



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary *LC*

DATE: August 29, 2022

SUBJECT: AO 2022-12 (Ready for Ron) Requestor Comment on
Drafts A and B

The following is a requestor comment on AO 2022-12 (Ready for Ron) on Drafts A and B. This matter will be discussed on the Open Meeting of August 31, 2022.

Attachment



RECEIVED
By Office of the Commission Secretary at 10:34 am, Aug 29, 2022

August 29, 2022

1
2 Office of the General Counsel
3 Attn: Lisa Stevenson
4 Federal Election Commission
5 1050 First Street N.E.
6 Washington, D.C. 20463
7 ao@fec.gov

8
9 RE: Advisory Opinion Request 2022-12 (Ready for Ron)

10
11 Dear Ms. Stevenson,

12
13 Please accept this comment from Ready for Ron (“RFR”) regarding proposed Drafts A and
14 B of an advisory opinion from the Federal Election Commission (“FEC”) responding to RFR’s
15 request, No. 2022-12. RFR respectfully recommends the Commission adopt a modified form of
16 Draft B. Draft B properly recognizes neither federal contribution limits in general, nor the
17 Commission’s “testing the waters” regulation, 11 C.F.R. § 100.72(a), apply to transfers from a
18 political committee to an individual who is neither testing the waters nor a candidate.
19 Consequently, federal campaign finance law does not restrict the ability of RFR to provide its
20 petition (including the names and contact information for its signatories), or anything else of
21 value, to Governor Ron DeSantis to persuade him to declare his candidacy for the Republican
22 nomination for President before he begins “testing the waters” for federal office.

23
24 The Commission should modify Draft B, however, to recognize RFR may provide
25 its petition, along with the names and contact information for its signatories, to Governor
26 DeSantis even if he: (i) begins testing the waters and/or (ii) becomes a candidate. **Neither the**



1 **Federal Election Campaign Act (“FECA”) nor FEC regulations empowers the Commission to**
2 **regulate, much less prohibit, political petitions to draft potential candidates.** Most basically, the
3 FECA does not mention drafting candidates or political petitions at all. And the only reference to
4 “draft[ing] an individual . . . to encourage him or her to become a candidate” in the Commission’s
5 regulations is to exempt draft committees from restrictions that typically apply to the use of
6 candidates’ names by unauthorized committees. 11 C.F.R. § 102.14(b)(2). The regulations other
7 references to “drafts” refer solely to bank checks, while its mentions of “petitions” refer only to
8 petitions for agency rulemaking, petitions for rehearing by the commission, and petitions for
9 judicial relief, bankruptcy, or contempt orders. Both of the Commission’s proposed draft opinions
10 amount to a tremendous expansion of Commission authority without adequate legal foundation.

11
12 Both drafts suffer from a range of additional constitutional, statutory, and regulatory
13 deficiencies, as well, which this comment discusses at greater length. **First**, neither draft
14 recognizes the violations of the fundamental constitutional rights to engage in pure political
15 speech and association which arise by prohibiting RFR from transmitting a signed petition to
16 Governor DeSantis. **Second**, 11 C.F.R. § 100.72(a) cannot validly limit contributions to non-
17 candidates on the grounds they are “testing the waters,” because such an interpretation is both
18 inconsistent with the regulation’s text and unsupported by any statutory authority. **Third**, both
19 drafts incorrectly summarily decline to recognize RFR is merely acting as a conduit through which
20 Governor DeSantis’ supporters may transmit their support for the petition encouraging Governor
21 DeSantis to run for President. **Finally**, both drafts erroneously treat signed petition as a
22 “contribution” for purposes of campaign finance law. For these reasons, the FECA cannot
23 reasonably be construed as requiring RFR to shield from Governor DeSantis the identities of the
24 people who chose to petition him to run for President.

