FEDERAL ELECTION COMMISSION
Washington, DC 20463

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August 13, 2014

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
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Subject: AO 2014-07 (Crowdpac) Draft B

Attached is a proposed draft of the subject advisory opinion.

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 August 14, 2014.

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 http://www.fec.gov/law/draftaos.shtml.

Attachment

1   ADVISORY OPINION 2014-07

2

3   Benjamin L. Ginsberg, Esq.   **DRAFT B**

4   Jones Day

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7

8   Marc E. Elias, Esq.

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12

13   Dear Messrs. Ginsberg and Elias:

14   We are responding to the advisory opinion request that you submitted on behalf of

15   Crowdpac concerning the application of the Federal Election Campaign Act, 2 U.S.C. §§ 431-57

16   (the "Act"), and Commission regulations to various aspects of Crowdpac's proposed web-based

17   contribution platform. The Commission concludes that (1) Crowdpac's services would not result

18   in impermissible contributions by Crowdpac to candidate committees; (2) Crowdpac may permit

19   its users to earmark contributions for eventual nominees or prospective candidates; (3) Crowdpac

20   may permit candidates to provide video content for Crowdpac candidate pages; and

21   (4) Crowdpac may use data derived from Commission reports to display aggregated campaign

22   finance data about candidates and may also use such data in its algorithm and may display on its

23   website the names, cities, and states of individual contributors identified from Commission

24   reports.

25   ***Background***

26   The facts presented in this advisory opinion are based on your advisory opinion request

27   received on July 2, 2014 ("AOR").

28   Crowdpac is a non-partisan, for-profit corporation that is incorporated in Delaware and

29   based in California. "[T]o help raise the voice of individual contributors," Crowdpac proposes to

1   establish "a data-driven political 'marketplace'" that will provide to voters publicly available

2   information about candidates for federal office in order to make it easier for voters to find and

3   support candidates who share their priorities and positions on issues.

4   Crowdpac will provide its users with various tools to help identify like-minded

5   candidates. Crowdpac will allow users to identify their priority issues and view candidates'

6   positions on those issues. Users will be able to search for candidates through criteria such as

7   location, demographics, positions on issues, office sought, and incumbency status. Users will

8   also be able to create their own "political profiles" that indicate their priority issues and positions

9   on those issues.[1]

10   To provide these tools, Crowdpac has developed a proprietary algorithm that will analyze

11   publicly available data — such as floor speeches, proposed bills, and voting records — to

12   determine which issues candidates prioritize and candidates' positions on those issues. The

13   algorithm will also utilize certain campaign finance information, including contributor

14   information contained in reports filed with the Commission. Crowdpac represents that its

15   algorithm is able to make inferences about issue positions of both candidates and contributors by

16   analyzing the patterns of which contributors support which candidates. Crowdpac's algorithm

17   will also incorporate data on candidates' contributions to other campaigns.

18   Additionally, Crowdpac proposes to make available on its website certain information

19   "regarding the functionality of its algorithm." Because the algorithm incorporates individual

20   contributor information from campaign finance reports, Crowdpac might display certain

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[1]   Additionally, users who create a profile on Crowdpac will have the option of "sharing" information
regarding their support of candidates on Crowdpac. Crowdpac might place the name and picture of users who have
selected this option on candidate pages. This information would be taken solely from Crowdpac's own data.

1   information compiled from reports filed with the Commission, including the names, cities, and

2   states of individual contributors.

