privacy policies." AOR007.⁴

Questions Presented

1. *May a corporation use Democracy Engine's platform to communicate with its restricted class about contributing to candidates and committees, and then receive real-time data about any contributions made using the platform, without undertaking such activity through its corporate SSF?*

2. *May a corporation or its SSF use Democracy Engine's platform to communicate to the general public about contributing to candidates and committees – excluding the corporation's own PAC and any other SSF – and then receive real-time data about any contributions made using the platform?*

Legal Analysis

1. *May a corporation use Democracy Engine's platform to communicate with its restricted class about contributing to candidates and committees, and then receive real-time data about any contributions made using the platform, without undertaking such activity through its corporate SSF?*

The Commission could not approve a response to this question by the required four affirmative votes. *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

⁴ *See also* Democracy Engine's Privacy Policy at <https://democracyengine.com/privacy-policy/> (last visited Apr. 25, 2022) (stating "many third-party providers and sites link to or display our web pages and/or online forms (including via Application Program Interfaces or APIs) from their or their customers' or members' online properties ('Sponsors'). We also provide reports to these Sponsors, which can include all of the information described above. Each Sponsor's use of this information is governed by its own privacy policy.").

2. *May a corporation or its SSF use Democracy Engine's platform to communicate to the general public about contributing to candidates and committees – excluding the corporation's own PAC and any other SSF – and then receive real-time data about any contributions made using the platform?*

Under the circumstances presented here, a corporate SSF may solicit the general public to make contributions through a customized website hosted by Democracy Engine and receive real-time data about any resulting contributions because that activity is not prohibited corporate facilitation, and the proposed activity is not covered by the Act's sale or use prohibition.⁵ However, the SSF's customized website hosted by Democracy Engine must include the disclaimers required by 11 C.F.R. § 110.11 because it would be the website of a political committee available to the general public.

A. Facilitation

One of the Commission's regulations prohibits corporations and "representatives acting as agents of corporations" from "facilitating the making of contributions to candidates and political committees," except for contributions to the corporation's own SSF. 11 C.F.R. § 114.2(f)(1). Facilitation is defined as "using corporate . . . resources or facilities to engage in fundraising activities in connection with any federal election." *Id.* The regulation provides a non-exhaustive list of activities that do not constitute corporate facilitation. 11 C.F.R. § 114.2(f)(2)-(5). Another regulation provides that a corporate SSF may communicate with the general public, including communications that solicit contributions to a candidate or political committee, if the communications are made using only voluntary contributions and do not solicit contributions to any SSF. 11 C.F.R. § 114.5(i); *see also* 11 C.F.R. § 114.5(g) (limiting who an SSF may solicit for contributions to an SSF but not limiting who an SSF may solicit for contributions to candidates and other political committees).

Beyond that general exception from the definition of corporate facilitation in the Commission's regulation, the regulation lists additional activities that are not prohibited facilitation when conducted by an SSF. These activities are: (1) "[a]ny activity specifically permitted under 11 C.F.R. 110.1, 110.2, or 114.5 through 114.8, including soliciting contributions to a candidate or political committee, and making in kind contributions to a candidate or political committee," and (2) "[c]ollecting and forwarding contributions earmarked to a candidate." 11 C.F.R. § 114.2(f)(3)(i), (ii).

A corporate SSF does not facilitate the making of a contribution by "soliciting contributions to a candidate or political committee." 11 C.F.R. § 114.2(f)(3)(i). The regulation does not require the solicitation to be for direct contributions to candidates or limited to the restricted class to fall within this exclusion when the activity is conducted by an SSF. *Id.* Accordingly, in soliciting contributions from the general public to be submitted indirectly using the Democracy Engine platform, the activities of Democracy

⁵ The Commission could not approve a response by the required four affirmative votes as to whether a corporation may solicit the general public to make contributions through a customized website hosted by Democracy Engine. *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

Engine's corporate SSF clients would not be prohibited corporate facilitation under 11 C.F.R. § 114.2(f)(3).

