



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 3, 2022

**MEMORANDUM**

To: The Commission

Through: Alec Palmer  
Staff Director

From: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Dayna C. Brown *PCO for DCB*  
Assistant Staff Director  
Audit Division

Nicole Burgess *NB*  
Audit Manager

By: Robert Morcomb *NB for RM*  
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Democracy Engine, Inc., PAC (A19-18)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to Democracy Engine, Inc., PAC (DEI) on October 15, 2021 (see attachment). In response to the DFAR, DEI requested an audit hearing on November 1, 2021 and the Commission granted the request on November 5, 2021. The audit hearing was held on December 2, 2021.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR.

In response to the DFAR, DEI provided additional information, as noted below.

**Finding 1. Failure to Maintain a Bank Depository**

In response to the DFAR, DEI acknowledged that Commission regulations appear to require that each political committee must maintain a depository account and

asked that the Commission determine that the maintenance of an account without any funds by a committee which has no receipts or disbursements is unnecessary and impractical. DEI stated “it has been our experience that banks are less willing to allow their clients to maintain dormant or empty accounts and will force close the account after a period of inactivity.” Further DEI stated “it makes no sense to require DEI to reopen an account until and unless it has funds to deposit or spend.” DEI noted that it reopened an account in 2019 and has been depositing funds into and making expenditures from that account. With regard to its 2018 cycle activity, DEI indicated that it amended its reports to “properly reflect the activities as memo entries since none of the earmarked contributions passed through a bank account of DEI” and stated that, “[i]n hindsight, even this level of reporting may have been more than necessary since DEI never ‘handled’ any of the contributions and donors used a for-profit vendor to process and forward the contributions to the candidates.”

The Audit staff does not agree with DEI’s assessment of its reporting requirements, since the earmarked contributions were in fact deposited and processed through a bank account, albeit by Democracy Engine, LLC.’s (DELLC’s) depository rather than a DEI depository. The original reporting of deposited earmarked contributions is a more accurate representation of DEI’s financial activity.

During the audit hearing, the Treasurer stated that “through 2018, the PAC has never made a contribution to a candidate independently of an earmark and the only funds the PAC has had that were for its own use was an initial \$5,000 donation deposited into the Citibank account to cover a handful of operating expenses.” The Treasurer further stated the funds were exhausted by 2012, and sometime after that the bank forcibly closed the account.

The Audit staff noted during the audit hearing that DEI received contributions during the audit period for potential nominees and, as such, the nominee funds should have been deposited into a DEI bank account and not a DELLC bank account. The Treasurer acknowledged that it was factually correct that DEI received limited contributions for nominee funds. In a response subsequent to the audit hearing, counsel for DEI detailed that DEI received nominee funds totaling approximately \$377,000<sup>1</sup>. Because the DELLC account held the “nominee funds” that were reported on DEI’s disclosure reports, the DELLC account served as the undesignated campaign depository of DEI.<sup>2</sup> As such, the Audit staff recommends that the Commission find that DEI failed to maintain a bank depository for earmarked contributions and disbursements.

### **Finding 2. Inaccurate Disclosure of Statement of Organization**

This matter was not addressed in DEI’s response to the DFAR nor was it discussed during the audit hearing.

The Audit staff recommends that the Commission find that during the audit period, DEI inaccurately disclosed as its depository of record, a depository which was closed in 2012.

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<sup>1</sup> This amount could not be verified by the Audit staff, see Finding 3.

<sup>2</sup> See the Office of General Counsel’s LRA 1110 Democracy Engine, Inc., PAC ADRM Comments dated January 3, 2022.

**Finding 3. Failure to Maintain Records Sufficient to Verify Reported Activity**

In response to the DFAR, DEI objected to the DFAR's assertion that it failed to maintain accounts sufficient to verify reported activity. Further, DEI stated DELLC has provided the Audit Division with substantial documentation to document the transactions that have been disclosed as conduit activity.

During the audit hearing, the Treasurer stated that DEI provided everything that was requested by the Audit staff, from detailed reports by DELLC of every donor transaction processed and disbursed, to DELLC bank account statements through which the donor funds flowed.

