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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 22-36-A**  
**AGENDA ITEM**  
**For meeting of August 11, 2022**

August 2, 2022

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *ALR for LJS*  
Acting General Counsel

Neven F. Stipanovic *ALR for NFS*  
Associate General Counsel

Amy Rothstein *ALR*  
Assistant General Counsel

Heather Filemyr *HF*  
Attorney

Subject: Draft AO 2022-12 (Ready for Ron) – 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 12:00 pm (Eastern Time) on August 10, 2022.

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 2022-12  
2  
3 Lilian Rodriguez-Baz, Esq.  
4 Ready for Ron  
5 66 West Flagler Street  
6 Suite 900  
7 Miami, FL 33130

**DRAFT A**

8 Dear Ms. Rodriguez-Baz:

9 We are responding to your advisory opinion request on behalf of Ready for Ron  
10 (“R4R”) concerning the application of the Federal Election Campaign Act, 52 U.S.C.  
11 §§ 30101-45 (the “Act”), and Commission regulations to R4R’s proposal to provide to  
12 Governor Ron DeSantis without charge a petition containing the names and contact  
13 information of thousands of individuals who wish to encourage him to run for President  
14 in the 2024 election. The Commission concludes that R4R may not provide the names  
15 and contact information to Governor DeSantis as proposed because the value of that  
16 information would exceed applicable contribution limits and limits on funds used to test  
17 the waters for a federal candidacy. The proposal is also contrary to restrictions on the use  
18 of funds in the non-contribution accounts of political committees with both contribution  
19 and non-contribution accounts (“hybrid PACs”).

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter dated May  
22 25, 2022, your email dated June 17, 2022, disclosure reports filed with the Commission,  
23 and publicly available information.

1           On May 23, 2022, R4R registered with the Commission as a hybrid,  
2 nonconnected, unauthorized political committee.<sup>1</sup> It describes itself as a “draft”  
3 committee “that seeks to encourage Florida Governor Ron DeSantis . . . to declare his  
4 candidacy for the 2024 Republican nomination for President.”<sup>2</sup>

5           R4R states that it accepts contributions subject to the Act’s source prohibitions  
6 and contribution limits to its contribution account and “solicits and accepts unlimited  
7 contributions” from individuals other than prohibited sources to its non-contribution  
8 account.<sup>3</sup> R4R does not plan to seek or qualify for multicandidate political committee  
9 status.

10           R4R proposes to use funds from both its contribution and non-contribution  
11 accounts to fund a nationwide petition drive to encourage Governor DeSantis to run for  
12 President in 2024.<sup>4</sup> Individuals supporting a potential DeSantis presidential campaign  
13 may “sign” the petition through R4R’s website or by phone. R4R requires all petition  
14 signatories to provide their names, phone numbers, email addresses, and zip codes; any  
15 individual not wishing to provide this information cannot sign the petition. R4R will  
16 notify individuals that, by signing the petition, they agree to have their names and contact

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<sup>1</sup> Ready for Ron, Statement of Organization, FEC Form 1 (May 23, 2022), <https://docquery.fec.gov/cgi-bin/forms/C00815928/1597424/>. R4R has reported making \$1,250,000 in independent expenditures since registering with the Commission in May 2022. Ready for Ron, 48 Hour Notice Filing, Amendment 1, FEC Form 24, Schedule E (July 15, 2022), <https://docquery.fec.gov/cgi-bin/forms/C00815928/1612461/se>.

<sup>2</sup> Advisory Opinion Request (“AOR”) at AOR001.

<sup>3</sup> AOR002.

<sup>4</sup> AOR003. R4R’s petition drive became active on May 23, 2022. AOR019. R4R explains that the purpose of its petition is “to demonstrate the breadth of public support for [Governor DeSantis] and attempt to persuade him to become, and subsequently to remain, a candidate for the Republican nomination for President in the 2024 election.” AOR004.

1 information provided to Governor DeSantis. R4R proposes to provide this information to  
2 Government DeSantis without charge.