25



1 Before turning to the Drafts’ legal analysis, RFR wishes to correct an erroneous factual
2 assertion in both drafts. Both drafts contend, “RFR requires all petition signatories to provide
3 their names, phone numbers, email addresses, and zip codes; any individual not wishing to
4 provide this information cannot sign the petition.” Draft A, No. 2022-12, at 2, lines 13-15; Draft
5 B, No. 2022-12, at 3, lines 2-4. RFR’s advisory opinion request, however, stated only that the
6 website and phone number for its petition “will provide users with the opportunity to
7 electronically submit their name, phone number, e-mail address, and zip code . . . to be added to
8 a petition” Ready for Ron Advisory Opinion Request, No. 2022-12, at 2 (May 25, 2022)
9 [hereinafter, “AOR”]. In order to sign the petition via phone, a person is only required to “press
10 1” on their telephone and need not provide their contact information. To sign through the
11 website, a person is directed to provide their name and e-mail address.

12

13 **I. DRAFT B PROPERLY RECOGNIZES RFR MAY PROVIDE ITS SIGNED**
14 **PETITION AND ACCOMPANYING SIGNATORY INFORMATION**
15 **TO GOVERNOR DESANTIS BEFORE HE BEGINS TESTING THE WATERS**

16

17 As an initial matter, the Commission should use Draft B as a foundation for its advisory
18 opinion, rather than Draft A. Only Draft B properly recognizes “RFR may provide the names and
19 compiled contact information included in its petition to Governor DeSantis before he begins
20 testing the waters for a potential federal candidacy because neither the Act nor Commission
21 regulations prohibit that activity.” Draft B at 1, lines 14-17; *accord id.* at 5, lines 14-17. In contrast,
22 Draft A neither expressly analyzes, nor provides any specific conclusions concerning, federal
23 campaign finance law as it applies to the current period, when Governor DeSantis is neither
24 testing the waters nor a federal candidate. Rather, Draft A broadly concludes “RFR may not
25 provide the names and contact information to Governor DeSantis as proposed because the value
26 of that information would exceed applicable contribution limits” Draft A at 1, lines 14-17;



1 accord *id.* at 5, lines 12-14; see also Draft A at 12, lines 8-11 (“[T]he Commission concludes that
 2 RFR’s petition and contact information are subject to the testing the waters regulation at 11 C.F.R.
 3 § 100.72(a) if RFR provides them to Governor DeSantis **before he becomes a federal candidate.**”
 4 (emphasis added)). Draft A further concludes RFR’s proposal violates restrictions on the use of
 5 non-contribution accounts. *Id.* at 1, lines 17-19. Because Draft A fails to expressly address one of
 6 the important questions in RFR’s advisory opinion request, and incorrectly suggests federal
 7 campaign finance law can limit interactions with a person who is neither a candidate nor testing
 8 the waters, the Commission should reject it. *Cf. id.* at 5, lines 15-17 (“[P]roviding the list before
 9 [Governor DeSantis] becomes a federal candidate would be contrary to the Commission’s testing
 10 the waters regulation”)

11
 12 RFR’s advisory opinion request inquired, among other things, whether RFR may “provide
 13 its Petition, allowing with the accompanying list of over 58,000 signatories and their Signatory
 14 Information, to Governor Ron DeSantis to attempt to persuade him to become a candidate for
 15 the Republican nomination for President in 2024.” AOR at 4 [hereinafter, “AOR”]. The request
 16 specifically asked whether RFR could do so “before Governor DeSantis . . . starts testing the
 17 waters to become a candidate for the office of President.” *Id.* at 4-5. RFR explained it sought
 18 guidance as to the timing of its activities because it intended to submit its petition “and relevant
 19 updates” to Governor DeSantis at various points in time, including “before Governor DeSantis
 20 begins ‘testing the waters.’” AOR at 4. Section A of RFR’s request specifically explains why “RFR
 21 May Provide Its Petition, Along with the Names and Signatory Information of its Signatories, to
 22 Governor DeSantis **Before He Begins Testing the Waters.**” *Id.* at 5.