Although DEI provided DELLC documents, because DEI's financial activity was processed through DELLC's bank account, the funds were combined with DELLC's other activity, including that of other DELLC clients. As such, the Audit staff maintains that it is unable to verify the accuracy and completeness of DEI's reported receipts and disbursements. The Audit staff recommends that the Commission find that DEI failed to maintain records, including bank records, to provide sufficient detail that would allow its reports filed with the Commission to be reconciled and verified for accuracy and completeness.

The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

If this memorandum is approved, the Proposed Final Audit Report will be prepared and circulated within 30 days of the Commission's approval.

**If this Audit Division Recommendation Memorandum is not approved on a tally vote, Directive No. 70 states that the matter will be placed on the next regularly scheduled open session agenda.**

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Robert Morcomb or Nicole Burgess at 694-1200.

Attachments:

- Draft Final Audit Report of the Audit Division on the Democracy Engine, Inc., PAC
- LRA 1110 Democracy Engine, Inc., PAC ADRM Comments dated January 3, 2022

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on the Democracy Engine, Inc., PAC (January 1, 2017 - December 31, 2018)

## Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

## Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

## About the Committee (p. 2)

The Democracy Engine, Inc., PAC is a separate segregated fund - corporation. It is a non-qualified committee and is headquartered in Washington, DC. For more information, see the chart on the Committee Organization, p. 2.

## Financial Activity (p. 2)

|  |                     |
|--|---------------------|
| • <b>Receipts</b>                                |                     |
| ○ Contributions from Individuals                 | \$ 5,922,872        |
| ○ Offsets to Operating Expenditures              | 284,717             |
| <b>Total Receipts</b>                            | <b>\$ 6,207,589</b> |
| • <b>Disbursements</b>                           |                     |
| ○ Contributions to Federal Candidates/Committees | \$ 5,921,334        |
| ○ Operating Expenditures                         | 284,717             |
| <b>Total Disbursements</b>                       | <b>\$ 6,206,051</b> |

## Findings and Recommendations (p. 3)

- Failure to Maintain a Bank Depository (Finding 1)
- Inaccurate Disclosure of Statement of Organization (Finding 2)
- Failure to Maintain Records Sufficient to Verify Reported Activity (Finding 3)

<sup>1</sup> 52 U.S.C. §30111(b).



# **Draft Final Audit Report of the Audit Division on the Democracy Engine, Inc., PAC**

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(January 1, 2017 - December 31, 2018)

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# Part I

## Background

### Authority for Audit

This report is based on an audit of the Democracy Engine, Inc., PAC (DEI), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

### Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the disclosure of individual contributors' occupation and name of employer;
2. the consistency between reported figures and bank records;
3. the completeness of records; and
4. other committee operations necessary to the review.

### Limitations

The Audit staff was not able to perform a reconciliation of DEI's bank records to its disclosure reports filed with the Commission because the DEI did not deposit funds nor make disbursements from a committee depository (see Finding 1 – Failure to Maintain a Bank Depository). Without bank records, the Audit staff was unable to verify the accuracy and completeness of the DEI disclosure reports filed during the audit period (see Finding 3 – Failure to Maintain Records Sufficient to Verify Reported Activity). In addition, because DEI filed amended reports of its financial activity during this election cycle, the Audit staff sought to perform an analysis of the original reports as compared to the bank records but was unable to do so.

## Part II

### Overview of Committee

#### Committee Organization

|  |  |
|--|--|
| <b>Important Dates</b>                           |  |
| • Date of Registration                           | October 13, 2009                       |
| • Audit Coverage                                 | January 1, 2017 - December 31, 2018    |
| <b>Headquarters</b>                              |  |
| Washington, DC                                   |  |
| <b>Bank Information</b>                          |  |
| • Bank Depositories <sup>2</sup>                 | None                                   |
| • Bank Accounts <sup>2</sup>                     | None                                   |
| <b>Treasurer</b>                                 |  |
| • Treasurer When Audit Was Conducted             | Jonathan Zucker                        |
| • Treasurer During Period Covered by Audit       | Jonathan Zucker (10/13/2009 – Present) |
| <b>Management Information</b>                    |  |
| • Attended FEC Campaign Finance Seminar          | No                                     |
| • Who Handled Accounting and Recordkeeping Tasks | Treasurer                              |