3   Crowdpac's website will also feature a dedicated page for each federal candidate who has

4   registered an authorized committee with the Commission. These pages will include information

5   about each candidate, including office sought, biographical details, and a photo, as well as

6   information about the candidate's political positions, including information derived from

7   Crowdpac's algorithm.

8   In addition, Crowdpac will allow every candidate, "on an equal and nonpartisan basis," to

9   upload certain content to his or her candidate page. For example, Crowdpac will allow each

10   candidate to upload an introductory video message to Crowdpac users and other videos

11   explaining his or her positions on priority issues. All candidates will be provided equal

12   opportunity to upload content to their respective candidate pages. Crowdpac will set subject

13   matter, duration, and other requirements that will apply equally to all candidates. Crowdpac

14   states that it will not allow candidates "to upload any content . . . that is for purposes other than

15   enhancing the quality and accuracy of information about that candidate." For example,

16   Crowdpac will not allow candidates to upload content that would solicit contributions outside of

17   Crowdpac's platform.

18   Crowdpac also plans to display certain aggregated campaign finance data, such as the

19   total number of contributors to a candidate's committee and the total amount of contributions the

20   candidate has raised. Crowdpac will use information from reports filed with the Commission to

21   ensure that it is providing current, accurate campaign finance information on candidates.

22   Each candidate page will contain a link (which appears as a "DONATE" button) allowing

23   users to make contributions to the candidate. Crowdpac itself will not process contributions,

1   deposit contributions into a merchant account in its name, or forward contributions to candidate

2   committees. Instead, Crowdpac will contract with Democracy Engine[2] — whose online

3   contribution processing platform the Commission approved in Advisory Opinion 2011-06

4   (Democracy Engine *et al.*) — to process contributions.

5   Once a Crowdpac user identifies a candidate to whom he or she wishes to contribute, the

6   user will be required to provide payment processing information, along with other information

7   that the recipient political committee must maintain or report, such as the user's name, mailing

8   address, employer, and occupation. The user will also view disclaimer and "best efforts"

9   language[3] and will be required to attest to certain facts as a condition to having his or her

10   contribution processed.[4] The platform will not process contributions that exceed the relevant

11   contribution limits. Each user will be required to agree to Democracy Engine's terms of service

12   before Democracy Engine processes the user's contributions.[5]

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[2]   As explained in Advisory Opinion 2011-06 (Democracy Engine *et al.*), Democracy Engine is a for-profit limited liability company that offers web-based payment services for individual subscribers to make contributions to federal political committees. Democracy Engine is the sole stockholder of Democracy Engine, Inc., which is the connected organization of a separate segregated fund, Democracy Engine, Inc., PAC ("Democracy Engine PAC").

[3]   Language similar to the following will be displayed: "Candidates and committees registered with the Federal Election Commission are required to use their best efforts to collect and report the name, address, employer and occupation of all contributors. We require you to enter this information so that we can provide it to those recipients of your contributions."

[4]   The contribution processing platform will require an attestation similar to the following:

I confirm that the following statements are true and accurate: I am not a federal contractor; I am at least eighteen years old; I am either a U.S. citizen or lawful permanent resident of the U.S.; I am making this contribution from my own funds, and funds are not being provided to me by another person for the purpose of making this contribution; I am making this contribution with my own personal credit or debit card and not with a corporate or business card or a card issued to another person.

[5]   Under the terms of service, users must (1) acknowledge that their contributions will be reported in accordance with applicable laws; (2) agree to pay the fees for use of the Crowdpac and Democracy Engine services; and (3) agree that their contributions will be aggregated with other contributions that they make to the recipient candidate for purposes of calculating compliance with contribution limits.

1   Contributions will be deposited in a bank account belonging to Democracy Engine. This

2   account will be segregated from Democracy Engine's corporate operating funds. No

3   contributions to federal committees will be deposited into a Crowdpac bank account.

4   Democracy Engine will deduct a fee from each contribution before forwarding the contribution

5   to the recipient committee. Crowdpac and Democracy Engine have not yet determined the

6   amount of this fee, but they expect that it will be approximately 8% of the contribution amount.

7   Crowdpac and Democracy Engine will set the fee rate to cover all costs incurred by Democracy

8   Engine and Crowdpac in providing their respective services — including credit card processing

9   fees — and to provide both entities with a reasonable profit.[6] Except for contributions to

10   prospective candidates (as discussed below), Democracy Engine will then transmit the remaining

11   amount of the contribution to the recipient committee as instructed by the user no later than ten

12   days after the user authorizes the contribution. Democracy Engine will also provide the recipient

13   committee with the contribution date and amount and the contributor's name, mailing address,

14   occupation, and employer.

