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Washington, DC 20463

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For meeting of July 28, 2022
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July 25, 2022

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
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Subject: Draft AO 2022-10 (Sprinkle) - Draft A

We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on July 28, 2022.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2022-10

2

3 David Lazarus, Esq.

4 Nielsen Merksamer Parrinello Gross & Leoni LLP

5 2350 Kerner Boulevard

6 Suite 250

7 San Rafael, CA 94901

8

9

DRAFT A

10 Dear Mr. Lazarus:

11 We are responding to the advisory opinion request that you submitted on behalf of
12 Platform Venture Studio Inc. doing business as (“d/b/a”) Sprinkle (“Sprinkle”), concerning the
13 application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-145 (the “Act”), and
14 Commission regulations to various aspects of Sprinkle’s proposed web-based contribution
15 platform. The Commission concludes that, under the circumstances presented in this request,
16 Sprinkle’s provision of contribution processing services to contributors will not result in
17 prohibited contributions by Sprinkle, and that Sprinkle’s proposed use of Commission data to
18 supplement its services to contributors is permissible.

19 ***Background***

20 The facts presented in this advisory opinion are based on your advisory opinion request
21 received on June 10, 2022 (“AOR”).

22 Sprinkle is an internet platform that seeks to make it easier for people to find and support
23 candidates that align with their interests, policy views, and values. It is organized and operates
24 solely for commercial purposes, and it is not owned or operated by or for a candidate, party
25 committee, or political committee. Sprinkle is incorporated under Delaware law.

26 Although Sprinkle’s internet platform will be available to voters of all ages, Sprinkle will
27 specifically seek to engage younger voters that might not have made extensive contributions to

1 candidates and political committees in the past.¹ Sprinkle will provide a variety of online tools
2 to its users to help them identify candidates who share their positions and priorities on issues,
3 including searching and filtering candidates by issues, geography, voting records, scorecards
4 from advocacy organizations, endorsements, and biographical information. Sprinkle has
5 developed a proprietary algorithm based on publicly available data that can recommend
6 candidates to users based on information provided to the platform by the users. Sprinkle will
7 also use machine learning based on candidate data, prior election results, polling trends, and
8 geographic data to help users decide where their contributions will make an impact.

9 *Displaying Commission Data*

10 As part of its services to users, Sprinkle will display on its platform data from publicly
11 available campaign finance reports filed with the Commission. Sprinkle's graphic displays of
12 this information will help users to see how campaigns are being funded, and users will be able to
13 review the data based on average contribution amount, geographic concentration, and individual
14 versus organizational support. Sprinkle's platform will allow users to tailor their searches for
15 candidates and build lists of candidates they wish to track or support.

16 Sprinkle will display only aggregated campaign finance data. Sprinkle's website will
17 show the numbers of contributors that support a particular candidate, the total amount of funds
18 the candidate has raised, the geographic distribution or concentration of contributors, the
19 candidate's average contribution amount, and the relative proportion of individual contributions
20 as a percentage of total contributions received. The aggregated data that Sprinkle will display

¹ AOR001-02.

1 will not allow users to obtain identifiable information about any individual contributor or enable
2 political committees or others to engage in fundraising activity.

3 *Candidate Pages*

4 Sprinkle will host a page for each federal candidate with a registered authorized
5 campaign committee, which will enable users to obtain additional information about candidates
6 they may be considering supporting. Candidate pages will include biographical information, the
7 candidates' positions on issues, and other information that may be helpful to users. Sprinkle will
8 create the scaffolding for the candidate pages, which will all share a common look and feel, and
9 Sprinkle will populate each page with publicly available information such as the candidate's
10 partisan affiliation, fundraising results, and status as an incumbent or a challenger. Candidates
11 will be able to amend this information and provide additional information, to better enable users
12 to make informed decisions. In providing such information, candidates will be subject to limits
13 imposed by Sprinkle, such as character limits for quotes or biographical information.

14 Sprinkle will not allow candidates to add any content to their pages that is for any
15 purpose other than enhancing the quality and accuracy of the information Sprinkle provides to its
16 users. For example, candidates will not be allowed to add any content that solicits contributions
17 through events or any contribution mechanisms other than Sprinkle's platform.