#### Overview of Financial Activity (Audited Amounts)<sup>3</sup>

|  |                     |
|--|---------------------|
| <b>Cash on hand @ January 1, 2017</b>            | <b>\$ 276</b>       |
| <b>Receipts</b>                                  |                     |
| ○ Contributions from Individuals                 | 5,922,872           |
| ○ Offsets to Operating Expenditures              | 284,717             |
| <b>Total Receipts</b>                            | <b>\$ 6,207,589</b> |
| <b>Disbursements</b>                             |                     |
| ○ Contributions to Federal Candidates/Committees | 5,921,334           |
| ○ Operating Expenditures                         | 284,717             |
| <b>Total Disbursements</b>                       | <b>\$ 6,206,051</b> |
| <b>Cash on hand @ December 31, 2018</b>          | <b>\$ 1,814</b>     |

<sup>2</sup> See Finding 1 – Failure to Maintain a Bank Depository.

<sup>3</sup> The amounts are as reported on DEI's disclosure reports. The Audit staff was not able to verify the accuracy and completeness of the amounts given DEI's lack of a bank depository and corresponding bank records. See Limitations in Part I and Finding 1 – Failure to Maintain a Bank Depository.



## Part III

# Summaries

### Findings and Recommendations

#### **Finding 1. Failure to Maintain a Bank Depository**

DEI failed to maintain a committee bank depository (depository). DEI also failed to deposit receipts received and disbursements made, as required by federal statute, using a committee-maintained depository. Instead, all DEI's receipts and disbursements were processed through the depository of Democracy Engine, LLC<sup>4</sup> (DELLC). DEI's activity was processed through DELLC's transfer account (Transfer Account) along with the activity of other DELLC clients, thus combining DEI's federal activity with the activity of other political and non-political entities.

During audit fieldwork, DEI provided bank statements showing that DEI established its own depository on September 18, 2019 and provided an April 2020 bank statement demonstrating that DEI now processed activity through this depository. In response to the Interim Audit Report recommendation, DEI stated that it was filing amendments to "correctly characterize [its] activity as non-depository bundled contributions for which [DEI] served as a conduit." DEI amended all its reports for the 2018 cycle to reflect all activities as "memo entries." The Audit staff maintains that DEI failed to maintain a bank depository for earmarked contributions and disbursements. (For more detail, see p. 5.)

#### **Finding 2. Inaccurate Disclosure of Statement of Organization**

DEI disclosed a closed depository on its amended Statements of Organization during the audit period. DEI filed an amended Statement of Organization on September 19, 2019<sup>5</sup>, disclosing Amalgamated Bank as its committee depository. In response to the Interim Audit Report recommendation, DEI acknowledged that it should have filed a "miscellaneous disclosure" with the Commission that its depository institution had forced closed its account due to inactivity. However, DEI believed that no additional information was required until a new depository account was established in September 2019, at which time it filed an amendment to its Statement of Organization. (For more detail, see p. 8.)

#### **Finding 3. Failure to Maintain Records Sufficient to Verify Reported Activity**

DEI failed to maintain sufficient records, specifically bank records (see Finding 1 - Failure to Maintain a Bank Depository), to provide sufficient detail that would allow its

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<sup>4</sup> Democracy Engine, LLC (DELLC) is the sole stockholder of Democracy Engine, Inc. Democracy Engine, Inc. PAC (DEI), the subject of this audit report, discloses Democracy Engine, Inc. as a connected organization on its Statement of Organization.

<sup>5</sup> DEI filed this amended Statement of Organization prior to the October 2, 2019 audit notification.

reports filed with the Commission to be reconciled and verified for accuracy and completeness. As a part of standard audit procedures, total reported receipts and disbursements, as well as reported cash balances, are verified through a review of bank records. However, since DEI did not maintain its own depository and its activity was processed with other DELLC clients, reported receipts totaling \$6,207,589 and reported disbursements totaling \$6,206,051, could not be verified for accuracy and completeness. In response to the Interim Audit Report recommendation, DEI stated that “it objects to this finding and characterization that it failed to maintain sufficient records to verify reported activity.” By filing the amendments described in Finding 1, DEI believes that this finding is “moot and that sufficient records have been provided by DELLC to verify the conduit activity.” (For more detail, see p. 9.)