15   Neither Crowdpac nor Democracy Engine will enter into contractual relationships with

16   candidate committees in connection with processing and forwarding contributions.[7] Crowdpac

17   states that neither it nor Democracy Engine will exercise any direction or control over

18   contributions deposited in Democracy Engine's segregated account.

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[6]   More specifically, Crowdpac states that it and Democracy Engine will calculate the amount of the fee in a commercially reasonable manner in accordance with market conditions. The amount of the fee will be set to (1) cover all costs Democracy Engine and Crowdpac incur in performing credit card processing, including all of the fees and costs of the financial institutions involved in the credit card transaction; (2) cover Democracy Engine and Crowdpac's own costs; and (3) provide a reasonable profit to both Democracy Engine and Crowdpac.

[7]   Democracy Engine, however, might contract with candidate committees on a limited basis solely to facilitate the electronic deposit of funds.

1   Crowdpac will allow users to designate a contribution either to (1) a specific party's

2   eventual nominee for a specific office ("eventual nominee") or (2) a specific prospective

3   candidate who has not yet registered an authorized committee ("prospective candidate"). When

4   a user designates a contribution to be transmitted to either an eventual nominee or a prospective

5   candidate, those funds will be held by Democracy Engine PAC, rather than Democracy Engine,

6   until disbursement. Crowdpac will inform the user that such funds are "earmarked"

7   contributions within the meaning of 11 C.F.R. § 110.6, that they must comply with the amount

8   limitations for contributions to candidates in accordance with 11 C.F.R. § 110.1, and that the

9   contribution will be forwarded to the candidate committee when the designated nominee or

10   candidate has been identified and has registered an authorized committee with the Commission.

11   Democracy Engine PAC will forward the contribution to the authorized committee within 10

12   days after these events occur.

13   For any reporting period in which it receives earmarked contributions, Democracy

14   Engine PAC will disclose on its regular reports to the Commission each such contribution, its

15   source, and the eventual candidate for whom it is earmarked. For any reporting period in which

16   it forwards earmarked contributions, Democracy Engine PAC will report the disbursement to the

17   Commission and the recipient candidate in accordance with 11 C.F.R. § 110.6(c)(1).

18   If no prospective or eventual candidate meeting the contributor's criteria is identified and

19   registers an authorized committee with the Commission within seven days of the respective state

20   or federal nominating convention, Democracy Engine PAC will forward the contribution to the

21   respective national congressional or senatorial party committee as a "default committee." The

22   user will be notified of this policy prior to submitting a contribution.

1   *Questions Presented*

2   *1. May Crowdpac provide its services of matching users with candidates and utilizing the*

3   *Democracy Engine platform to process and forward users' contributions to candidates*

4   *without making impermissible contributions to federal candidate committees?*

5   *2. Is Crowdpac's proposal for users to earmark contributions for eventual nominees or*

6   *prospective candidates permissible under the Act and Commission regulations?*

7   *3. May Crowdpac allow candidates to provide video content for their Crowdpac candidate*

8   *pages without making impermissible contributions to those candidates?*

9   *4. Is Crowdpac's proposal to use information taken from reports filed with the Commission*

10   *permissible under the Act and Commission regulations?*

11   **Legal Analysis and Conclusions**

12   *1. May Crowdpac provide its services of matching users with candidates and utilizing the*

13   *Democracy Engine platform to process and forward users' contributions to candidates*

14   *without making impermissible contributions to federal candidate committees?*

15   Yes, Crowdpac may provide its services of matching users with candidates and utilizing

16   the Democracy Engine platform to process and forward users' contributions to candidates

17   without making impermissible contributions to federal candidates committees.