18 *Contribution Processing*

19 Each candidate page will include a link allowing users to make contributions to the
20 candidate. Sprinkle will partner with Stripe, Inc., a commercial payment processor, to provide
21 all contribution processing services. Sprinkle itself will not process any contributions, deposit
22 funds into a merchant account in its own name, or forward contributions to candidates, but will

1 rely on Stripe to provide all such services. Neither Sprinkle nor Stripe will exercise any
2 direction or control over any user's choice of recipient candidates.

3 Sprinkle will deduct a fee from each contribution to cover all costs that Sprinkle and
4 Stripe incur in providing their services to users, including all fees and costs of financial
5 institutions involved in the transaction, and to provide a reasonable profit to both Sprinkle and
6 Stripe. The fee will be approximately 10% of each contribution; Sprinkle and Stripe will
7 determine the exact amount in a commercially reasonable manner, consistent with market
8 conditions and regardless of a candidate's political affiliation. Stripe will deduct the fee from
9 each contribution before forwarding the remainder of the funds to the recipient candidate.
10 Sprinkle and Stripe will pay all fees and costs to participating financial institutions. Neither
11 Sprinkle nor Stripe, in performing services for Sprinkle, will contract to provide any services to
12 candidates' authorized committees.

13 ***Questions Presented***

- 14 1. *Will Sprinkle's services result in prohibited contributions by Sprinkle?*
15 2. *Will Sprinkle's proposed business model result in impermissible sale or use of*
16 *Commission data?*

17 ***Legal Analysis and Conclusions***

- 18 1. *Will Sprinkle's services result in prohibited contributions by Sprinkle?*
19 Sprinkle's services, as proposed in this request, will not result in prohibited contributions
20 by Sprinkle to any candidate.

1 The Act and Commission regulations prohibit corporations from making a contribution in
2 connection with a Federal election.² In this context, a “contribution” includes any “direct or
3 indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or
4 anything of value . . . to any candidate, campaign committee, or political party or organization, in
5 connection with any [federal] election.”³ “Anything of value” includes in-kind contributions,
6 such as the provision of goods or services without charge or at a charge that is less than the usual
7 and normal charge.⁴ Commission regulations define “usual and normal charge” as the price of
8 goods in the market from which they ordinarily would have been purchased at the time of the
9 contribution, or the commercially reasonable rate prevailing at the time the services were
10 rendered.”⁵

11 In several advisory opinions, the Commission has concluded that companies that process
12 contributions as a service to contributors without receiving compensation from the recipient
13 political committees are not making contributions because the companies are not providing any

² See 52 U.S.C. § 30118(a) (generally prohibiting corporations from making contributions); 11 C.F.R. § 114.2(b) (same). Corporations may, however, make contributions to nonconnected political committees that make only independent expenditures, *see, e.g.*, Advisory Opinion 2011-11 (Colbert); Citizens United v. FEC, 558 U.S. 310 (2010); SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*), and to non-contribution accounts of hybrid political committees, *see* FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 6, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-v-fec/>.

³ 52 U.S.C. § 30118(b)(2); 11 C.F.R. § 114.2(b)(1); *see also* 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

⁴ *See* 11 C.F.R. § 100.52(d)(1).

⁵ *See* 11 C.F.R. § 100.52(d)(2).

1 services to the recipient political committees.⁶ The Commission has also approved proposals in
2 which companies that process contributions as a service to contributors provide contributors with
3 tools to gather information about and to evaluate potential recipient candidates.⁷ The
4 Commission has reasoned that providing such information is a “corollary of creating a web
5 platform through which users [can] identify political committees and transmit contributions.”⁸

6 Sprinkle’s proposed service closely resembles the services approved by the Commission
7 in Advisory Opinion 2015-15 (WeSupportThat.com), Advisory Opinion 2014-07 (Crowdpac),
8 Advisory Opinion 2012-22 (skimmerhat), and Advisory Opinion 2011-19 (GivingSphere). Here,
9 as in those advisory opinions, a commercial entity proposes to develop a for-profit, web-based
10 platform through which it provides information to users so that users can identify and make
11 contributions to political committees. Users’ funds will be transmitted only at their own request