3 R4R plans extensive media outreach to support its petition. R4R represents that,  
4 as of June 12, 2022, it has aired approximately 86 television advertisements promoting  
5 the petition, including on Fox News and other channels; run online advertisements with a  
6 total of 318,779 impressions; and received over one million views of its advertisements  
7 through social media. In addition, R4R states that its petition has received news coverage  
8 by Fox News, *Politico*, the Associated Press, MarketWatch, and the *Boston Herald*. R4R  
9 plans to continue to promote the petition through television and online advertisements, as  
10 well as “through radio, podcast, Skywriting, direct mail, billboards, blimps, and other  
11 media,” and estimates that it will spend an average of \$25,000-\$50,000 per week on  
12 advertisements in support of the petition through 2024.<sup>5</sup> Governor DeSantis’s state  
13 gubernatorial campaign has commented on R4R’s activities in the news media.<sup>6</sup>

14 As a result of these efforts, R4R expects to receive contact information from more  
15 than 58,000 petition signatories during the pendency of this advisory opinion and  
16 “projects it will likely amass well over a million virtual signatures for its petition, along  
17 with accompanying [contact information], by the end of 2022.”<sup>7</sup> R4R states that its  
18 petition will likely eventually include the contact information of “millions” of petition

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<sup>5</sup> AOR003.

<sup>6</sup> See Paul Steinhauser, “DeSantis Campaign Warns that Donations to ‘Ready for Ron’ PAC Don’t Benefit Florida Governor’s Reelection” (June 20, 2022), [www.foxnews.com/politics/florida-desantis-campaign-warns-donations-pac-dont-benefit-reelection](http://www.foxnews.com/politics/florida-desantis-campaign-warns-donations-pac-dont-benefit-reelection).

<sup>7</sup> AOR004.

1 signers.<sup>8</sup> After initially submitting its petition to Governor DeSantis, R4R proposes to  
2 submit “regular updates” to him through the 2024 election, “accompanied by the names  
3 and [contact information] of people who have joined the petition since it was last  
4 updated.”<sup>9</sup> R4R estimates the value of each signatory’s contact information to be five  
5 cents, based on a “reasonable sample market value of contact information in political  
6 distribution lists,” and states that the market value of the information it plans to provide  
7 to Governor DeSantis will exceed \$2900.<sup>10</sup>

8 R4R represents that neither it “nor its agents are coordinating with Governor Ron  
9 DeSantis, his gubernatorial campaign, or any federal or state political committees  
10 authorized by Governor DeSantis.”<sup>11</sup> R4R states that if it uses any common vendors with  
11 Governor DeSantis, it “will require firewalls.”<sup>12</sup> Finally, R4R asserts that, “to the best of  
12 its knowledge,” it does not employ and will not employ any former employees or  
13 independent contractors of Governor DeSantis’s gubernatorial campaign.<sup>13</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* R4R bases its estimate on the following. In support of its petition, R4R purchased a distribution list of registered Republicans who contributed to Republican candidates, but not to President Trump or Save America PAC. R4R represents that it paid five cents per name to purchase this list with contact information, and more than \$2900 for the list. AOR018. R4R also consulted “with commercial data vendors experienced in political marketing.” *Id.*

<sup>11</sup> AOR003.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

1 ***Questions Presented***

2 1. *May R4R provide its petition, along with the accompanying list of over*  
3 *58,000 signatories and their contact information, to Governor Ron DeSantis to attempt to*  
4 *persuade him to become a candidate for the Republican nomination for President in*  
5 *2024?*

6 2. *If the answer to question one is “yes,” must R4R do so, if at all, before*  
7 *Governor DeSantis:*

8 a. *starts testing the waters to become a candidate for the office of President,*

9 *or*

10 b. *becomes a candidate for the office of President?*

11 ***Legal Analysis***

12 R4R may not provide Governor DeSantis with the list of over 58,000 signatories’  
13 names and contact information because the value of the list would exceed the  
14 contribution limits of the Act and Commission regulations. Providing the list to  
15 Governor DeSantis after he becomes a federal candidate (should he do so) would exceed  
16 the Act’s contribution limits, and providing the list before he becomes a federal candidate  
17 would be contrary to the Commission’s testing the waters regulation at 11 C.F.R.  
18 § 100.72(a). R4R’s proposal is also contrary to restrictions on the non-contribution  
19 accounts of hybrid PACs.