B. Sale or Use of Contributor Data

A key component of the service that Democracy Engine proposes to sell to an SSF is the provision of “real-time data about the amount and recipients of contributions made through the service,” as well as the name and state of residence of each contributor. AOR006-7. Democracy Engine would make this data available to its clients so that its clients may obtain the data without using reports filed with the Commission. AOR006. This raises the issue of whether the proposed activity is barred by the Act's prohibition on the sale or use of data from Commission reports. The Commission concludes that the sale or use prohibition does not apply to the proposed activity because the data provided by Democracy Engine would not be copied from Commission reports or statements but instead obtained from Democracy Engine's own records of contributions processed on its platform.⁶

The Act requires the Commission to post “reports and statements filed with it” within 48 hours after receipt. 52 U.S.C. § 30111(a)(4). The Act further provides that “any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.” *Id.* Similarly, the Commission's regulation provides that “[a]ny information copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed under the Act, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose,” except that the name and address of a political committee may be used to solicit contributions from the committee. 11 C.F.R. § 104.15(a). The Commission has determined that a political committee's use of the names of its own contributors is not within the sale or use prohibition where the contributor names were not obtained from Commission reports but compiled by the committee “on the basis of its own information.” Advisory Opinion 1977-66 (Title Industry PAC) at 2; *see also* Advisory Opinion 1991-16 (Feigenbaum) at 3 (sale or use prohibition “would not prohibit a political committee from selling or renting its own contributor list for use by someone else to solicit contributions” but “does prohibit the use of any list to solicit contributions which is copied or otherwise obtained from disclosure reports filed under the Act”).

While Democracy Engine is not a political committee, a similar analysis applies here. The data that Democracy Engine would sell to an SSF would not include “any information copied from” reports or statements filed with the Commission, *see* 52 U.S.C. § 30111(a)(4), but instead would be gathered from Democracy Engine's own records of contributions processed on its platform. Because the data would not be copied from Commission reports or statements, the Commission concludes that the data's sale or

⁶ The Commission expresses no view on whether requestor's proposal is consistent with any law not administered by the Commission, including federal and state privacy laws.

use is outside of the Act's sale or use prohibition, and the proposed activity is permissible.

C. Disclaimers

An SSF's customized website hosted by Democracy Engine must include disclaimers as required by 11 C.F.R. § 110.11 because it would be the website of a political committee. The request states that Democracy Engine expects that SSFs will include disclaimers in their solicitations directing members of the public to the SSF's website hosted by Democracy Engine, but there are no disclaimers on the sample website display provided in the advisory opinion request, and the request makes no mention of any such disclaimers on the customized website. AOR002, 7.

Under 11 C.F.R. § 110.11(a)(1), "all Internet websites of political committees available to the general public" must include appropriate disclaimers. *See also* Advisory Opinion 2011-14 (Utah Bankers Association) at 9 (requiring website of SSF project that solicited contributions directly to candidates to include appropriate disclaimers as the website of a political committee). As explained in the request, while the customized website would be hosted by Democracy Engine, the SSF would "in its discretion, determine[] the overall content of this website, including which candidates will be featured on the site" and would have "administrative rights to change the content on the website." AOR003. As a result, the customized website would be a website of a political committee available to the general public and must include required disclaimers by the SSF under 11 C.F.R. § 110.11.

Conclusion

The Commission concludes that a corporate SSF client of Democracy Engine may solicit members of the general public to contribute to candidates or political committees through a website hosted by Democracy Engine and receive real-time data about contributions because that activity is not prohibited corporate facilitation, and the proposed activity is not covered by the Act's sale or use prohibition. Finally, an SSF's customized website hosted by Democracy Engine and available to the general public must include the disclaimers required by 11 C.F.R. § 110.11 because the website would be the website of a political committee.

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 that 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* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or 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,

A handwritten signature in blue ink, appearing to read "Allen J. Dickerson", written over a faint, illegible stamp or background.

Allen J. Dickerson
Chairman