23
 24 Draft B correctly concludes, “Neither the Act nor Commission regulations . . . govern
 25 donations of things of value to individuals who are neither federal candidates nor testing the
 26 waters for federal office” Draft B at 15, lines 11-13. Consequently, “nothing in the Act or



1 Commission regulations prohibits RFR from providing the names and compiled contact
2 information from its petition to Governor DeSantis when Governor DeSantis is neither a federal
3 candidate nor testing the waters.” Draft B at 15, lines 15-16 through 16, lines 1-2. The Campaign
4 Legal Center’s comment does not seriously dispute this analysis. See Campaign Legal Center,
5 Public Comment, A.O. 2022-12, at 5 (Aug. 8, 2022) [hereinafter, “CLC Comment”]. To the contrary,
6 CLC invites the Commission to simply ignore the law and effectively create new *pre-testing the*
7 *water* restrictions, purportedly to avoid “incentivizing prospective candidates to claim they have
8 not even begun testing the waters” to “gam[e] the system.” *Id.* Unsurprisingly, CLC is wholly
9 unable to cite a single statute, regulation, advisory opinion, or other legal authority empowering
10 the Commission to regulate transfers to a person who is neither a candidate nor testing the
11 waters to become a candidate.

12
13 CLC puzzlingly declares, “[I]t is difficult to understand why an individual would knowingly
14 accept the material [RFR] wishes to provide if that individual were not *exploring* possible
15 candidacy.” *Id.* The entire point of a draft petition, however, is to demonstrate the type of broad,
16 deep public support necessary to persuade someone to begin exploring the possibility of
17 becoming a federal candidate. Without RFR’s petition, Governor DeSantis may never begin
18 testing the waters or become a candidate; the biggest loser from CLC’s ill-informed, extremist
19 position would not be RFR or even Governor DeSantis, but rather the American people. The
20 Commission should likewise disregard CLC’s fabrication that DeSantis “is already testing the
21 waters, if not already a candidate for purposes of FECA.” *Id.* at 5. Not even Draft A contends the
22 record supports the patently false notion Governor DeSantis—who is embroiled in a re-election
23 campaign for Governor of Florida—has engaged in any conduct that even comes close to “testing
24 the waters” for a federal candidacy under 11 C.F.R. §§ 100.72, 100.131. Thus, the Commission
25 should reject Draft A because it fails to specifically consider or address a key aspect of RFR’s



1 request. At an absolute minimum, federal law does not bar RFR from providing its petition to
2 Governor DeSantis before he *actually* begins testing the waters for a potential candidacy.

3

4 **II. BOTH DRAFTS IMPROPERLY CONCLUDE RFR MAY NOT PROVIDE ITS PETITION AND**
5 **SIGNATORY INFORMATION TO GOVERNOR DESANTIS**

6

7 The Commission should reject both drafts insofar as they each conclude “RFR may not
8 provide the names and contact information to Governor DeSantis as proposed because the value
9 of that information would exceed applicable contribution limits and limits on funds used to test
10 the waters for a federal candidacy.” Draft A, No. 2022-12, at 1, lines 14-18; *accord id.* at 6, lines
11 12-18; Draft B, at 1, lines 17-21; *id.* at 5, line 17 through *id.* at 6, line 2. The Commission should
12 likewise reject the drafts’ conclusion that providing the signed petition to Governor DeSantis—
13 either while he is testing the waters or after he becomes a candidate—would violate restrictions
14 on the use of RFR’s non-contribution account. Draft A, at 1, lines 17-19; *id.* at 5, lines 18-19; Draft
15 B, at 4, lines 21-24; *id.* at 5, lines 2-4.