## Part IV

# Findings and Recommendations

### Finding 1. Failure to Maintain a Bank Depository

#### Summary

DEI failed to maintain a committee bank depository (depository). DEI also failed to deposit receipts received and disbursements made, as required by federal statute, using a committee-maintained depository. Instead, all DEI's receipts and disbursements were processed through the depository of Democracy Engine, LLC<sup>6</sup> (DELLC). DEI's activity was processed through DELLC's transfer account (Transfer Account) along with the activity of other DELLC clients, thus combining DEI's federal activity with the activity of other political and non-political entities.

During audit fieldwork, DEI provided bank statements showing that DEI established its own depository on September 18, 2019 and provided an April 2020 bank statement demonstrating that DEI now processed activity through this depository. In response to the Interim Audit Report recommendation, DEI stated that it was filing amendments to "correctly characterize [its] activity as non-depository bundled contributions for which [DEI] served as a conduit." DEI amended all its reports for the 2018 cycle to reflect all activities as "memo entries." The Audit staff maintains that DEI failed to maintain a bank depository for earmarked contributions and disbursements.

#### Legal Standard

**A. Depositories.** Each political committee shall designate one or more state banks, federally chartered depository institutions (including a national bank), or depository institutions, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. Each political committee shall maintain at least one checking account or transaction account at one of its depositories. 52 U.S.C. §30102(h)(1) and 11 CFR §103.2.

**B. Deposit of Receipts and Disbursements.** All receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR §103.2, except that any contribution may be, within 10 days of the treasurer's receipt, returned to the contributor without being deposited. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. A committee shall make all disbursements by check or similar drafts drawn on an account at its designated campaign depository, except for expenditures of \$100 or less made from a petty cash fund maintained pursuant to 11 CFR §102.11. Funds may be transferred from the depository for investment purposes but shall be returned to the depository before such funds are used to make expenditures. 11 CFR §103.3(a).

<sup>6</sup> Democracy Engine, LLC (DELLC) is the sole stockholder of Democracy Engine, Inc. Democracy Engine, Inc. PAC (DEI), the subject of this audit report, discloses Democracy Engine, Inc. as a connected organization on its Statement of Organization.

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff learned that DEI did not maintain its own bank depository (see Limitations, p.1.), as the Citi[bank] account, disclosed as the depository of record on Statements of Organization filed between October 13, 2009 and September 18, 2019, was closed in January 2012<sup>7</sup>. DEI's financial activity was instead processed through the depository (the Transfer Account) of Democracy Engine, LLC (DELLC). DELLC is a for-profit limited liability company whose principal business is the processing and distribution of web-based donations to charities, non-profits and political committees, including candidate committees at the local, state and federal level. DELLC's Transfer Account processed DEI's activity, as well as the activity of its other clients, thus combining DEI's federal activity with the activity of other political and non-political entities.

During audit fieldwork, DEI's representative indicated, in a notarized affidavit, that "effective on or around March 1, 2020, earmarked donations to [DEI] will be processed by DELLC via a [DEI] owned merchant account and deposited to a [DEI] owned bank account (the Amalgamated Bank account on [DEI's] current Form 1); distributions will be made from the [DEI] owned account in the form of checks and ACH transfers. DELLC will still serve as a vendor to the PAC, but the funds will now be segregated from other DELLC donation volume." DEI's representative submitted an April 2020 bank statement demonstrating that effective that month, DEI processed its activity through this bank account.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the lack of a committee depository with DEI's representative during the exit conference.

In response to the exit conference, DEI representatives submitted a response indicating that it had no expenditures other than those directly related to earmarked contributions after January 2012. DEI representatives stated that 11 CFR §100.6 does not require that earmarked contributions, for which a committee serves as a conduit or intermediary, pass through the committee's depository account. As such, the contributions were processed and distributed by DELLC in accordance with the services agreement between DELLC and DEI. The representatives also noted it was their understanding that it was common practice for political committees, without financial activity, but which remain active and file reports with the Commission, not to maintain a depository account with a zero balance given the practice of financial institutions to assess fees even on zero balance accounts. Further, if it intended to receive any contributions or make any expenditures that required a depository account, it would have immediately reopened its account at Citibank or opened a new account and amended its Statement of Organization as it did in September 2019 in anticipation of expenditures for merchant account fees from a new merchant processor. DEI representatives noted that the Amalgamated Bank account was opened prior to any notice of the audit.

