



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 23, 2020

MEMORANDUM

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Chief Compliance Officer

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FROM: Neven F. Stipanovic *NFS*
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SUBJECT: Interim Audit Report on Democracy Engine, Inc., PAC (LRA 1110)

The Office of the General Counsel has reviewed the proposed Interim Audit Report (“Proposed IAR”) on Democracy Engine, Inc., PAC (“DEI”). The IAR contains 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).¹ 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.

¹ We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed IAR. 11 C.F.R. §§ 2.4(a), (b)(6).

I. ALL POLITICAL COMMITTEES ARE REQUIRED TO MAINTAIN A CAMPAIGN DEPOSITORY (FINDING 1).

DEI is a separate segregated fund, and therefore a political committee under the Act. 52 U.S.C. 30101(4)(B); 11 C.F.R. § 100.5(b); *see* 52 U.S.C. § 30118(b)(2)(C); *see also* Democracy Engine, Inc., PAC, Statement of Organization, FEC Form 1 at 2 (Aug. 7, 2017), (Nov. 26, 2018), (Sept. 19, 2019). The Audit Division determined that DEI did not maintain a campaign depository during the audit period, and, consequently, neither deposited receipts, nor made disbursements from its depository account.² 52 U.S.C. § 30102(h)(1); *see* Proposed IAR at 5-6 (Finding 1).

DEI acknowledges that it did not maintain a campaign depository, but argues that it was not required to do so because its financial activity during the audit period was limited to receiving earmarked contributions as an intermediary or conduit.³ Email from Jonathan Zucker, Treasurer, Democracy Engine, Inc., PAC, to Paula Nurthen, Auditor, FEC (May 27, 2020). DEI contends 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.” *Id.*⁴

DEI asserts that these earmarked contributions instead passed through the account of Democracy Engine, LLC. *Id.* Democracy Engine, LLC is the sole stockholder of Democracy Engine, Inc. Advisory Opinion 2011-06 (Democracy Engine). Democracy Engine, Inc. is the connected organization of the separate segregated fund, DEI. *Id.*; *see* Statement of Organization, FEC Form 1 at 3 (Aug. 7, 2017), (Nov. 26, 2018), (Sept. 19, 2019).

We disagree with the Committee’s arguments. The Act and Commission regulations require all political committees to maintain at least one campaign depository. 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.2. All receipts by a political committee must be

² DEI used Democracy Engine, LLC’s account to receive contributions and make disbursements. Democracy Engine, LLC is the sole stockholder of DEI’s connected organization, Democracy Engine, Inc. *See infra*. This raises the issue of whether DEI unlawfully commingled its funds. The Act prohibits a political committee from commingling its funds with the personal funds of an individual. 52 U.S.C. § 30102(b)(3). The Commission has also recognized that commingling of contributions and corporate funds would be inconsistent with the Act and Commission regulations. *See* AO 2017-06 (Stein-Gottlieb) at 8 (concluding that a proposal by a vendor collecting and forwarding contributions to political committees would comply with the Act and Commission regulations because, among other reasons, the vendor would keep contributions in an account separate from its own treasury funds). However, Democracy Engine, LLC is organized and taxed as a partnership, not a corporation. Zucker Aff. ¶ 1; *see* 11 C.F.R. § 110.1(g). Nevertheless, we do not know whether all of the funds in Democracy Engine, LLC comply with the requirements of the Act, nor do we know whether DEI’s funds could be accounted for separately in that account from the LLC’s funds. All of DEI’s financial activity ran through the LLC’s bank account, an account that processed a multitude of financial transactions encompassing the LLC’s activities.

³ Because DEI did not maintain a campaign depository account, the Audit Division has not been able to verify DEI’s financial activity as reported on its disclosure reports. Proposed IAR at 1, Para. Limitations, 2, note 2, 3, 7-9.

⁴ Section 100.6 defines a “connected organization” as an organization that is not a political committee but that establishes, administers, or financially supports a political committee. The provision does not address any requirements related to separate segregated funds like DEI.

deposited in the campaign depository account(s) and all disbursements, except petty cash, must be drawn on such account(s).⁵ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.3.

Because DEI is a separate segregated fund, and therefore a political committee under the Act, DEI is required to maintain at least one campaign depository account, and to run all receipts and 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.

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵ According to the Audit Division, DEI's treasurer was aware that the contributions were being received by Democracy Engine, LLC. During the period covered by the audit, DEI's treasurer was also a Managing Member of Democracy Engine, LLC, and was therefore familiar with its operations. In that capacity, DEI's treasurer appears to have been in a position to have ensured that these earmarked contributions be received by DEI and deposited into a campaign depository established by DEI.