16

17 A. Contribution Limits May Not Constitutionally Be
18 Applied to Pure Political Communications

19

20 Most basically, both drafts fail to address the unique constitutional considerations that
21 would be posed by construing the Federal Election Campaign Act (“FECA”) to prohibit pure
22 political speech and association by prohibiting RFR from providing its signed petition to Governor
23 DeSantis. Contribution limits are generally subject only to intermediate scrutiny and
24 constitutionally permissible precisely because they typically “entail[] only a marginal restriction
25 upon the contributor’s ability to engage in free communication.” *Buckley v. Valeo*, 424 U.S. 1, 20
26 (1976) (per curiam). *Buckley* explained, “A contribution serves as a general expression of support



1 for the candidate and his views, but does not communicate the basis for the underlying
2 support. . . . [T]he expression rests solely on the undifferentiated, symbolic act of contributing.
3 At most, the size of the contribution provides a very rough index of the intensity of the
4 contributor’s support for the candidate.” *Id.* at 21. The Court further emphasized contribution
5 limits “involve[] little direct restraint on . . . political communication” because they do “not in any
6 way infringe the contributor’s freedom to discuss candidates and issues.” *Id.*

7
8 This reasoning is patently inapplicable when the supposed contribution is, itself, political
9 speech, such as a petition. The Supreme Court has never allowed contribution limits to be applied
10 to prohibit pure political speech by American citizens. Treating the petition as a contribution
11 would impose much more than “a marginal restriction upon the contributor’s ability to engage
12 in free communication.” *Id.* at 20–21. Petitioning Governor DeSantis is not “undifferentiated,
13 symbolic act,” but rather direct, express political speech that lies at the heart of the First
14 Amendment. *Id.* at 21. Such a sweeping conception of in-kind contributions would place a “direct
15 restraint” on a person’s “freedom to discuss candidates and issues.” *Id.* at 21.

16
17 Joining together in a petition is also a fundamental, time-honored form of political
18 association, as well. “[T]he practice of persons sharing common views banding together to
19 achieve a common end is deeply embedded in the American political process. The 18th-century
20 Committees of Correspondence . . . were early examples of this phenomena” *Citizens Against*
21 *Rent Cont./Coalition for Fair Hous. v. Berkeley*, 454 U.S. 290, 294 (1981). As the Court elaborated,
22 “[B]y collective effort individuals can make their views known, when, individually, their voices
23 would be faint or lost.” *Id.*; see also *NAACP v. Alabama*, 357 U.S. 449, 460 (1958) (“Effective
24 advocacy of both public and private points of view . . . is undeniably enhanced by group
25 association, as this Court has more than once recognized by remarking upon the close nexus
26 between the freedoms of speech and assembly.”). Indeed, *Buckley* itself recognized the right to



1 freedom of association “is diluted if it does not include the right to pool money through
2 contributions.” *Buckley*, 424 U.S. at 65-66. Here, Governor DeSantis’ supporters are not seeking
3 to “pool money,” but rather join together in a petition, amplifying their voices through collective
4 action in a way that would be impossible if acting individually. By barring RFR from presenting a
5 signed political petition to Governor DeSantis, the Commission would be severely hindering
6 expressive political association.

7
8 If an individual directly e-mailed Governor DeSantis, encouraging him to run for President
9 and providing their contact information, that would be pure political speech which the
10 Commission could not regulate. If that person instead urged people to sign a petition to Governor
11 DeSantis to persuade him to run, both that person’s speech, as well as the underlying petition,
12 would be likewise protected. Such pure political speech does not lose constitutional protection
13 or become subject to governmental restriction simply because gathering the petition costs
14 money. *See Buckley*, 424 U.S. at 16 (rejecting the notion “the dependence of a communication
15 on the expenditure of money operates itself to introduce a nonspeech element”). Nor does a
16 signatory lose their right to convey their political support for Governor DeSantis’ candidacy
17 simply because they wish to join with others to convey it.

18
19 Accordingly, prohibiting RFR from submitting its signed petition to Governor DeSantis
20 would “heavily burden[] core First Amendment expression.” *Colo. Republican Fed. Campaign*
21 *Comm. v. FEC*, 518 U.S. 604, 614 (1996) (“*Colorado I*”) (plurality op.). The Commission should not
22 ignore such critical constitutional infirmities with its drafts.¹

¹ To the extent the Commission concludes, for any of the foregoing reasons, RFR may provide its signed petition with the signatories’ contact information to Governor DeSantis at any particular point in time (i.e., before he begins testing the waters, while he is testing the waters, and/or after he becomes a candidate), RFR is likewise permitted to engage in expenditures for that purpose from its non-contribution account. *Cf.* Draft A at 15, lines 7-10; Draft B at 14, lines 13-14 through 15, lines 1-2.