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<sup>7</sup> As noted on a bank statement provided to Audit Staff by DEI representatives, this account was closed in January 2012.

Although DEI cited 11 CFR §100.6, which pertains to connected organizations, the Audit staff noted that Democracy Engine, Inc. is DEI's connected organization, as disclosed on each Statement of Organization DEI has filed, whereas DEI itself is a political committee, registered with the Commission since October 2009. The statute and regulations for political committees require the use of a campaign depository as cited above. The Audit staff further noted that DEI's disclosure reports filed during the audit period disclosed earmarked contributions on Schedules A (*Itemized Receipts*) and B (*Itemized Disbursements*) as though the contributions passed through its depository. DEI did not report the earmarked contributions as memo entries per 11 CFR § 110.6(c)(1)(iv).

The Interim Audit Report recommended that DEI provide any additional comments it deemed necessary with respect to this matter.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, DEI stated, "although the Commission's regulations at 11 C.F.R. § 103.2 appear to "require" the maintenance of a campaign depository, such requirement should not be placed upon a dormant committee that has no receipts or disbursements and no cash on hand. DEI further stated that, since none of its conduit activities passed through a committee depository account, DEI should have disclosed all such activities during the 2018 election cycle as memo entries in accordance with 11 CFR § 110.6(c)(1)(v). DEI amended all its disclosure reports for the 2018 cycle to reflect all its activity as "memo entries" with \$0 in receipt or disbursement activity.

The Interim Audit Report did not recommend that DEI amend its reports; however, DEI indicated that it did so to correctly characterize its activity as "non-depository bundled contributions for which DEI served as conduit." DEI amended its reports to change its entries from deposited earmarked contributions to undeposited earmarked contributions (memo entries).

Commission regulations require that conduits must comply with special reporting rules, which vary depending on whether the contribution was deposited in the conduit's bank account or was passed on directly to the recipient committee. In accordance with 11 CFR § 110.6(c)(1)(v), if the committee deposits the earmarked contribution, the committee reports the earmarked contributions on Schedules A (*Itemized Receipts*) and B (*Itemized Disbursements*). If the committee forwards the contribution without depositing it first, the committee must itemize the same information in memo entries on Schedules A and B. In the case of DEI, the earmarked contributions were not merely forwarded to recipient committees, but were first deposited, not in a DEI depository as required by 11 CFR §103.2, but instead in the DELLC depository. This was done, as noted by DEI in its notarized affidavit, in accordance with its service agreement. In addition, DEI's response to the Interim Audit Report, stated that, "All funds received and disbursed in connection with this conduit activity was done through credit card processing and DEI utilized a third-party vendor, [DELLC], to process the credit card contributions to each benefiting committee that received contributions in connection with its conduit fundraising activities"

The Audit staff does not agree with DEI's assessment of its reporting requirements. The original reporting of the earmarked contributions as *deposited* earmarked contributions was a more accurate representation of DEI's financial activity. As currently disclosed on the amended reports filed in response to the Interim Audit Report, it appears that the earmarked contributions were not deposited and processed by a depository, when in fact they were, albeit by DELLC's depository rather than a DEI depository. The Audit staff maintains that DEI failed to maintain a bank depository for earmarked contributions and disbursements. DEI is a separate segregated fund, and therefore a political committee under the Act and is required to maintain at least one campaign depository and deposit all receipts and issue disbursements through such account, including earmarked contributions received in DEI's capacity as an intermediary or conduit, as required by the Act and Commission regulations. 52 U.S.C. § 30102(h)(1); 11 C.F.R. §§103.2 and 103.3.

## **Finding 2. Inaccurate Disclosure of Statement of Organization**

### **Summary**

DEI disclosed a closed depository on its amended Statements of Organization during the audit period. DEI filed an amended Statement of Organization on September 19, 2019<sup>8</sup>, disclosing Amalgamated Bank as its committee depository. In response to the Interim Audit Report recommendation, DEI acknowledged that it should have filed a "miscellaneous disclosure" with the Commission that its depository institution had forced closed its account due to inactivity. However, DEI believed that no additional information was required until a new depository account was established in September 2019, at which time it filed an amendment to its Statement of Organization.

### **Legal Standard**

**A. Registration.** A separate segregated fund must file a Statement of Organization no later than 10 days after establishment. 52 U.S.C. §30103(a).