⁶ See Advisory Opinion 2021-07 (PACMS) at 6-7; Advisory Opinion 2019-04 (Prytany) at 5-6; Advisory Opinion 2017-06 (Stein and Gottlieb) at 4-5; Advisory Opinion 2016-08 (eBundler.com) at 6-8; Advisory Opinion 2015-15 (WeSupportThat.com) at 4; Advisory Opinion 2014-07 (Crowdpac) at 6; Advisory Opinion 2012-22 (skimmerhat) at 4-6; Advisory Opinion 2011-19 (GivingSphere) at 7; Advisory Opinion 2011-06 (Democracy Engine) at 5.

⁷ See, e.g., Advisory Opinion 2015-15 (WeSupportThat.com) at 4-5 (approving a proposal that enabled users to search for candidates based on their public statements, legislative votes, and sponsorship of particular legislation and make contributions to them); Advisory Opinion 2014-07 (Crowdpac) at 1-2 (approving a proposal that would provide users with publicly available information about candidates “to make it easier for voters to find and support candidates who share their priorities and positions on issues” and make contributions to them); Advisory Opinion 2012-22 (skimmerhat) at 6-7 (approving a proposal to offer its users a searchable database and “candidate pages” to enable them to identify potential recipients and make contributions to them); Advisory Opinion 2011-19 (GivingSphere) (approving a proposal to provide users with searchable database of potential political committee recipients and “basic factual information” on those recipients and make contributions to them).

⁸ See Advisory Opinion 2012-22 (skimmerhat) at 7 (citing Advisory Opinion 2011-19 (GivingSphere) at 9).

1 and not pursuant to negotiated agreements with political committees.⁹ Because Sprinkle will
2 provide these services to its users — rather than to political committees — Sprinkle’s proposal is
3 analogous to widely available services that contributors may use to send contributions, such as
4 United Parcel Service or electronic bill-pay services provided by banks.¹⁰ And because the user
5 fees that Sprinkle will collect are ““for the benefit of the contributors, not of the recipient
6 political committees,”” such fees “d[o] not ‘relieve the recipient political committees of a
7 financial burden they would otherwise have had to pay for themselves.’”¹¹ Accordingly, as in
8 the prior advisory opinions, neither Sprinkle’s services nor its fees are contributions to the
9 recipient political committees.

10 In addition, like the requestors in Advisory Opinion 2015-15 (WeSupportThat.com),
11 Advisory Opinion 2014-07 (Crowdpac), Advisory Opinion 2012-22 (skimmerhat) and Advisory
12 Opinion 2011-19 (GivingSphere), Sprinkle will provide users with the ability to search
13 candidates’ backgrounds, positions, and incumbency status and otherwise review information
14 about candidates and their positions to identify potential recipients. These search tools that
15 Sprinkle will offer its customers will merely “supplement the overall service offered by the
16 site.”¹² Accordingly, Sprinkle’s proposal to match users with candidates and utilize Stripe, Inc.’s

⁹ See Advisory Opinion 2014-07 (Crowdpac), Advisory Opinion 2012-22 (skimmerhat). Compare Advisory Opinion 2011-06 (Democracy Engine) (hosting a website through which contributors identify recipients and transmit funds) with Advisory Opinion 2007-04 (Atlatl) (processing online credit card contributions made via political committees’ own websites). Sprinkle will be using an outside vendor to provide all contribution processing services. As in Advisory Opinion 2014-07 (Crowdpac), the use of an outside vendor to process contributions on Sprinkle’s behalf does not change the nature of Sprinkle’s services as being provided to its users.

¹⁰ See Advisory Opinion 2014-07 (Crowdpac) at 6; see also Advisory Opinion 2012-22 (skimmerhat) at 5-6.

¹¹ Advisory Opinion 2012-22 (skimmerhat) at 6 (quoting Advisory Opinion 2011-06 (Democracy Engine)).

¹² *Id.* at 7.

1 platform to process and forward users' contributions to candidates would not result in
2 impermissible contributions by Sprinkle to any candidate.