1 B. Federal Campaign Finance Law Does Not Empower the Commission
2 to Regulate Transfers to Individuals Who Are Testing the Waters

3
4 Both drafts contend RFR may not provide its petition with Signatory Information to
5 DeSantis once he begins “testing the waters” to explore the possibility of running for federal
6 office. Draft A at 12, lines 8-12 (“RFR’s petition and contact information are subject to the testing
7 the waters regulation at 11 C.F.R. § 100.72(a) if RFR provides them to Governor DeSantis before
8 he becomes a federal candidate.”); Draft B at 12, lines 1-4 (“[I]f RFR provides its petition with
9 names and compiled contact information to Governor DeSantis after he begins testing the waters
10 for a potential federal candidacy RFR would not be able to provide them to Governor
11 DeSantis without charge.”); *see also* CLC Comment at 4 (arguing RFR “cannot transfer the petition
12 to DeSantis” in part due to the Commission’s “testing the waters” regulation).

13
14 Neither draft, however, identifies which statutory prohibitions RFR’s intended conduct
15 would violate if performed while Governor DeSantis is “testing the waters.” Federal contribution
16 limits, by definition, apply only to “contributions.” 52 U.S.C. § 30116(a). The FEC’s regulation
17 expressly acknowledges a transfer to an individual who is only testing the waters is not a
18 “contribution.” 11 C.F.R. § 100.72(a) (“Funds received solely for the purpose of determining
19 whether an individual should become a candidate are not contributions.”). The regulation goes
20 on to state, “Only funds permissible under the Act may be used for such activities.” *Id.* Since the
21 Act itself does not regulate transfers to individuals who are merely testing the waters, 11 C.F.R.
22 § 100.72(a) does not restrain either RFR’s ability to provide the petition to Governor DeSantis, or
23 his ability to receive it.

24
25 Moreover, on its face, the “testing the waters” regulation applies only to “funds,” 11 C.F.R.
26 § 100.72(a); nothing in the regulation purports to regulate in-kind transfers to a person who is



1 testing the waters. The FEC’s unilateral declaration the regulation applies to the provision of non-
2 monetary items such as petitions or mailing lists, *see* Draft A at 10, lines 1-5 (citing *Republican*
3 *Majority Fund*, A.O. 1985-40 and *Wash. State Dem. Comm.*, A.O. 1998-18); Draft B at 9-14, is flatly
4 inconsistent with the regulation’s plain text. Since RFR seeks to provide a signed political petition,
5 rather than “funds,” to Governor DeSantis, § 100.72(a) is inapplicable. Thus, the Commission
6 should reject the drafts’ conclusions 10 C.F.R. § 100.72(a) prohibits RFR from providing a signed
7 political petition with the signatories’ contact information to Governor DeSantis while he is
8 “testing the waters.”

9
10 C. Contribution Limits Do Not Apply to RFR’s Proposed Activities
11 Because It Is Merely Acting as a Conduit for the Provision of Information
12 from Governor DeSantis’ Supporters to Governor DeSantis
13

14 Both drafts also cursorily reject RFR’s argument that, to the extent the Petition’s Signatory
15 Information qualifies as a contribution to Governor DeSantis, RFR is merely a conduit to facilitate
16 a contribution from each individual providing that information to Governor DeSantis himself. *See*
17 AOR at 13-14. Both drafts reject this argument on the grounds “‘mailing lists’ or ‘membership
18 lists’ compiled by political committees are an in-kind contribution under the Act if provided at
19 less than the ‘usual and normal charge.’” Draft A at 8, lines 11-14; Draft B at 9, lines 2-5. They
20 further note RFR will “spend a significant amount of money to compile the list,” and it “would be
21 of significant value to Governor DeSantis.” Draft A at 9, lines 1-2, 5-6; Draft B at 9-10, 13-14.