18   The Act and Commission regulations prohibit corporations from making a contribution in

19   connection with a Federal election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1). In this

20   context, a "contribution" includes any "direct or indirect payment, distribution, loan, advance,

21   deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign

22   committee, or political party or organization, in connection with any [federal] election." 2

23   U.S.C. § 441b(b)(2); 11 C.F.R. § 114.2(b)(1); *see also* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R.

1   § 100.52(a). "Anything of value" includes in-kind contributions, such as the provision of goods

2   or services without charge or at a charge that is less than the usual and normal charge. *See* 11

3   C.F.R. § 100.52(d)(1). Commission regulations define "usual and normal charge" as the price of

4   goods in the market from which they ordinarily would have been purchased at the time of the

5   contribution, or the commercially reasonable rate prevailing at the time the services were

6   rendered." *See* 11 C.F.R. § 100.52(d)(2).

7   In several advisory opinions, the Commission has concluded that companies that process

8   contributions as a service to contributors without receiving compensation from the recipient

9   political committees are not making contributions because the companies are not providing any

10   services to the recipient political committees. *See, e.g.*, Advisory Opinion 2012-22 (skimmerhat)

11   (distinguishing between companies that process contributions as service to contributors and

12   companies that process contributions as service to recipient political committees); Advisory

13   Opinion 2011-19 (GivingSphere) (same); Advisory Opinion 2011-06 (Democracy Engine)

14   (same). Additionally, the Commission has approved proposals in which companies that process

15   contributions as a service to contributors provide contributors with tools to gather information

16   about and to evaluate potential recipient candidates. For example, in Advisory Opinion 2012-22

17   (skimmerhat), the Commission approved a requestor's proposal to offer its customers a

18   searchable database and "candidate pages" to enable them to identify potential recipients. *Id*. at

19   6-7; *see also* Advisory Opinion 2011-19 (GivingSphere) (approving proposal to provide

20   customers with searchable database of potential political committee recipients and "basic factual

21   information" on those recipients). The Commission has reasoned that providing such

22   information is a "corollary of creating a web platform through which users [can] identify

1   political committees and transmit contributions." *See* Advisory Opinion 2012-22 (skimmerhat)

2   at 7 (citing Advisory Opinion 2011-19 (GivingSphere) at 9).

3   Crowdpac's proposed service closely resembles the services approved by the

4   Commission in Advisory Opinion 2012-22 (skimmerhat) and Advisory Opinion 2011-19

5   (GivingSphere). Here, as in those advisory opinions, a commercial entity proposes to develop a

6   web-based platform through which customers can identify and make contributions to political

7   committees. Users' funds will be transmitted only at their own request and not pursuant to

8   negotiated agreements with political committees. *See* Advisory Opinion 2012-22 (skimmerhat).

9   *Compare* Advisory Opinion 2011-06 (Democracy Engine) (hosting website through which

10   contributors identify recipients and transmit funds) *with* Advisory Opinion 2007-04 (Atlatl)

11   (processing online credit card contributions made via political committees' own websites).

12   Because Crowdpac will provide these services to its customers — rather than to political

13   committees — Crowdpac's proposal is analogous to widely available services that contributors

14   may use to send contributions, such as United Parcel Service or electronic bill-pay services

15   provided by banks. *See* Advisory Opinion 2012-22 (skimmerhat) at 5-6; *see also* Advisory

16   Opinion 2011-06 (Democracy Engine) at 5. And because the user fees that Crowdpac will

17   collect are for services rendered "'for the benefit of the contributors, not of the recipient political

18   committees,'" such fees "d[o] not 'relieve the recipient political committees of a financial burden

19   they would otherwise have had to pay for themselves.'" Advisory Opinion 2012-22

20   (skimmerhat) at 6 (quoting Advisory Opinion 2011-06 (Democracy Engine)). Accordingly,

21   consistent with the prior advisory opinions, neither Crowdpac's services nor its fees are

22   contributions to the recipient political committees. *Id*.