3 Sprinkle further proposes to allow candidates to add content to their candidate pages, but
4 only to the extent that the content would "enhance[e] the quality and accuracy of the
5 information."¹³ Sprinkle would also impose certain specific limits on the candidate's ability to
6 edit their candidate pages, such as character limits for quotes or biographical information. This
7 limitation, according to Sprinkle, would be imposed as a service to its users in order to help them
8 identify the candidates they wish to support. This aspect of Sprinkle's proposal is similar to the
9 proposals the Commission previously approved in Advisory Opinion 2014-07 (Crowdpac) and
10 Advisory Opinion 2012-22 (skimmerhat). In Advisory Opinion 2014-07 (Crowdpac), the
11 requestor proposed to allow all candidates an equal opportunity to upload content to their
12 respective candidate pages, and the requestor proposed to set limits on the candidate's ability to
13 edit content by setting the "subject matter, duration, and other requirements that [would] apply
14 equally to all candidates."¹⁴ As with Sprinkle's proposal, the requestor in Advisory Opinion
15 2014-07 (Crowdpac) sought to "make information and intelligence regarding all candidates for
16 federal office more readily available and easier to understand" to its users.¹⁵ In Advisory
17 Opinion 2012-22 (skimmerhat), the requestor proposed to develop and host "candidate pages"
18 that would include, for each federal candidate, a picture of the candidate, biographical

¹³ AOR003.

¹⁴ Advisory Opinion 2014-07 (Crowdpac) at 2.

¹⁵ *Id.*

1 information, campaign finance data, recent updates, and issue positions.¹⁶ As with Sprinkle’s
2 candidate pages, candidates under skimmerhat’s proposal would have “limited managerial
3 control” over the information on their candidate pages.¹⁷ And candidates’ control of their pages
4 was conditioned on agreeing to terms of service that prohibited use of the requestor’s platform to
5 fundraise outside of that platform or “for any activity that can be reasonably deemed outside of
6 that which enhances the quality and accuracy of candidate information available to users.”¹⁸

7 Accordingly, consistent with prior advisory opinions, Sprinkle’s services will not result
8 in a prohibited contribution by Sprinkle to any candidate.

9 2. *Will Sprinkle’s proposed business model constitute impermissible sale or use of*
10 *Commission data?*

11 Under the circumstances presented in this request, Sprinkle’s proposed business model
12 will not constitute the impermissible sale or use of Commission data.

13 The Act requires each political committee to report the name, mailing address,
14 occupation, and employer name of any individual who contributes more than \$200 to the
15 committee in a calendar year.¹⁹ The Act also requires the Commission to make these reports
16 available for public inspection and copying.²⁰ But in enacting these requirements, Congress was
17 concerned about “protect[ing] the privacy of the generally very public-spirited citizens who may

¹⁶ Advisory Opinion 2012-22 (skimmerhat) at 2-3, 7.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 4.

¹⁹ See 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A); see also 11 C.F.R. §§ 100.12, 104.8(a).

²⁰ See 52 U.S.C. § 30111(a)(4); see also 52 U.S.C. § 30112 (requiring Commission to make all reports publicly available online).

1 make a contribution to a political campaign or a political party.”²¹ Accordingly, the Act
2 prohibits any information copied from Commission reports from being “sold or used by any
3 person for the purpose of soliciting contributions or for commercial purposes, other than using
4 the name and address of any political committee to solicit contributions from such committee.”²²

5 In determining whether a proposed sale or use of contributor data is prohibited, the
6 Commission has focused on whether the sale or use of the data “implicate[s] the privacy
7 concerns at the heart of section 30111(a)(4).”²³ The Commission has concluded that “a vendor
8 does not violate section [30111(a)(4)] where its use of Commission data is not of the type that
9 could infringe on the contributor’s privacy interests.”²⁴ Consistent with this reasoning, the
10 Commission has approved the sale or use of contributor data when it would not disclose
11 sufficient information to generate solicitations.²⁵ By contrast, the Commission has determined

²¹ 117 Cong. Rec. S30057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon).

²² 52 U.S.C. § 30111(a)(4); *see also* 11 C.F.R. § 104.15(a).