20 1. *The compiled contact information in R4R’s petition is a thing of value.*

21 The Act prohibits a political committee, other than a multicandidate political  
22 committee, from contributing more than \$2900 to any candidate with respect to any

1 election for federal office.<sup>14</sup> A contribution includes “any gift, subscription, loan,  
2 advance, or deposit of money or anything of value made by any person for the purpose of  
3 influencing any election for Federal office.”<sup>15</sup> “[T]he provision of any goods or services  
4 without charge or at a charge that is less than the usual and normal charge” is an “in-  
5 kind” contribution.<sup>16</sup> The value or “amount of the in-kind contribution is the difference  
6 between the usual and normal charge for the goods or services at the time of the  
7 contribution and the amount charged the political committee.”<sup>17</sup>

8 As “the product of time-consuming, labor-intensive activities that can cost a  
9 political committee thousands, even millions, of dollars” to compile, a political  
10 committee’s list of persons sympathetic to its cause is among “its most valuable assets.”<sup>18</sup>  
11 Accordingly, the Commission has “long recognized” that political committee mailing and  
12 email lists have commercial value and are “frequently sold, rented, or exchanged in a  
13 market.”<sup>19</sup> Indeed, rather than spending the time and money to start its petition drive  
14 completely from scratch, R4R itself states that it “will rent access to distribution lists

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<sup>14</sup> See 52 U.S.C. §§ 30101(11) (defining “person” to include committees), 30116(a)(1)(A), (a)(2)(A); see also 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021) (adjusting limit for inflation pursuant to 52 U.S.C. § 30116(c)).

<sup>15</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>16</sup> 11 C.F.R. § 100.52(d)(1).

<sup>17</sup> *Id.*

<sup>18</sup> *FEC v. Int’l Funding Inst.*, 969 F.2d 1110, 1116 (D.C. Cir. 1992) (en banc) (internal citations omitted); see also Notice of Proposed Rulemaking, Mailings Lists of Political Committees, 68 Fed. Reg. 52,531, 51,531 (Sept. 4, 2003) (“One of the principal assets of many political committees is their mailing list.”).

<sup>19</sup> Advisory Opinion 2014-06 (Ryan for Congress, *et. al*) at 8 (collecting examples); see also, e.g., Advisory Opinion 2011-02 (Scott Brown for U.S. Senate Committee) at 7 (same); Advisory Opinion 2002-14 (Libertarian National Committee) at 2.

1 from commercial vendors to send e-mails and text messages to potential DeSantis  
2 supporters” and that it has already paid more the \$2900 for a contact list of persons who  
3 it believes are likely sympathetic to its cause.<sup>20</sup>

4 The Commission’s regulation specifically identifies “membership lists” and  
5 “mailing lists” as examples of goods that are in-kind contributions when provided to a  
6 candidate or political committee without charge or at less than their usual and normal  
7 charge.<sup>21</sup> And the Commission has long recognized this principle in its advisory opinions  
8 as well. For example, in Advisory Opinion 1979-18 (FEC’s Former Employees  
9 Committee), the Commission found that a political committee would make an in-kind  
10 contribution to a candidate if it provided its contributor list to the candidate at less than  
11 “the usual and normal charge for such a list in the market from which it would ordinarily  
12 be purchased.”

13 *2. R4R’s proposal to provide the signatories’ contact information to*  
14 *Governor DeSantis without charge after Governor DeSantis becomes a federal*  
15 *candidate would result in an excessive contribution.*

16 The Act prohibits a political committee, other than a multicandidate political  
17 committee, from contributing more than \$2900 to any candidate with respect to any  
18 election for federal office.<sup>22</sup> R4R is not a multicandidate political committee, and so it is  
19 subject to the \$2900 limit.