1   In addition, like the requestors in Advisory Opinion 2012-22 (skimmerhat) and Advisory

2   Opinion 2011-19 (GivingSphere), Crowdpac will provide users with the ability to search

3   candidates' backgrounds, positions, and incumbency status and otherwise review information

4   about candidates and their positions to identify potential recipients. These search tools that

5   Crowdpac will offer its customers will merely "supplement the overall service offered by the

6   site." Advisory Opinion 2012-22 (skimmerhat) at 7. Accordingly, Crowdpac's proposal to

7   match users with candidates and utilize the Democracy Engine platform to process and forward

8   users' contributions to candidates would not result in impermissible contributions by Crowdpac

9   to federal candidate committees.

10   *2. Is Crowdpac's proposal for users to earmark contributions for eventual nominees or*

11   *prospective candidates permissible under the Act and Commission regulations?*

12   Yes, Crowdpac's proposal for users to designate contributions for eventual nominees or

13   prospective candidates is permissible under the Act and Commission regulations.

14   The Act provides that "all contributions made by a person, either directly or indirectly

15   . . . , including contributions which are in any way earmarked or otherwise directed through an

16   intermediary or conduit to [a] candidate, shall be treated as contributions from such person to

17   such candidate." 2 U.S.C. § 441a(a)(8). "Earmarked" means "a designation, instruction, or

18   encumbrance, whether direct or indirect, express or implied, oral or written, which results in all

19   or any part of a contribution . . . being made to . . . a clearly identified candidate." 11 C.F.R.

20   § 110.6(b)(1). A person who is prohibited from making contributions or expenditures in

21   connection with federal elections may not serve as a conduit or intermediary for an earmarked

22   contribution. 11 C.F.R. § 110.6(b)(2)(ii). Each person who receives a contribution for an

23   authorized committee, including a conduit or intermediary under 11 C.F.R. § 110.6, must

1   forward the contribution to the committee's treasurer within ten days after receipt. 2 U.S.C.

2   § 432(b)(1); 11 C.F.R § 102.8(a), (c).

3   Crowdpac proposes that certain contributions made through its website — *i.e.*, those

4   designated for eventual nominees and prospective candidates — will be received and held by

5   Democracy Engine PAC (rather than by Democracy Engine itself) as earmarked contributions

6   under 11 C.F.R. § 110.6. Democracy Engine PAC will report the contributions as earmarked on

7   its regular reports to the Commission and will forward the contributions within 10 days after the

8   relevant triggering event (which will generally be either the candidate's nomination or the

9   candidate's registration of a campaign committee). If no candidate meeting the contributor's

10   criteria is identified and registers an authorized committee with the Commission within seven

11   days of the respective state or federal nominating convention, Democracy Engine PAC will

12   forward the contribution to the respective national congressional or senatorial party committee as

13   a "default committee."[8] The user will be notified of this policy prior to submitting a contribution

14   for an eventual nominee or prospective candidate.

15   This proposal is similar to one that the Commission approved in Advisory Opinion 2006-

16   30 (ActBlue).[9] There, ActBlue, a nonconnected political committee, proposed to collect

17   contributions earmarked for prospective candidates. The Commission concluded that the ten-day

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[8]   The Commission assumes that a user will be required to choose which national party's congressional or senatorial committee the user wishes to designate as the default committee.

[9]   In Advisory Opinion 2012-22 (skimmerhat), the Commission explained that, when contributors use commercial processing services to transmit contributions to candidates, the users' contributions are "direct contributions to the candidate . . . via a commercial processing service" — "not contributions . . . earmarked for a candidate." *Id*. at 10. "[C]ertain electronic transactional services . . . do not run afoul of the prohibition on corporations acting as a conduit or intermediary for earmarked contributions because [these] services are so essential to the flow of modern commerce that they are akin to 'delivery services, bill-paying services, or check writing services.'" *Id*. (citing Advisory Opinion 2011-06 (Democracy Engine)). Thus, in certain circumstances, an incorporated payment processor such as Democracy Engine may lawfully process contributions that are not "earmarked" within the meaning of the Act and Commission regulations. But because Crowdpac intends to treat contributions to eventual nominees and prospective candidates as earmarked and transmit them through a political committee, the "direct contribution" rationale of Advisory Opinion 2012-22 (skimmerhat) does not apply here.