22
23 The drafts’ analysis overlooks the key facts of RFR’s proposal. ***RFR is not compiling a***
24 ***mailing list and does not include anyone on the petition except at their express request and***
25 ***direction.*** RFR has drafted a petition encouraging Governor DeSantis to seek the Republican
26 nomination for President in the 2024 election. AOR at 4. It is running advertisements to alert



1 people to the petition’s existence, and offering interested people the opportunity to voluntarily
2 sign it, either through a website or by phone. AOR at 2-3. “The text of the Petition will be available
3 on the website for people to read before submitting their Signatory Information.” *Id.* at 2.
4 Critically, RFR does not itself add anyone’s name or other identifying information to the petition.
5 Rather, each signatory makes the decision for him- or herself to add their name and contact
6 information to it. In doing so, they are explicitly asking that their signature and contact
7 information be provided to Governor DeSantis.

8
9 The webpage on which people have the opportunity to sign the petition and provide their
10 contact information states, “I am Ready for Ron! Let Ron know I’m behind him and want to join
11 his team!” *Id.* Moreover, “[a] notice at the bottom of the screen . . . inform[s] users that, by
12 virtually signing the petition and providing their information, they are requesting to have RFR
13 provide it to Governor DeSantis.” *Id.* Likewise, when a person calls in, or receives a call, to have
14 their name added to the petition, a prerecorded message invites them to “press 1” to sign the
15 petition and provide their information, and have RFR provide it to Governor DeSantis. *Id.* at 3.

16
17 If individuals provided checks to RFR to transmit to Governor DeSantis—even at RFR’s
18 behest or as a result of RFR’s solicitations and advertisements—the Commission would clearly
19 recognize those individuals as the source of any donation or contribution, Governor DeSantis as
20 the recipient, and RFR as merely the conduit responsible for transmitting the checks to him. *See*
21 52 U.S.C. § 30116(a)(8). To the extent the Commission erroneously deems the Signatory
22 Information from the petition to constitute a “contribution,” *see infra* Section II.B, the same
23 analysis should apply. If an individual provides a thing of value—personally identifying
24 information about themselves—to RFR with the express request the information be transmitted
25 to Governor DeSantis, that individual should be deemed the source of the transaction, Governor
26 DeSantis the recipient, and RFR the conduit.



1 commercial value is the signatories' contact information. That information is provided by each
2 signatory, who individually asks RFR to provide it on their behalf to Governor DeSantis. The fact
3 RFR is waiting to amass a substantial number of signatures before delivering its petition to ensure
4 it has maximal impact as a form of political speech and facilitate political association among
5 individuals who wish to join together in support of Governor DeSantis, rather than immediately
6 forwarding each signature to Governor DeSantis at the time it is made, does not make RFR
7 somehow more responsible for the totality of the signatory information than it otherwise would
8 be. In short, because RFR cannot be properly regarded as the source of any contribution to
9 Governor DeSantis, it is not prohibited from providing the Petition with the Signatory information
10 to him at any time.

11

12 D. A Petition with the List of Signatories is Not a "Contribution"

13

14 Both drafts appear to erroneously assume providing the petition with the accompanying
15 list of signatories and their contact information qualifies as a "contribution" for purposes of
16 federal campaign finance law. The Commission should reject this assumption, for two reasons. A
17 contribution is "any gift, subscription, loan, advance, or deposit of money or anything of value"
18 made to influence a federal election. 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52(a). The signed
19 petition, containing its signatories' contact information, does not fall within this definition
20 because it is neither a "gift" nor a "thing of value" within the meaning of FEC regulations.

