



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**ADVISORY OPINION 2015-03 (DEMOCRACY RULES)
STATEMENT OF COMMISSIONER LEE E. GOODMAN**

Technological innovation should not need government permission. When innovators do request the FEC's regulatory approval for their ideas, we should find a way to embrace rather than deter these efforts. To its credit, the Commission historically supported new technological platforms that provide citizens political information and help them participate in democracy. Unfortunately, today's three-to-three vote on the advisory opinion requested by Democracy Rules is another example of opposition within the Commission to democratizing technological innovations.

Today, more than ever before, Americans are developing and deploying new technology to empower individual citizens to participate in democracy. As a product of this innovative spirit, people from all walks of life are now able to easily communicate and associate with like-minded individuals, efficiently gather information about their choice of democratic causes to support, and quickly transmit financial resources to their favorite candidates and committees.

Democracy Rules developed a new technological platform that allows citizens to associate around shared ideas and to participate in civic activities. For a small fee, Democracy Rules offers citizens a virtual meeting place to consult with others about important public policies and to develop a group recommendation about non-profit organizations or candidates deserving of their individual support. Once the group, under the guidance of Democracy Rules, decides to recommend a federal candidate to its participants, each participant can voluntarily choose to contribute to the recommended candidate. Democracy Rules' principal services are providing the platform, identifying potential organizations or candidates who match the participants' stated philosophical interests, and transmitting contributions as directed by each participant. By providing citizens a virtual meeting place to decide how best to support causes and candidates, Democracy Rules provides a valuable service to potential users at an affordable transaction fee.

As set forth in Draft D,¹ which I supported, Democracy Rules' matching service is analogous to others the Commission has approved under a long line of existing precedent.² For

¹ Agenda Document No. 15-38-D.

² See, e.g., Advisory Opinion 2014-07 (Crowdpac); Advisory Opinion 2012-22 (skimmerhat); Advisory Opinion 2011-19 (GivingSphere); Advisory Opinion 2011-06 (Democracy Engine); Advisory Opinion 2006-08 (Brooks).

example, the Commission has acknowledged the benefits afforded by the online service skimmerhat.com, a service that matched citizens with candidates who shared their philosophical preferences and assisted them by transmitting their contributions to those matched candidates.³ And in a recent opinion involving Crowdpac, the Commission affirmed that a corporation could use their website to guide citizens toward candidates of likely interest to them and then aid citizens seeking to contribute to such candidates.⁴ While the matching or candidate recommendation methods vary (including matching surveys,⁵ algorithms,⁶ and/or objective and subjective criteria applied by the service provider⁷), all incorporate a process by which the service provider assists the citizen-user in identifying a candidate who matches the citizen's stated philosophical or other criteria. Democracy Rules' proposal accords with these precedents.

Furthermore, each citizen-user of Democracy Rules' service is free to contribute or not to contribute to a federal candidate recommended through the Democracy Rules' method. Because citizens voluntarily decide to use Democracy Rules' service, pay a fee for the use of the service, and choose to contribute to candidates recommended by the service, citizen use of this technology platform in no way violates the corporate contribution ban or threatens to corrupt politicians. Indeed, Democracy Rules' legal compliance appeared to be a foregone conclusion.

Some commissioners rejected this straightforward application of existing precedent. Troublingly, they did so even after Democracy Rules repeatedly revised its request to meet every concern raised by commissioners over several meetings.⁸ Thus, not only did commissioners break from historical precedent and set back the march of technological innovation, they also unfairly moved the goal posts on a citizen requestor. Obtaining an advisory opinion should not be so difficult, particularly for a citizen requestor who went above and beyond the legal requirements to meet every concern articulated by all commissioners.

³ Advisory Opinion 2012-22 (skimmerhat).

⁴ Advisory Opinion 2014-07 (Crowdpac).

⁵ Advisory Opinion 2012-22 (skimmerhat).

⁶ Advisory Opinion 2014-07 (Crowdpac).

⁷ Advisory Opinion Request 2015-03 (Democracy Rules).

⁸ These changes were unnecessary. I would have supported Draft B, which made no reference to the changes later submitted by the requestor.

But Democracy Rules' effort has not been for naught. It obtained the opinion of three Commissioners that its service complies with the Federal Election Campaign Act and Commission regulations⁹ and, moreover, the organization is entitled to the protection of Advisory Opinions 2012-22 (skimmerhat) and Advisory Opinion 2014-07 (Crowdpac) just the way it is.



Lee E. Goodman
Commissioner

Sept. 17, 2015
Date

⁹ Draft D was careful to limit its legal analysis to the Federal Election Campaign Act and Commission regulations. As stated in Draft D, “The Commission expresses no opinion regarding any implications of the requestor’s proposal under the Internal Revenue Code or any other state or federal law because those issues are outside the Commission’s jurisdiction.” Draft D, Agenda Document No. 15-38-D, at p. 8.