1   forwarding requirement under 2 U.S.C. § 432(b) was "tolled until *both* the recipient's identity

2   and candidacy status are known." Advisory Opinion 2006-30 (ActBlue) at 4. The Commission

3   also approved ActBlue's proposal to identify a "'default recipient' for earmarked contributions in

4   the event that a [p]rospective [c]andidate does not register" an authorized committee by a pre-

5   established deadline. *Id.* at 5. The Commission stated, however, that ActBlue "must clearly

6   state in its solicitation how it will distribute the earmarked contributions under such

7   circumstances." *Id.*

8   The Commission also concluded that ActBlue was required to disclose on its regular

9   reports to the Commission when it received the earmarked contributions, including the sources of

10   the contributions and the prospective candidate for whom each contribution was earmarked.

11   Advisory Opinion 2006-30 (ActBlue) at 6 (citing 2 U.S.C. § 441a(a)(8) and 11 C.F.R.

12   § 110.6(c)(1)(i), (ii)). Additionally, the Commission concluded that ActBlue was required to

13   disclose on its regular reports when it ultimately disbursed the earmarked contributions to the

14   ultimate recipients. *Id.*

15   Crowdpac's proposal is consistent with these forwarding and reporting requirements, and

16   (in the case of default committees) Crowdpac will provide contributors with the same

17   notification provided in Advisory Opinion 2006-30 (ActBlue). Therefore, Crowdpac may permit

18   its users to earmark contributions for eventual nominees or prospective candidates as described

19   in the request.[10]

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[10]   Democracy Engine PAC's status as a separate segregated fund, rather than a nonconnected committee, does not change this result because the request does not contemplate the solicitation of contributions by or to Democracy Engine PAC. *See* 2 U.S.C. § 441b(b)(4)(A)(i) (prohibiting connected organizations and separate segregated funds from soliciting contributions to separate segregated funds from other than restricted class).

1   *3. May Crowdpac allow candidates to provide video content for their Crowdpac candidate*

2   *pages without making impermissible contributions to those candidates?*

3   Yes, Crowdpac may allow candidates to provide video content for their Crowdpac

4   candidate pages without making impermissible contributions to those candidates.

5   In Advisory Opinion 2012-22 (skimmerhat), the requestor proposed to develop and host

6   "candidate pages" that would include, for each federal candidate, a picture of the candidate,

7   biographical information, campaign finance data, recent updates, and issue positions. *Id.* at 2-3,

8   7. Candidates could assume "limited managerial control" over basic biographical information on

9   their candidate pages and set positions on issues. *Id.* at 7. Candidates' control of their pages,

10   however, was conditioned on agreeing to terms of service that prohibited use of the requestor's

11   platform to fundraise outside of that platform or "for any activity that can be reasonably deemed

12   outside of that which enhances the quality and accuracy of candidate information available to

13   users." *Id.* at 4. In approving the proposal, the Commission noted that it was similar to those in

14   which candidates were able to refine biographical information and issue positions presented on

15   commercial vendors' websites. Advisory Opinion 2012-22 (skimmerhat) at 7-8 (citing Advisory

16   Opinion 1999-25 (Democracy Network) and Advisory Opinion 1999-24 (Election Zone)).

17   Additionally, the Commission noted several of the requestor's representations, including that (1)

18   allowing candidate modification to the pages would "increase the accuracy of the site's data and

19   the effectiveness of the [requestor's] matching process, both of which advance the [requestor's]

20   commercial interests"; (2) the website was "operated on a commercial basis only"; and (3) the

21   requestor had a "vested commercial interest in seeking participation of users from all political

22   parties and ideological background" rather than influence federal elections. *Id*. at 8.