**B. Contents.** The Statement of Organization shall include a listing of all banks, safety deposit boxes, or other depositories used by the committee. 52 U.S.C. §30103(b)(6).

### **Facts and Analysis**

#### **A. Facts**

DEI disclosed a closed depository on its Statements of Organization. DEI filed its original Statement of Organization with the Commission in October 2009, disclosing its depository as Citi[bank]. As previously noted in Finding 1 above, the Citibank depository was closed in January 2012.

<sup>8</sup> DEI filed this amended Statement of Organization prior to the October 2, 2019 audit notification.



From February 2012 through September 18, 2019, DEI continued to disclose Citibank as its depository<sup>9</sup>. DEI filed an amended Statement of Organization on September 19, 2019, to report Amalgamated Bank as its committee depository. Amalgamated Bank is also the depository used by DELLC.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with DEI's representative during the exit conference.

In response to the exit conference, DEI representatives submitted a response stating that as of January 2012, its depository account had a zero balance and while it had no specific recollection of requesting that the account be closed, noted that it may have made such a request after being informed that Citibank would continue to assess fees on the account. DEI representatives stated it was their understanding that it was common practice for political committees without financial activity, but which remain active and file reports with the Commission, not to maintain a depository account with a zero balance given the practice of financial institutions to assess fees, even on zero balance accounts.

As noted above, 52 U.S.C. §30103(b)(6) requires that committees disclose all bank accounts, safety deposit boxes, or other depositories used. The Audit staff noted that from February 2012 through September 18, 2019, including two amended Statements of Organization filed during the 2017-2018 election-cycle, DEI incorrectly disclosed Citibank as the depository it was using, although this depository was closed in January 2012.

The Interim Audit Report recommended that DEI provide any additional comments it deemed necessary with respect to this matter.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, DEI acknowledged that it should have filed a "miscellaneous disclosure" to notify the Commission that its depository institution had forced closed its account due to inactivity. Further, DEI stated it believed that no additional information was required until a new depository account was established in [September] 2019, at which time it filed an amendment to its Statement of Organization.

## **Finding 3. Failure to Maintain Records Sufficient to Verify Reported Activity**

### **Summary**

DEI failed to maintain sufficient records, specifically bank records (see Finding 1 - Failure to Maintain a Bank Depository), to provide sufficient detail that would allow its reports filed with the Commission to be reconciled and verified for accuracy and completeness. As a part of standard audit procedures, total reported receipts and disbursements, as well as reported cash balances, are verified through a review of bank records. However, since

<sup>9</sup> DEI filed two amended Statements of Organization during the audit period with the incorrect disclosure.

DEI did not maintain its own depository and its activity was processed with other DELLC clients, reported receipts totaling \$6,207,589 and reported disbursements totaling \$6,206,051, could not be verified for accuracy and completeness. In response to the Interim Audit Report recommendation, DEI stated that it “objects to this finding and characterization that it failed to maintain sufficient records to verify reported activity.” By filing the amendments described in Finding 1, DEI believes that this finding is “moot and that sufficient records have been provided by DELLC to verify the conduit activity.”

### **Legal Standard**

**Contents of Reports.** Each political committee required to file any report or statement shall maintain all records as follows:

- Maintain records, including bank records, with respect to the matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified and checked for accuracy and completeness;
- Preserve a copy of each report or statement required to be filed under 11 CFR parts 102 and 104, and all records relevant to such reports or statements; and
- Keep all reports required to be preserved under this section available for audit, inspection or examination by the Commission or its authorized representative(s) for a period of not less than 3 years after the report or statement is filed. 11 CFR §104.14(b)(1), (2) and (3).

### **Facts and Analysis**

#### **A. Facts**

The Audit staff could not verify the reported receipts and disbursements totaling \$6,207,589 and \$6,206,051, respectively, for accuracy and completeness, due to DEI’s failure to maintain sufficient records, specifically bank records.<sup>10</sup> Although DEI maintained an accounting of receipts and disbursements processed by DELLC, the Audit staff notes the regulations go beyond simple documentation requirements and specifically require that committee records provide information sufficient to verify, explain and check for accuracy and completeness of reports, in addition to the requirement to use a campaign depository as cited above. Use of a campaign depository ensures a clear financial trail of records linking receipts and disbursements to a third-party financial institution and provides a complete and verifiable disclosure history for audit purposes.

