



Federal Election Commission
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RE: Advisory Opinion Request 2022-12 (Ready for Ron)

Dear Commissioners,

In Advisory Opinion Request 2022-12, Ready for Ron (“RFR”), a hybrid, nonconnected, unauthorized political committee, asks whether it may provide Gov. Ron DeSantis with a petition, including the names, phone numbers, email addresses, and zip codes of each signatory, for the asserted purpose of convincing DeSantis to run for president. Campaign Legal Center respectfully files this comment urging the Commission to adopt as its Final Opinion Agenda Document No. 22-36-A (“Draft A”), which correctly concludes that RFR’s proposed course of action would violate the Federal Election Campaign Act (“FECA”) and Commission regulations.

Factual Background

RFR proposes to collect a list of supporters for a petition to encourage DeSantis to run for president, and signatories will be required to provide their “Signatory Information” — which includes their “name, phone number, e-mail address, and zip code” — to sign the petition.¹ To jumpstart its effort to reach potential supporters, RFR plans to “rent access to distribution lists from commercial vendors to send e-mails and text messages to potential DeSantis supporters, encouraging them to visit the website and add their name to the Petition.”² It also plans to develop and disseminate advertisements soliciting prospective DeSantis supporters to add their name and information to the list.³ To further advance its outreach efforts, RFR “anticipates spending an average of \$25,000–50,000 each week on advertisements, and intends to do so through

¹ Advisory Op. Request 2022-12 (Ready for Ron) (hereinafter, “AOR”) at 1.

² *Id.* at 2.

³ *Id.* at 1-2.

2024.”⁴ RFR proposes to give the petition to DeSantis at no charge, and after its initial submission, to continue updating the list, including by providing “the names and Signatory Information of people who have joined the petition since it was last updated.”⁵

Relevant Law

FECA prohibits any person from making aggregate contributions to a candidate or their authorized committee in excess of \$2,900 per election.⁶ FECA defines “person” to include a political committee,⁷ and a “contribution” as “anything of value” provided “for the purpose of influencing” a federal election.⁸ Commission regulations further provide that “anything of value” includes “all in-kind contributions,” and explicitly recognize that “membership lists” and “mailing lists” are goods or services that result in an in-kind contribution, if provided to a candidate or committee at no charge or at a charge below the “usual and normal charge” for such goods or services.⁹

Moreover, under the Commission’s “testing the waters” regulations, funds raised or spent solely to explore a potential federal candidacy are not contributions or expenditures, respectively, but “only funds permissible under [FECA] may be used for such activities.”¹⁰ Accordingly, even before an individual has officially become a candidate, the funds they raise or spend to explore a federal candidacy must comply with FECA’s source prohibitions and amount limits. Additionally, if the individual subsequently becomes a federal candidate, any funds they received while testing the waters become contributions, and payments made become expenditures, subject to FECA’s reporting requirements.¹¹

Legal Analysis

1. *The RFR Petition is a Thing “of Value” under FECA and Commission Regulations, and is Essentially a “Mailing List”*

The petition that RFR proposes to give to DeSantis, at no charge, is a thing of value under FECA and is essentially a mailing list of voter information, tailor-

⁴ *Id.* at 3.

⁵ *Id.* at 4.

⁶ 52 U.S.C. § 30116(a)(1)(A). While the per-election contribution limit is higher for multicandidate committees, *see id.* § 30116(a)(2)(A), RFR is not a multicandidate committee, *see* 11 C.F.R. § 100.5(e)(3).

⁷ 52 U.S.C. § 30101(11).

⁸ 52 U.S.C. § 30101(8)(A).

⁹ 11 C.F.R. § 100.52(d)(1).

¹⁰ 11 C.F.R. §§ 100.72, 100.131.

¹¹ *Id.*

made to dramatically advance fundraising and voter targeting efforts by DeSantis’s presidential campaign. RFR acknowledges that its petition would contain electorally valuable information — namely, the name, phone number, email address, and zip code of identified DeSantis supporters. Thus, the petition has the hallmark features of a mailing list, which is a specific example of a thing “of value” included in the Commission’s regulation implementing FECA’s definition of “contribution.”¹² RFR’s assertion that the petition is not a thing of value is therefore contrary to law and Commission precedent.¹³

RFR even appears to acknowledge that the signatory information on the petition — that is, “the name, zip code, e-mail address, and phone number of each signatory” — renders the petition a thing of value, and RFR assigns it a value equal to five cents per signatory. RFR admits that the proposed list would “reasonably be expected to have an estimated market value of at least \$2,900” as any list with more than 58,000 names, at five cents per name, would exceed \$2,900, and RFR expects to collect a much larger number of signatories.¹⁴

In fact, the signatory list has far greater value; five cents per name might be a fair price for a *generic* list of party donors — for instance, this is the price RFR reports that it paid for its initial mailing list — but, as explained below, because RFR’s proposed list would be *tailored* to contain the information of DeSantis supporters, its value would have to incorporate the cost of RFR’s own resource-intensive efforts to compile a mailing list with maximum value for a prospective DeSantis presidential campaign.

RFR acknowledges that it will bear significant acquisition costs that must be factored into the “value” of the petition’s signatory list. RFR states that it plans to text and email its initial list of potential supporters, which costs money. RFR also plans to spend “\$25,000-50,000 each week on advertisements” that ask individuals to add their names to the petition.¹⁵ Thus, by RFR’s own estimation, the acquisition cost of the petition’s signatory list will potentially be as much as hundreds of thousands of dollars.