1   Similar elements are present in Crowdpac's proposal. Crowdpac will create a dedicated

2   page for each candidate for federal office who has registered an authorized committee with the

3   Commission. Crowdpac's candidate pages will present candidates' biographies and photographs

4   and identify offices sought and positions on issues. Each candidate will then have the

5   opportunity to provide content to augment his or her Crowdpac page, subject to a restriction

6   similar to that presented by the requestor in Advisory Opinion 2012-22 (skimmerhat) at 3-4:

7   Candidates will not be able to upload content "for purposes other than enhancing the quality and

8   accuracy of information about that candidate available to Crowdpac's users." *See* AOR at 2, 8.

9   That Crowdpac proposes to allow candidates to provide content through videos, instead of

10   through graphics or text, does not materially distinguish Crowdpac's proposal from those

11   previously approved by the Commission. *Cf.* Advisory Opinion 2012-22 (skimmerhat);

12   Advisory Opinion 1999-25 (Democracy Net); Advisory Opinion 1999-24 (Election Zone).

13   Additionally, Crowdpac represents that it "seeks to make information and intelligence

14   regarding all candidates for federal office more readily available and easier to understand."

15   AOR at 1. Indeed, to that end, Crowdpac will provide all candidates with an equal opportunity

16   to upload content and will subject all candidates to the same restrictions on that content. *See id.*

17   at 2-3. And because candidate videos "help[] users accurately identify federal candidates they

18   may wish to support," the videos serve Crowdpac's commercial interest in providing its users

19   with tools to identify recipient candidates. *Id.* at 3.

20   Accordingly, Crowdpac may allow candidates to provide video content for their

21   Crowdpac candidate pages, as described in the request, without resulting in contributions by

22   Crowdpac to those candidates.

1   *4. Is Crowdpac's proposed use of information taken from reports filed with the Commission*

2   *permissible under the Act and Commission regulations?*

3   Crowdpac may display aggregated campaign finance data about candidates and use

4   Commission data in its algorithm, and may display the names, cities, and states of individual

5   contributors drawn from reports filed with the Commission.

6   Crowdpac proposes to use data from reports filed with the Commission in three ways.

7   First, Crowdpac proposes to display certain aggregated campaign finance data on candidates,

8   such as the total number of contributors to a candidate's committee and the total amount of

9   contributions the candidate has raised. Second, Crowdpac's algorithm will analyze (1) the

10   candidates and political committees who have contributed to particular candidates and (2) the

11   contribution histories of individuals who have contributed to particular candidates, including any

12   other candidates to whom those contributors have given. Finally, Crowdpac asks whether it may

13   display the names, cities, and states of certain contributors, drawn from Commission reports, on

14   its website in order to provide information on "the functionality of its algorithm." AOR at 11.

15   The Act requires each political committee to report the name, mailing address,

16   occupation, and employer name of any individual who contributes more than $200 to the

17   committee in a calendar year. *See* 2 U.S.C. §§ 431(13)(A), 434(b)(3)(A); *see also* 11 C.F.R.

18   §§ 100.12, 104.8(a). The Act also requires the Commission to make these reports available for

19   public inspection and copying. *See* 2 U.S.C. § 438(a)(4); *see also* 2 U.S.C. § 438a (requiring

20   Commission to make all reports publicly available online). In enacting these requirements,

21   Congress was concerned about "protect[ing] the privacy of the generally very public-spirited

22   citizens who may make a contribution to a political campaign or a political party." 117 Cong.

23   Rec. S30057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon). Accordingly, the Act

1   prohibits any information copied from Commission reports from being "sold or used by any

2   person for the purpose of soliciting contributions or for commercial purposes, other than using

3   the name and address of any political committee to solicit contributions from such committee."