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<sup>20</sup> AOR002, 18 (stating R4R purchased list of contact information for registered Republicans who contributed to Republican candidates, but not President Trump or Save America PAC, for more than \$2900 to invite those individuals to sign R4R’s petition).

<sup>21</sup> 11 C.F.R. § 100.52(d)(1).

<sup>22</sup> 52 U.S.C. §§ 30101(11), 30116(a)(1)(A), (a)(2)(A); *see also* 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. at 7869.

1 R4R states that it expects its petition will include the contact information of more  
2 than 58,000 petition signatories during the pendency of this advisory opinion request and  
3 “likely” more than one million by the end of 2022.<sup>23</sup> R4R estimates that the market value  
4 of the list of signatories’ contact information will exceed \$2900.<sup>24</sup> Accordingly,  
5 providing Governor DeSantis with the contact information in the petition without charge  
6 after he becomes a candidate for federal office would constitute an in-kind contribution in  
7 excess of contribution limits and thus is prohibited.

8 R4R states that the Commission should not treat the compiled contact information  
9 from the petition as a contribution by R4R because the value of the individual contact  
10 information provided by each petition signatory should be considered a *de minimis*  
11 contribution by that individual to Governor DeSantis with R4R acting as a conduit.<sup>25</sup> As  
12 discussed above, it is well established under the Commission’s regulation that “mailing  
13 lists” or “membership lists” compiled by political committees are an in-kind contribution  
14 under the Act if provided at less than the “usual and normal charge.” As the D.C. District  
15 Court recognized in *FEC v. Christian Coalition*, “[e]ven if the names on the . . . list were  
16 publicly available, the fact that the [respondent] expended resources to compile the list”  
17 of persons likely to support a candidate “created value that was passed on” when that list

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<sup>23</sup> AOR004.

<sup>24</sup> AOR004, 5; *see also* AOR020 (stating “[t]he market value of the list of signatories (which contains [contact information]) who wish to associate with Governor DeSantis and support him running for President in 2024 that Ready for Ron wishes to provide to Governor DeSantis will exceed federal contribution limits”).

<sup>25</sup> AOR013-14.

1 was provided to the candidate.<sup>26</sup> R4R states it intends to spend a significant amount of  
2 money to compile the list of contact information in its petition — an estimated \$25,000-  
3 \$50,000 per week over a period of more than two years, with more than \$2900 already  
4 spent to acquire a mailing list in support of its efforts — and asserts that the resultant list  
5 will have a commercial value in excess of \$2900.<sup>27</sup> The contact information in R4R’s  
6 petition would be of significant value to Governor DeSantis not only because of its  
7 expensive development costs, but also because it exclusively includes persons who are  
8 advocating in favor of Governor DeSantis running for President. Accordingly, R4R may  
9 not provide the contact information to Governor DeSantis without charge if and when he  
10 becomes a federal candidate because the value of the information would exceed the  
11 contribution limits.

12           3.       *R4R’s proposal to provide the signatories’ contact information to*  
13                   *Governor DeSantis before he becomes a federal candidate is contrary to the*  
14                   *Commission’s testing the waters regulation at 11 C.F.R. § 100.72(a).*

15           The Commission’s “testing the waters” regulation at 11 C.F.R. § 100.72(a)  
16 provides that “[f]unds received solely for the purpose of determining whether an  
17 individual should become a candidate are not contributions”; however, “[i]f the  
18 individual subsequently becomes a candidate, the funds received are contributions subject  
19 to the reporting requirements of the Act.”<sup>28</sup> “Only funds permissible under the Act may  
20 be used for [testing the waters] activities.”<sup>29</sup> The Commission long ago determined that

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<sup>26</sup> 52 F. Supp. 2d 45, 96 (D.D.C. 1999).

