



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 31, 2022

ADVISORY OPINION 2022-11

Jonathan S. Berkon, Esq.  
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Washington, DC 20002

Dear Mr. Berkon and Ms. Weisman:

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

***Background***

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

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

SDD PAC states that its “mission is to raise funds from donors across the country and donate these funds to state party committee *nonfederal accounts*—consistent with state campaign finance laws—to facilitate their vital grassroots, pro-democracy work.”<sup>2</sup> SDD PAC will draw on

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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>.

<sup>2</sup> AOR002.

its colleagues' and consultants' "trusted relationships with national donors," allowing those donors to make contributions to SDD PAC that it will, in turn, distribute to the nonfederal accounts of state party committees of its choosing.<sup>3</sup> SDD PAC will not accept contributions earmarked for specific state party committees, but will itself decide how to spend the funds it receives. In states where it is more efficient for donors to fund directly the state party committees' nonfederal accounts, SDD PAC will encourage such donations. SDD PAC will also make monetary and in-kind donations to state and local candidates.

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

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

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

### ***Questions Presented***

1. *Are state party committees and their chairs able to solicit and direct nonfederal funds to SDD PAC under 11 C.F.R. § 300.37(a)(3)(i) because SDD PAC is a "political committee" under 11 C.F.R. § 100.5?*
2. *If the answer to Question 1 is "no":*
  - a. *Are state party committees and their chairs able to solicit and direct nonfederal funds to SDD PAC under 11 C.F.R. § 300.37(a)(3)(iv) if state party committees pay for an appropriate share of SDD PAC's federal disbursements under the federal funds escrow method?*

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<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 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).

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

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

### **Legal Analysis**

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

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

The Bipartisan Campaign Reform Act of 2002 (“BCRA”) added to the Act “new restrictions and prohibitions on the receipt, solicitation, and use of certain types of non-Federal funds.”<sup>7</sup> Under the provisions of the Act added by BCRA, national party committees “may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of [the] Act.”<sup>8</sup> As distinct from national party committees, state party committees generally are not prohibited from soliciting or receiving funds that are outside the Act’s amount limitations and source prohibitions.<sup>9</sup> However, they must use federal funds for federal election activity, and they must use separate bank accounts to ensure that non-federal funds are not used for such activities.<sup>10</sup>

Further, though state party committees are generally not prohibited from soliciting and receiving non-federal funds, the Act provides that “[a] national, State, district, or local committee of a political party . . . and an officer or agent acting on behalf of any such party committee” may not solicit any funds for a tax-exempt organization “other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office.”<sup>11</sup> The Commission regulation implementing this provision

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<sup>7</sup> Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064 (July 29, 2002).

<sup>8</sup> 52 U.S.C. § 30125(a)(1).

<sup>9</sup> *Id.* § 30125(b).

<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).

further elaborates, providing that a party committee and its agents may not solicit any funds for a tax-exempt organization or one that has applied for such exemption, unless the organization is:

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

As the Commission explained when it promulgated this regulation, the main purpose of BCRA was “to prohibit non-Federal funds from being used in connection with Federal elections.”<sup>13</sup> At that time, federal political committees could only accept federal funds, and thus there was no danger of circumventing the Act’s amount limitations or source prohibitions even if state and local party committees, who were otherwise not subject to such restrictions, solicited funds for them. Even now, when hybrid and independent expenditure-only political committees have been established and can accept unlimited funds from certain sources, they are subject to regulation concerning such funds that similarly prevents circumvention of the Act’s restrictions.

The four categories of tax-exempt organizations for which state party committees and their officers are not prohibited from soliciting funds are listed in the alternative. Therefore, if an organization falls within any one of the categories, a party committee and its officers may solicit funds for that organization regardless of whether it qualifies as any of the other types. Accordingly, if SDD PAC qualifies as any one of the four types of committees listed in section 300.37(a), state party committees and their chairs may solicit funds for SDD PAC.

SDD PAC registered with the Commission as a hybrid, nonconnected political committee.<sup>14</sup> As a hybrid committee, SDD PAC may accept federal funds, subject to the limitations and prohibitions that apply to all federal political committees, and it may accept unlimited funds from individuals, corporations, labor organizations, and certain political committees (*i.e.*, super PACs and hybrid PAC non-contribution accounts) subject to requirements for keeping such funds segregated from its federal funds.<sup>15</sup> SDD PAC must report all of its receipts and disbursements to the Commission on a regular basis.<sup>16</sup>

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

<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>.

<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.

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

The amounts and types of funds that SDD PAC can accept depend on the type of committee it is. SDD PAC represents, and its Statement of Organization confirms, that it is a “Carey PAC,” also known as a “hybrid PAC,” that “intends to establish a separate bank account to deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor organizations, and/or other political committees,” that will not be used to make contributions to federal candidates or committees, in accordance with *Carey v. FEC*.<sup>17</sup> A hybrid committee may accept funds outside of the Act’s amount limitations and certain source prohibitions so long as it deposits such contributions into a non-contribution account that remains segregated from any accounts that receive federal funds for the purpose of making contributions to candidates.<sup>18</sup> A hybrid committee’s non-contribution account may be used “for the purpose of financing independent expenditures, other advertisements that refer to a Federal candidate, and generic voter drives.”<sup>19</sup> Because SDD PAC has registered with the Commission as a hybrid PAC, it may accept unlimited contributions from individuals, corporations, labor organizations, and certain other political committees in its non-contribution account.

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

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

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.<sup>20</sup> 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

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<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/>.

<sup>19</sup> *Id.*

<sup>20</sup> *See* 52 U.S.C. § 30108.

rendered may rely on this advisory opinion.<sup>21</sup> 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,



Allen J. Dickerson  
Chairman

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<sup>21</sup> See 52 U.S.C. § 30108(c)(1)(B).