21

22 **First**, the signed petition is not a "gift" within the meaning of federal campaign finance
23 law. Although RFR addressed this issue in its advisory opinion request, *see* AOR at 9-10, neither
24 draft addresses it. The term "gift" should presumptively be given its "ordinary, contemporary,
25 common meaning." *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 207 (1997). In ordinary
26 parlance, a person would not call the delivery of a signed petition to its designated, intended



1 recipient a “gift,” even if the signatories identified themselves, confirmed their authenticity, and
2 invited a response by including their contact information with their signatures. *Cf. Watson v.*
3 *United States*, 552 U.S. 74, 79 (2007) (“The Government may say that a person ‘uses’ a firearm
4 simply by receiving it in a barter transaction, but no one else would.”). A political communication
5 is not a gift, regardless of whether it is accompanied by the identities of the people who signed
6 it. *Cf. Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey*
7 *and James E. “Trey” Trainor, III, In re Donald J. Trump for President, Inc.*, MURs 7265 & 7266, at
8 2 & n.8(May 10, 2021) (expressing reticence to adopt the FEC Office of General Counsel’s
9 “tenuous legal theory of what constitutes a ‘thing of value’” and doubting whether the term
10 includes the provision of “general information that is helpful to a campaign”).

11
12 Moreover, as RFR explained in its request, the term “gift” cannot be read in isolation, but
13 instead must be construed specifically in the context of the definition of “contribution” set forth
14 in 52 U.S.C. § 30101(8)(A) and 11 C.F.R. § 100.52. As noted above, those provisions define
15 “contribution” in relevant part as including “any gift, subscription, loan, advance, or deposit of
16 money or anything of value.” 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52(a). The *noscitur a sociis*
17 canon provides the term “gift” should be read as referring only to items that are similar to other
18 entries in the list. A signed petition containing its signatories’ contact information is a facially
19 expressive act of political speech and materially distinguishable from a “subscription, loan,
20 advance, or deposit.” *E.g., Yates v. United States*, 135 S. Ct. 1074, 1085 (2015) (defining “tangible
21 object” narrowly in light of the definition’s other components); *Gustafson v. Alloyd Co.*, 513 U.S.
22 561, 575 (1995) (defining “communication” narrowly in light of the definition’s other
23 components); *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 36 (1990) (defining “reporting and
24 recordkeeping requirements” narrow in light of the definition’s other components). Since a
25 petition cannot be deemed a “gift,” it does not constitute a “contribution” and is therefore not
26 subject to contribution limits.



1 **Second**, even if the signed petition constitutes a “gift,” it still does not satisfy the
2 definition of “contribution” because it does not constitute “anything of value.” 52 U.S.C. §
3 30101(8)(A); 11 C.F.R. § 100.52(a). Both drafts claim, “The compiled contact information in RFR’s
4 petition is a thing of value” for purposes of federal contribution limits. Draft A at 5, line 20; Draft
5 B at 6, line 6. The regulation defining “thing of value” provides, “[T]he provision of **any goods or**
6 **services** without charge or at a charge that is less than **the usual and normal charge** for such
7 goods or services is a contribution.” *Id.* § 100.52(d)(1) (emphasis added). As an initial matter, a
8 list of signatories accompanying a petition is neither a “good” nor a “service” within the ordinary
9 understanding of those terms. Moreover, under this regulation’s plain terms, a good or service
10 must carry a usual and normal charge” for it to constitute “anything of value” and qualify as a
11 contribution. *Id.*; see, e.g., *Preston v. Leake*, 743 F. Supp. 2d 501, 511 (E.D.N.C. 2010) (stating, in
12 construing a comparable state campaign finance provision, “[p]roviding a service to a candidate
13 for free **when one usually charges for it** is an in-kind contribution”), *aff’d*, 660 F.3d 726 (4th Cir.
14 2011). Signed petitions are customarily provided to public figures free of charge; they are not
15 regarded as “goods” or “services” for which the recipient must typically pay. The drafts point out
16 the Commissions’ regulations include “membership lists” and “mailing lists” as “[e]xamples of . . .
17 goods or services” with monetary value. Draft A at 7, lines 4-7; Draft B at 7, lines 4-7. The
18 signatories to a petition, however, are neither a “membership list[]” nor “mailing list[],” any more
19 than signatures and return addresses on holiday greeting cards. *Cf.* CLC Comment at 2-3.