<sup>27</sup> AOR003-4, 20.

<sup>28</sup> 11 C.F.R. § 100.72(a).

<sup>29</sup> *Id.*

1 “funds received” for purposes of the testing the waters regulation “include in-kind gifts of  
2 anything of value.”<sup>30</sup> Thus, “funds received from any committee, *whether in-kind or*  
3 *direct*, for an individual’s testing-the-waters activities are aggregated with any  
4 contributions from the same committee to such individual as a candidate (or to his or her  
5 authorized committees).”<sup>31</sup>

6 “Through its regulations, the Commission, in essence, has excepted ‘testing the  
7 waters’ activity from the reporting rules that would otherwise apply.”<sup>32</sup> The Commission  
8 promulgated the “limited exceptions” in the testing the waters regulations from the  
9 requirements to report contributions and expenditures in order “to permit individuals to  
10 conduct certain activities while deciding whether to become a candidate for Federal  
11 office, without making their activities immediately public.”<sup>33</sup>

12 The Commission’s early regulations permitted a candidate to refund any  
13 excessive or prohibited contributions received during the “testing the waters” period  
14 within 10 days after the individual became a candidate.<sup>34</sup> However, the Commission  
15 “reconsidered this issue and determined that permitting prohibited funds to be used for  
16 ‘testing the waters’ activities extended the exemptions beyond the narrow range of

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<sup>30</sup> Advisory Opinion 1985-40 (Republican Majority Fund) at 3 (citing Advisory Opinion 1981-32 (Askew)); *see also* Advisory Opinion 1998-18 (Washington State Democratic Committee) (applying testing the waters regulations to state party committee’s donation of poll results to individual who was testing the waters and subsequently decided not to become a candidate).

<sup>31</sup> Advisory Opinion 1985-40 (Republican Majority Fund) at 3 (emphasis added).

<sup>32</sup> Advisory Opinion 1998-18 (Washington State Democratic Committee) at 2.

<sup>33</sup> Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985); *see also* Advisory Opinion 1998-18 (Washington State Democratic Committee) at 2.

<sup>34</sup> Payments Received for Testing the Waters Activities, 50 Fed. Reg. at 9994 (discussing changes to testing the waters regulations).

1 activities they were originally intended to encompass.”<sup>35</sup> Accordingly, the Commission  
2 revised the regulations to require that an individual must only receive funds for purposes  
3 of testing the waters that are permissible under the Act’s source prohibitions and  
4 contribution limits.<sup>36</sup> At the time of this regulatory revision, the Commission considered  
5 comments objecting to the prohibition on the use of impermissible funds for testing the  
6 waters, but determined the change was warranted, explaining: “[t]he Commission views  
7 the amended regulations as reducing the potential for circumvention of the prohibitions  
8 and limitations of the Act. These revisions also ensure consistent application of the Act’s  
9 contribution limitations and prohibitions.”<sup>37</sup> As a result, under the Commission’s current  
10 regulation, “[o]nly funds permissible under the Act may be used for [testing the waters]  
11 activities.”<sup>38</sup>

12 R4R “was formed for the purpose of drafting Ron DeSantis as a candidate for the  
13 Republican nomination for President in the 2024 election.”<sup>39</sup> Because R4R recognizes  
14 that “[a]n essential consideration in a person’s decision to declare their candidacy for  
15 federal office is the extent of public support for that position they can anticipate,”<sup>40</sup> it has  
16 embarked on a nationwide petition effort. R4R plans to spend tens of thousands of  
17 dollars each week for more than two years “organizing as many American citizens as

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 11 C.F.R. § 100.72(a).

<sup>39</sup> AOR002.