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the recordkeeping issue with the DEI representative during the exit conference. The DEI representative noted that DEI’s practice of using the DELLC bank account predated the audit period and offered to provide further detailed information related to the reported transfers to candidates. However, DEI’s representative stated that DEI would not be able to provide further information regarding receipts.

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<sup>10</sup> See Limitations, p. 1.



In response to the exit conference, DEI representatives provided the Audit staff with additional disbursement data files from DELLC. The data files contained information regarding the gross disbursement amounts paid to candidates and the portion of the disbursements attributed to DEI, as DEI's activity was often a subset of gross amounts paid to candidates/committees. The Audit staff was able to trace gross DEI transfer amounts and gross DEI check amounts on the DELLC bank statements. However, the Audit staff was not able to verify that the data files contained the entire population of DEI records since its activity was processed with other DELLC clients on the bank statements.

The Interim Audit Report recommended that DEI provide any additional comments it deemed necessary with respect to this matter.

### C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DEI stated that it "objects to this finding and characterization that it failed to maintain sufficient records to verify reported activity." By filing the amendments described in Finding 1, DEI believes that this finding is "moot and that sufficient records have been provided by DELLC to verify the conduit activity."

The Audit staff notes that DEI provided no additional documentation to verify the conduit activity. As noted in Finding 1, DEI filed amendments to change the characterization of its activity from deposited earmarked contributions (non-memo entries) to earmarked contributions forwarded directly to recipients without first being deposited (memo entries). The Audit staff reviewed these amendments and noted that, in addition to changing the entries from non-memo entries to memo entries, the amended reports also reflect the following changes:

- DEI reduced the total receipt and disbursement activity reported by \$107,049 and \$584,339, respectively.

The decrease in total reported receipts was due to the following:

| 2017 - 2018   | Amendments<br>filed March 23,<br>2021 | Audited Reports | Difference                      |
|---|---------------------------------------|-----------------|---------------------------------|
| Contributions from<br>Individuals<br>Schedule A, Line 11(a)           | \$6,006,306                           | \$5,922,872     | \$83,434<br>Increase            |
| Offsets to Operating<br>Expenditures (Refunds)<br>Schedule A, Line 15 | \$0.00                                | \$284,717       | (\$284,717)<br>Decrease         |
| Refunds of Federal<br>Contributions<br>Schedule A, Line 16            | \$94,234                              | \$0.00          | \$94,234<br>Increase            |
| <b>Net Decrease in Total<br/>Reported Receipts</b>                    |                                       |                 | <b>(\$107,049)<br/>Decrease</b> |

The decrease in total reported disbursements was due to the following:

| 2017 - 2018   | Amendments filed<br>March 23, 2021 | Audited Reports | Difference              |
|---|------------------------------------|-----------------|-------------------------|
| Operating Expenditures<br>Schedule B, Line 21(b)  | \$0.00                             | \$284,717       | (\$284,717)<br>Decrease |
| Contributions to Federal<br>Candidates<br>Schedule B, Line 23   | \$5,535,578                        | \$5,921,334     | (\$385,756)<br>Decrease |
| Refunds of Contributions to<br>Individuals/Persons other than<br>Political Committees<br>Schedule B, Line 28(a) | \$86,134                           | \$0.00          | \$86,134<br>Increase    |
| <b>Net Decrease in Total<br/>Reported Disbursements</b>   |                                    |                 | <b>\$584,339</b>        |

DEI did not provide an explanation for the change in disclosure amounts.

- Prior to the audit, DEI reported earmarked contributions from individuals received and forwarded totaling \$5,922,872 and \$5,921,334, respectively, a difference of \$1,538 (\$5,922,872 less \$5,921,334). The amended reports now reflect, via memo entries, that the earmarked contributions from individuals received and forwarded were \$6,006,306 and \$5,535,578<sup>11</sup>, respectively, a difference of \$470,728 (\$6,006,306 less \$5,535,578). DEI did not provide an explanation for the change in disclosure amounts.

