FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: **The Commission**

FROM: **Office of the Commission Secretary** VFV

DATE: **September 28, 2022**

SUBJECT: **AO 2022-12 (Ready for Ron) Third Requestor's Counsel Comment on Draft C**

The following is a third requestor's counsel comment on AO 2022-12 (Ready for Ron) Draft C. This item is on the agenda for the Open Meeting of September 29, 2022.

Attachment

September 28, 2022

Office of the General Counsel
Attn: Lisa Stevenson
Federal Election Commission
1050 First Street N.E.
Washington, D.C. 20463
ao@fec.gov

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

Dear Ms. Stevenson,

On behalf of Ready for Ron ("RFR"), we respectfully request the opportunity to appear before the Commission at a public hearing concerning the Commission's new draft advisory opinion, Draft C, in the above-captioned matter. Draft C would prohibit Ready for Ron from providing a signed petition to Governor Ron DeSantis to encourage him to seek the Republican nomination for President. The Commission should not adopt such an unprecedented, sweeping prohibition on pure political speech, much less without public consideration of the critical barriers posed by judicial precedent, administrative precedent, legislative history, and the Constitution.

At the Commission's public hearing on September 15, 2022, Commissioner Weintraub asked RFR if any precedent supported its position. In response, RFR has provided a 24-page filing setting forth the sweeping range of precedential barriers to the Commission's proposal:

- the U.S. Court of Appeals for the D.C. Circuit's ruling in *Federal Election Comm'n v. Machinists Non-Partisan Political League*, 655 F.2d 380, 382 (D.C. Cir. 1981), holds the Commission lacks power to regulate draft efforts. That case further emphasizes the Commission may not treat prospective candidates as "candidates," meaning disbursements to them may not be regulated as "contributions."

- the Commission has repeatedly approved the activities of ActBlue, *ActBlue*, A.O. 2006-30, at 2 (Nov. 9, 2006), specifically including its various funds to draft particular candidates, *ActBlue*, A.O. 2008-10 (Jan. 15, 2015). ActBlue collects billions of dollars in contributions for Democratic candidates from millions of contributors and transmits to those candidates both statutorily required identifying information about the contributors, 52 U.S.C. § 30102(b)(1)-(2); 11 C.F.R. § 102.8(a)-(b), as well as additional, non-required contact information for them. Under these precedents, RFR would be permitted to collect identifying and contact information about its petition signatories if it required them to make a conduit contribution to a "Draft Fund" for Governor DeSantis as a condition for signing the petition. The Commission may not bar RFR's

political expression simply because it does not charge signatories to funnel their contact information through a pay-to-play scheme.

- Congress repeatedly refused to amend the Federal Election Campaign Act's definition of "contribution" to include gifts made for the purpose of influencing someone to become a candidate, H.R. 1818, 106th Cong., 1st Sess., § 106 (May 14, 1999); S. Comm. on Rules & Admin., *Hearings on Proposed Amendments to the Federal Election Campaign Act of 1971*, S. Hrg. 99-709, at 122, 303, App. 1F, at 272 (Nov. 5, 1985; Jan. 22 & Mar. 27, 1986) (reprinting S. 1891, 99th Cong., § 3(a), 3(d) (Dec. 3, 1985) (amending 2 U.S.C. §§ 431(8)(A)(i), 431(9)(A)(i))). The FEC had repeatedly asked Congress—unsuccessfully—to make such changes. *See, e.g.*, *See* FEC, *Legislative Recommendations*—1987, *reprinted in* House Subcomm. on Elections, Comm. on House Admin., *Hearings on Campaign Finance*, 100th Cong., 1st Sess., at 869 (May 21, June 2, June 16, June 30, and July 14, 1987).

- the Commission deadlocked in *Senate Majority PAC*, A.O. 2015-09, at 1-2 (Nov. 13, 2015), concerning the ability of a prospective candidate to form a single-candidate SuperPAC, decide who runs it, develop campaign strategies and messaging with that SuperPAC, and even film media clips concerning the prospective candidate's achievements and qualifications for that SuperPAC to use. There is no basis for the Commission to bar a political committee from providing a signed draft petition to a prospective candidate while declining to prohibit such extensive cooperation between single-candidate committees and prospective candidate they formed to assist.

- the Commission overlooked the fundamental distinctions between a signed petition and the distribution, mailing, and contributor lists its precedents discuss. Petitions are core political expression, *Meyer v. Grant*, 486 U.S. 414, 421 (1988), including the decision to reveal one's identity, *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342 (1995). They also involve voluntary political association at the affirmative request of its signatories, *Citizens Against Rent Control / Coal. For Fair Hous. v. Berkeley*, 454 U.S. 290, 294 (1981); and implicate Governor DeSantis' right to receive the petition and be able to contact its signatories, *See Va. State Bd. of Pharmacy v. Va. Citizens Cons. Council*, 425 U.S. 748, 757 (1976).

These are directly pertinent issues and authorities responsive to Commissioner Weintraub's question which the Commission did not have the opportunity to discuss and assess during the previous hearing. Allowing RFR to appear at a public hearing concerning Draft C "would help ensure the Commission fully considers all significant aspects of this proposed . . . activity before voting on the advisory opinion," while simultaneously "promot[ing] transparency and fairness." Fed. Election Comm'n, *Notice of New Advisory Opinion Procedures and Explanation of Existing Procedures*, 74 Fed. Reg. 32,160, 32,160 (July 7, 2009). A public hearing on Draft C would also enable RFR to "answer directly Commissioners' questions." *Id.*

In short, the Commission is contemplating a direct prohibition on pure political speech. In response to Commissioner Weintraub's inquiry, RFR has discovered Draft C faces a wide range of substantial obstacles from binding judicial precedent, statutory legislative history, the Commission's own previous advisory opinions, and constitutional restrictions. These important matters warrant a full public airing.

Respectfully submitted,

Dan Backer, Esq.
Lilian Rodriguez-Baz, esq.
Chief Legal Counsel, Ready for Ron
66 W Flagler Street STE 900
Miami, FL 33130
(561) 291-9897
Lilian@ReadyforRon.com