<sup>40</sup> *Id.*

1 possible to sign its Petition and draft Ron DeSantis to run for President.”<sup>41</sup> R4R plans to  
2 provide Governor DeSantis with the petition and contact information on an ongoing  
3 basis, even after he becomes a candidate (if he does so).<sup>42</sup> Further, R4R intends  
4 Governor DeSantis to use the supporter-signatories’ names and contact information for  
5 political purposes.<sup>43</sup> Governor DeSantis’s state gubernatorial campaign is reportedly  
6 aware of R4R’s activities with respect to the Governor and the 2024 presidential  
7 election.<sup>44</sup>

8 Under these circumstances, the Commission concludes that R4R’s petition and  
9 contact information are subject to the testing the waters regulation at 11 C.F.R.  
10 § 100.72(a) if R4R provides them to Governor DeSantis before he becomes a federal  
11 candidate. As such, the petition and contact information must comply with the amount  
12 limitations and source prohibitions of the Act. Because their value would exceed the  
13 applicable amount limitation, R4R may not provide them to Governor DeSantis without  
14 charge before he becomes a federal candidate.<sup>45</sup>

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<sup>41</sup> AOR019.

<sup>42</sup> AOR004, 15 (R4R’s stated purpose in providing Governor DeSantis with petition and contact information is “to persuade him to become, and subsequently to remain, a candidate for the Republican nomination for President in the 2024 election.”).

<sup>43</sup> AOR020-21 (“Ready for Ron wishes to facilitate political association between Governor DeSantis and supporters seeking to draft him to run for President without limitation. In particular, Ready for Ron does not wish Governor DeSantis to be prohibited from using the signatory information it provides either before he has begun testing the waters or after he has ceased engaging in such activity.”)

<sup>44</sup> See Paul Steinhauser, “DeSantis Campaign Warns that Donations to ‘Ready for Ron’ PAC Don’t Benefit Florida Governor’s Reelection” (June 20, 2022), [www.foxnews.com/politics/florida-desantis-campaign-warns-donations-pac-dont-benefit-reelection](http://www.foxnews.com/politics/florida-desantis-campaign-warns-donations-pac-dont-benefit-reelection).

<sup>45</sup> The provided information would also become an in-kind contribution and subject to the Act’s reporting requirements if Governor DeSantis subsequently becomes a candidate. 11 C.F.R. § 100.72(a).

1 R4R offers several arguments as to why the Commission should not apply the  
2 testing the waters regulation at 11 C.F.R. § 100.72(a) or the Act’s contribution limits to  
3 its proposal. The Commission has considered these arguments and does not find them to  
4 be persuasive for the following reasons. First, the Commission has previously concluded  
5 that political committee mailing and membership lists have value and that the provision  
6 of such lists to a candidate or political committee at no charge or at less than the usual  
7 and normal charge is a contribution.<sup>46</sup> The requestor has not provided any information  
8 that would materially distinguish the information it proposes to provide to Governor  
9 DeSantis from that previously considered by the Commission. Second, the testing the  
10 waters regulation was duly promulgated by the Commission after notice and comment  
11 rulemaking and has not been struck down by any court. Accordingly, the Commission  
12 has a legal obligation to apply the regulation to R4R’s proposal.<sup>47</sup> Finally, under its  
13 proposal, R4R would be more than a mere conduit of other people’s information. As  
14 discussed above, the “thing of value” that R4R proposes to provide to Governor DeSantis  
15 does not consist solely, or even primarily, of any individual signatory’s name or contact  
16 information. Instead, it lies in R4R’s collection and compilation of information from tens  
17 of thousands, if not “millions,” of individuals nationwide who would have already  
18 demonstrated their support for Governor DeSantis and his potential presidential campaign  
19 by participating in R4R’s petition project — a project on which R4R plans to expend

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<sup>46</sup> 11 C.F.R. § 100.52(d)(1); Advisory Opinion 2014-06 (Ryan for Congress) at 8; Advisory Opinion 2011-02 (Scott Brown for U.S. Senate Committee) at 7; *see also* Advisory Opinion 2002-14 (Libertarian National Committee) at 4-5; Advisory Opinion 1982-41 (Committee for Congressman Ron Dellums) at 2.