Since DEI's financial activity was processed through the depository of DELLC and combined with DELLC's other activity<sup>12</sup>, the Audit staff could not verify the total original reported receipts and disbursements totaling \$6,207,589 and \$6,206,051, respectively. In addition, the Audit staff was also unable to verify the total reported amounts of the receipt and disbursement memo entries totaling \$6,100,540 and \$5,621,712, respectively, that DEI disclosed in the amended reports filed in response to the Interim Audit Report. The Audit staff maintains that DEI failed to maintain records, including bank records, to provide sufficient detail that would allow its reports filed with the Commission to be reconciled and verified for accuracy and completeness.

<sup>11</sup> Recipient committees disclosed on FEC reports approximately \$4.5 million from DEI as the conduit committee, per the Data Disclosure database. Without DEI bank records, the Audit staff is not able to determine if the material discrepancy is DEI's error.

<sup>12</sup> DELLC had bank receipt and disbursement activity of approximately \$71 million and \$68 million, respectively.



WASHINGTON, D.C. 20463

January 3, 2022

**MEMORANDUM**

TO: Patricia C. Orrock  
Chief Compliance Officer

Dayna C. Brown  
Assistant Staff Director  
Audit Division

FROM: Neven F. Stipanovic *NFS*  
Associate General Counsel  
Policy Division

Margaret J. Forman *MJF*  
Attorney  
Compliance Advice

SUBJECT: Audit Division Recommendation Memorandum on Democracy Engine, Inc., PAC (LRA 1110)

The Office of the General Counsel has reviewed the Draft Final Audit Report (“DFAR”) and Audit Division Recommendation Memorandum (“ADRM”) on Democracy Engine, Inc., PAC (“DEI”), the Audit Hearing of DEI, including supplementary information provided,<sup>1</sup> and DEI’s response to the DFAR. The DFAR and ADRM contain three findings: Failure to Maintain a Bank Depository (Finding 1), Inaccurate Disclosure of Statement of Organization (Finding 2), and Recordkeeping for Receipts and Disbursements (Finding 3). We concur with the findings, and comment on Findings 1 and 3. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

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<sup>1</sup> Procedural Rules for Audit Hearings, 74 Fed. Reg. 33,140, 33,142 (Jul. 10, 2009) *as corrected in* 74 Fed. Reg. 39535 (August 7, 2009).

**I. NOMINEE FUNDS DISCLOSED AS EARMARKED CONTRIBUTIONS HELD BY UNDESIGNATED CAMPAIGN DEPOSITORY OF DEMOCRACY ENGINE, INC., PAC (FINDINGS 1 AND 3)**

The Audit Division concludes, and we concur, that DEI failed to maintain and use a designated campaign depository during the audit period, as required under the Federal Election Campaign Act. 52 U.S.C. § 30102(h)(1); *see* DFAR at 5-8. As a result, the Audit Division cannot verify any of the disclosed activity on DEI’s campaign finance disclosure reports.

The Audit Division further concludes that DEI received earmarked contributions and made disbursements through an account owned and controlled by DEI’s affiliated LLC, Democracy Engine, LLC (DELLC). *See* DFAR at 6. In its response to the DFAR, DEI states that it never “handled” any of the contributions and that those contributions thus were, in effect, not earmarked contributions as DEI had disclosed on its campaign finance reports, but rather contributions processed by a vendor, DELLC. *See* DFAR Response at 1. However, in its supplementary response to the Commission following the audit hearing, DEI acknowledges that \$377,000 of the funds disclosed by DEI as earmarked funds for the 2018 election cycle were for “nominee funds in accordance with Advisory Opinion 2003-23 and subsequent opinions.” Email from Neil P. Reiff to Nicole Burgess, December 2, 2021 at 4:40PM. Nominee funds, disclosed as earmarked contributions, must be deposited in a campaign depository.<sup>2</sup> Here, the nominee funds were reported by DEI as earmarked contributions but the funds were deposited in the account of DELLC. Because the DELLC account held the “nominee funds” that were disclosed on the DEI’s campaign reports, the DELLC account served as the undesignated campaign depository of DEI. 52 U.S.C. § 30102(h)(1); 11 C.F.R. §§ 103.2, 103.3.

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<sup>2</sup> *See* Advisory Opinion 2003-23 (WE LEAD). Advisory Opinion 2006-30 (ActBlue); Advisory Opinion 2014-07 (CrowdPAC).