20
21 At a minimum, it is far from clear the statutory and regulatory definitions of “contribution”
22 include a political petition to a public figure, regardless of whether that petition—like most
23 petitions—identifies its signatories or was compiled through an organizer’s expenditure of funds.
24 To the extent any ambiguity or uncertainty exists, the constitutional avoidance canon, *Nat’l Labor*
25 *Relations Bd. v. Catholic Bishop of Chicago*, 440 U.S. 490, 507 (1979); the major questions doctrine,
26 *W. Va. v. EPA*, 142 S. Ct. 2587, 2614 (2022); and the rule of lenity, *Cleveland v. United States*, 531



1 U.S. 12, 25 (2000), all counsel against such a sweepingly broad interpretation that would directly
2 target pure political speech. For these reasons, the Commission should revise Draft B to specify
3 RFR’s petition, with the integral inclusion of the names and contact information for its signatories
4 at the end, does not constitute a “contribution” and therefore is not subject to contribution limits.
5

6 Neither of the authorities the Drafts cite is inapposite. In *FEC v. Int’l Funding Institute*, 969
7 F.2d 1110, 1116 (D.C. Cir. 1992) (en banc), *cited by* Draft A, page 6, lines 8-10; Draft B, page 6,
8 lines 16-17 though page 7, line 1, for example, the court was discussing the importance of a
9 political committee’s **contributor list**—a list of people who had made financial contributions to
10 the committee. Here, in contrast, RFR is simply compiling a Petition; a person may sign without
11 either making a contribution or even expressing willingness to ever make a contribution. And RFR
12 is broadly advertising opportunities to sign the petition through television and the Internet,
13 among a range of other means. Moreover, *Int’l Funding Institute* held only the FEC could prohibit
14 a private entity from reselling contributor information it obtained from the campaign finance
15 disclosure reports political committees file with the FEC. 969 F.2d at 1113, 1118.
16

17 Likewise, *Federal Election Commission’s Former Employees Committee*, A.O. 1979-18, at
18 2 (June 5, 1979), *cited by* Draft A, page 7, lines 8-12; Draft B, page 7, lines 13-15 through page 8,
19 lines 1-2, concluded a political committee’s **contributor list** “may, in certain circumstances,
20 constitute a contribution under the act.” The Commission concluded the contributor list was
21 “analogous to a ‘membership list commonly offered or used commercially.’” *Id.* (quoting 11 C.F.R.
22 § 100.4(a)(1)(iii)(A). Neither A.O. 1979-18 nor any other advisory opinions, however, address the
23 particular factual situation here—whether a signed political petition delivered to its express
24 intended recipient may be treated as a political contribution. Unlike the lists in *Int’l Funding*
25 *Institute* and A.O. 1979-18, the petition’s signatories are just that—signatories to a political
26 statement—not contributors. Likewise, CLC’s comment dismisses the petition as “essentially a



1 mailing list of voter information,” CLC Comment at 2-3. Both drafts as well as the CLC comment
2 err by failing to recognize the important distinction between a petition’s signatories and a
3 commercially purchased or sold contributor list or other mailing list. Federal campaign finance
4 law cannot be construed as directly or indirectly prohibiting signatories to a petition to a potential
5 candidate from identifying themselves or inviting a response by providing contact information.
6 For these reasons, it is materially incorrect for the drafts to contend RFR has “not provided . . .
7 information that would materially distinguish the information it proposes to provide to Governor
8 DeSantis from that previously considered by the Commission.” Draft A at 13, lines 7-9; Draft B at
9 12, lines 13-15.

10 Conclusion

11
12 For these reasons, RFR respectfully requests the Commission adopt a modified version of
13 Draft B which would allow it to provide its signed petition with its signatories’ contact information,
14 along with any updates, to Governor DeSantis before he has begun testing the waters, while he
15 is testing the waters, and after he becomes a federal candidate.

16
17 Respectfully submitted,

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19 _____
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