4   2 U.S.C. § 438(a)(4); *see also* 11 C.F.R. § 104.15(a).

5   Mere aggregations of data regarding contributions to candidates, without identifiable

6   contributor information, do not implicate the privacy concerns that the solicitation and

7   commercial use prohibitions in section 438(a)(4) are intended to mitigate. *See* Advisory Opinion

8   2012-22 (skimmerhat) at 9. Thus, Crowdpac may present on its website aggregated campaign

9   finance data regarding candidate committees, such as the number of persons who have

10   contributed to a committee and the amount of contributions received. This conclusion is

11   consistent with a long line of advisory opinions in which the Commission has approved

12   proposals to sell or use information from reports filed with the Commission where that

13   information did not include the names and addresses of individual contributors. *See, e.g.*, *id.*;

14   Advisory Opinion 1989-19 (Johnson) (approving proposal to sell portions of committee reports

15   identifying contributions from other political committees); Advisory Opinion 1983-44 (Cass)

16   (approving use of Commission reports to solicit candidates for advertising services); Advisory

17   Opinion 1980-101 (Weinberger) (approving proposal to publish directory of political committees

18   that omits identities of individual contributors).

19   Similarly, Crowdpac may also use data derived from Commission reports in its

20   algorithm, provided that doing so does not entail disclosing individual contributors' contact

21   information. As the Second Circuit concluded in *FEC v. Political Contributions Data*, a vendor

22   does not violate section 438(a)(4) where its use of Commission data is not "of the type that could

23   infringe on the contributors' privacy interests." 943 F.2d 190, 197-98 (2d Cir. 1991). Permitting

1   analysis of Commission data without public identification of contact information for individual

2   contributors accomplishes "FECA's broader aim of full disclosure" and "further[s] first-

3   amendment values" in a manner that "protect[s] the privacy of campaign contributors." *Id.* at

4   196-97 (analyzing purpose and legislative history of section 438(a)(4)); *c.f.* 11 C.F.R.

5   § 104.15(c) (permitting use of Commission data "in newspapers, magazines, books, or other

6   similar communications" where "the principal purpose of such communications is not to

7   communicate any contributor information listed on such reports for the purpose of soliciting

8   contributions or for other commercial purposes."); Advisory Opinion 2003-24 (National Center

9   for Tobacco-Free Kids) at 4 (finding impermissible proposal that risked "possibility of repetitive

10   and intrusive communications").

11   Finally, Crowdpac may display on its website the names, cities, and states of individual

12   contributors drawn from Commission reports for the purpose of explaining the "functionality of

13   its algorithm." Crowdpac has stated that its "primary interest is in building an efficient political

14   marketplace where users can find accurate assessments of ideal candidates to support." AOR at

15   10. Because this limited use of contributor data is simply meant "to promote . . . the

16   transparency of political information" provided by Crowdpac, and because Crowdpac will not

17   reveal contact information, such as phone numbers, street addresses, or email addresses, the

18   proposed use of data is permissible. *See* Advisory Opinion 1998-04 (White Oak Technologies)

19   at 3 (proposal that "would use contributor information only to illustrate [the requestor's] general

20   methodology to prospective clients" does not violate the Act); *see also FEC v. Legi-Tech, Inc.*,

21   967 F. Supp. 523, 525, 531 (D.D.C. 1997) (holding that commercial database that "provided

22   subscribers with information regarding contributors and their contributions, *including the*

23   *contributors' telephone numbers and street addresses*," that was largely copied from FEC

1   reports was "transaction akin to list-making and brokering" that was prohibited by Act)

2   (emphasis added).

3   The Commission expresses no opinion regarding any implications of the requestor's

4   proposal under the Internal Revenue Code because those issues are outside the Commission's

5   jurisdiction.

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* 2

8   U.S.C. § 437f. 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* 2 U.S.C.

14   § 437f(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   Lee E. Goodman
23   Chairman