²³ Advisory Opinion 2017-08 (Point Bridge Capital) at 3.

²⁴ Advisory Opinion 2014-07 (Crowdpac) at 10 (internal quotation marks omitted).

²⁵ *See, e.g.*, Advisory Opinion 2017-08 (Point Bridge Capital) at 3-4 (approving investment firm’s proposal to use aggregated contributor data from Commission reports to create index of companies); Advisory Opinion 2015-12 (Ethiq) (approving use of aggregated contributor data to match users to candidates and corporations with similar value); Advisory Opinion 2014-07 (Crowdpac) (approving display of total number of contributors and total amount of contributions); Advisory Opinion 2013-16 (PoliticalRefund.org) (approving display of aggregate number of donors requesting refunds); Advisory Opinion 2009-19 (Club for Growth PAC) (approving use of contributor data to inform contributors of their right to request refunds).

1 that the Act would prohibit the sale or use of contributor data when it would generate
2 solicitations.²⁶

3 The Commission has previously determined that the use of contributor data to derive
4 generalized information for purposes other than solicitation does not implicate the privacy
5 concerns of the Act. In Advisory Opinion 2014-07 (Crowdpac), the Commission concluded that
6 the privacy concerns behind the sale or use prohibition were not implicated by a vendor’s use of
7 contributor data in algorithms to make inferences about contributors’ positions on issues, and the
8 positions of candidates to whom they contributed, where doing so did not entail disclosing the
9 contributors’ contact information.²⁷

10 Similar to the proposal at issue in Advisory Opinion 2014-07 (Crowdpac), Sprinkle
11 proposes to display certain aggregated campaign finance data on candidates, including “average
12 contribution amount, geographic concentration of donor support, and individual versus
13 organizational support.”²⁸ As in that advisory opinion, “[n]one of the aggregated data will allow
14 users or others to access identifiable information about any particular donor or enable political

²⁶ See, e.g., Advisory Opinion 2021-05 (Tally Up) at 5-6 (although the requestor proposed to aggregate individual contributor data for its clients based on geographic and demographic fields — such as zip code, city, age, and gender — the Commission disapproved the proposal because the requestor’s clients would be able to identify which segment of voters identified in the data would be most likely to contribute and the clients would be able to solicit contributions from those individuals); Advisory Opinion 2004-24 (NGP) (disapproving vendor’s proposal to enable clients to access information about contributions made by client’s donors to other political committees and party organizations); Advisory Opinion 1995-05 (TRIM) (disapproving proposal to copy contributor’s names from political committee’s reports and send contributors a mailing soliciting donations); and Advisory Opinion 1985-16 (Weiss) (disapproving list vendor’s proposal to compare potential contributors on list to actual contributors in Commission reports before selling list for commercial or solicitation purposes).

²⁷ Advisory Opinion 2014-07 (Crowdpac) at 2, 10; see also Advisory Opinion 2012-22 (skimmerhat) at 9 (concluding that vendor may “use . . . campaign finance data regarding candidate fundraising totals . . . because the information . . . concerns political committees, rather than individual contributors”).

²⁸ AOR002.

1 committees or others to engage in fundraising activity.”²⁹ Thus, because Sprinkle’s proposed
2 use of contributor data would not be used to solicit contributors, Sprinkle’s proposal would not
3 violate the sale or use restrictions of the Act. This conclusion is consistent with prior advisory
4 opinions approving proposals to use aggregated, non-personally identifiable, contribution data
5 from reports filed with the Commission.

6 This response constitutes an advisory opinion concerning the application of the Act and
7 Commission regulations to the specific transaction or activity set forth in your request. *See*
8 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
9 assumptions presented, and such facts or assumptions are material to a conclusion presented in
10 this advisory opinion, then the requestor may not rely on that conclusion as support for its
11 proposed activity. Any person involved in any specific transaction or activity which is
12 indistinguishable in all its material aspects from the transaction or activity with respect to which
13 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
14 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
15 affected by subsequent developments in the law including, but not limited to, statutes,
16 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
17 on the Commission’s website.

18 On behalf of the Commission,

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20
21
22 Allen J. Dickerson
23 Chairman

²⁹ AOR006.