<sup>47</sup> *Cf. Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (observing that the “Commission’s unwillingness to enforce its own rule” in enforcement proceedings would be “contrary to law”).

1 considerable resources of its own.<sup>48</sup> This regularly updated repository of names and  
2 contact information of current supporters and potential future contributors and volunteers  
3 would be particularly valuable to Governor DeSantis if he decides to run for federal  
4 office.

5 4. *R4R's proposal is inconsistent with restrictions on a hybrid PAC's use of*  
6 *its non-contribution account.*

7 R4R's proposal to fund its petition activities, in part, from its non-contribution  
8 account, and then provide that information without charge to Governor DeSantis, is not  
9 permissible, because a "hybrid committee may not make contributions to candidates . . . ,  
10 including in-kind contributions . . . , from its non-contribution account."<sup>49</sup>

11 Hybrid PACs may accept contributions from individuals to their non-contribution  
12 accounts in excess of the amount limitations of the Act.<sup>50</sup> Candidates, by contrast, shall  
13 not "receive . . . or spend funds in connection with an election for Federal office . . .  
14 unless the funds are subject to the limitations, prohibitions, and reporting requirements of  
15 [the] Act."<sup>51</sup> In addition, all funds received or spent for testing the waters purposes are

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<sup>48</sup> AOR004.

<sup>49</sup> Advisory Opinion 2016-21 (Great America PAC) at 3-4.

<sup>50</sup> Following the decision of the U.S. District Court for the District of Columbia in *Carey v. FEC*, 791 F.Supp.2d 121 (D.D.C. 2011), the Commission announced that it will no longer enforce contribution limits against any nonconnected political committee for excessive and prohibited contributions received from individuals, political committees, corporations, and labor organizations, as long as the committee maintains separate bank accounts to: (1) receive such contributions for the purpose of making independent expenditures, other advertisements that refer to a federal candidate, and generic voter drives (the "non-contribution account"); (2) receive source- and amount-limited contributions for the purpose of making candidate contributions; and (3) pay a percentage of the committee's administrative expenses that closely corresponds to the percentage of activity for that account. 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>51</sup> 52 U.S.C. § 30125(e)(1)(A).

1 subject to the amount limitations and source prohibitions of the Act.<sup>52</sup> As a result, a  
2 hybrid PAC may make neither in-kind contributions nor testing the waters donations  
3 from its non-contribution account.

4 Here, R4R “solicits and accepts unlimited contributions” to its non-contribution  
5 account.<sup>53</sup> R4R proposes to use those funds for its petition drive, and then to provide  
6 signatories’ names and contact information without charge to Governor DeSantis.  
7 Because that information would be either an in-kind contribution or subject to the Act’s  
8 amount limitations and source prohibitions under 11 C.F.R. § 100.72(a), depending on  
9 when it is provided to Governor DeSantis, R4R may not pay for the proposed activity  
10 using funds from its non-contribution account.

11 This response constitutes an advisory opinion concerning the application of the  
12 Act and Commission regulations to the specific transaction or activity set forth in your  
13 request.<sup>54</sup> The Commission emphasizes that, if there is a change in any of the facts or  
14 assumptions presented, and such facts or assumptions are material to a conclusion  
15 presented in this advisory opinion, then the requestor may not rely on that conclusion as  
16 support for its proposed activity. Any person involved in any specific transaction or  
17 activity that is indistinguishable in all its material aspects from the transaction or activity  
18 with respect to which this advisory opinion is rendered may rely on this advisory

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<sup>52</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>53</sup> AOR002.

<sup>54</sup> See 52 U.S.C. § 30108.

1 opinion.<sup>55</sup> Please note that the analysis or conclusions in this advisory opinion may be  
2 affected by subsequent developments in the law including, but not limited to, statutes,  
3 regulations, advisory opinions, and case law. Any advisory opinions cited herein are  
4 available on the Commission's website.

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On behalf of the Commission,

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Allen J. Dickerson

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Chairman

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<sup>55</sup> *See id.* § 30108(c)(1)(B).