Draft A correctly concludes that the “contact information in R4R’s petition would be of significant value to Governor DeSantis not only because of its expensive development costs, but also because it exclusively includes persons who are advocating in favor of Governor DeSantis running for President.”¹⁶ Draft A also correctly acknowledges that RFR has not shown how the

¹² 11 C.F.R. § 100.52(d)(1).

¹³ See Advisory Op. 2014-06 at 8 (Ryan for Congress) (“The Commission has long recognized that a political committee’s mailing lists are assets that have value and that are frequently sold, rented, or exchanged in a market.”).

¹⁴ AOR at 4.

¹⁵ AOR at 3.

¹⁶ Draft A at 9.

information that it proposes to transfer to DeSantis is “materially distinguishable” from “political committee mailing and membership lists,” which the Commission has previously concluded are “contributions” when provided to a candidate or committee at no charge.¹⁷

Because the value of the petition is based largely on RFR’s effort to compile a tailored list of DeSantis supporters, Draft A also appropriately rejects RFR’s illogical contention that RFR would function merely as a “conduit to pass along the names and Signatory Information” of DeSantis supporters — such that individual signatories, not RFR, would be the relevant contributors for the purposes of FECA’s contribution limits.¹⁸ Draft A appropriately notes that because RFR proposes to spend money conducting outreach and collecting signatory information, thus creating a more valuable deliverable than a generic list of voters, the relevant contribution is the value of the petition as a whole, not each individual signatory’s information.¹⁹

The thing “of value” that R4R proposes to provide to Governor DeSantis does not consist of any individual signatory’s name or contact information. Instead, it is the petition as a whole that is “of value” under FECA, and its value is derived primarily, if not entirely, from R4R’s resource-intensive effort to collect and compile information from tens of thousands — “likely millions”²⁰ — of individuals who intend to support DeSantis’s potential presidential campaign.

2. *RFR Cannot Provide the Petition to DeSantis at No Charge Under FECA and the Commission’s “Testing the Waters” Regulations*

Because the value of the proposed petition, with its list of signatory information, would almost certainly exceed the relevant statutory contribution limit of \$2,900 per election, RFR’s proposed transfer of the petition to DeSantis, at no charge, would violate FECA’s contribution limits and the Commission’s regulations.

If DeSantis is a federal candidate, providing a good or service with a usual and normal value of more than \$2,900 per election, at no charge, would result in an excessive and prohibited in-kind contribution in clear violation of FECA’s contribution limits.²¹ Additionally, under the Commission’s regulations, the prohibition applies to goods or services that DeSantis receives during any testing-the-waters period, and, as such, RFR cannot transfer the petition to DeSantis before he becomes a candidate, as Draft A rightly concludes.²²

¹⁷ Draft A at 13.

¹⁸ AOR at 8.

¹⁹ Draft A at 13.

²⁰ AOR at 15.

²¹ Draft A at 8; *see* 52 U.S.C. § 30116(a)(1)(A).

²² Draft A at 12.

Agenda Document No. 22-36-B (“Draft B”), states that RFR can provide the petition to DeSantis “before he begins testing the waters.”²³ Even on its face this statement makes little sense, as it is difficult to understand why an individual would knowingly accept the material RFR wishes to provide if that individual were not *exploring* possible candidacy. In any event, RFR does not speak for DeSantis, RFR acknowledges that it “lacks any knowledge, insight, or control” over DeSantis’s “independent decisions and actions,” and RFR cannot proffer to the Commission reliable information regarding whether DeSantis is or is not testing the waters. This conclusion of Draft B therefore is premised on facts that the AOR does not and could not provide. In reality, ample publicly available information supports the conclusion that DeSantis is *already* testing the waters, if not already a candidate for purposes of FECA, rendering Draft B’s position on this issue a moot point.²⁴

Draft B also appears to suggest that if the petition is given to DeSantis before he begins testing the waters, the value of the petition would not ultimately be reportable as a contribution to his campaign, even if DeSantis becomes a candidate. This would grossly undermine FECA’s disclosure regime by denying voters complete and accurate information about the source of hundreds of thousands of dollars of in-kind value provided by RFR to DeSantis’s campaign.

Conclusion

According to FEC disclosure reports, during the 2016 and 2020 election cycles, political committees made over 10,000 disbursements — spending well over \$277 million — for “email list[s],” “list rental[s],” “mailing list[s],” “email acquisition,” and “list fee[s].”²⁵ Approving Draft B would risk creating a major loophole that would allow prospective candidates to receive these kinds of informational goods at no cost, and without any obligation to report their value as contributions.

Presidential candidates already routinely delay declarations of candidacy and abuse the Commission’s testing the waters rules to raise massive super PAC

²³ Draft B at 1.

²⁴ See Daniel Lippman, *DeSantis convenes top donors, fellow GOP gobs as 2024 chatter builds*, Politico (Jul. 12, 2022); <https://www.politico.com/news/2022/07/12/desantis-donors-gop-governors-2024-00045298>; Steve Contorno, *Ron DeSantis has raised more than \$100 million for his reelection bid. Could he use that money in a presidential race?*, CNN (Jul. 5, 2022), <https://www.cnn.com/2022/07/05/politics/ron-desantis-campaign-finance-2024-election/index.html>; Michael Scherer, *et al.*, *The shadow race is underway for the Republican presidential nomination*, Wash. Post (Jun. 11, 2022); <https://www.washingtonpost.com/nation/2022/06/11/republican-president-2024-trump/>.

²⁵ FEC.gov, “Disbursements,” https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2020&two_year_transaction_period=2016&disbursement_description=list+fee&disbursement_description=email+acquisition&disbursement_description=mailing+list&disbursement_description=email+list&disbursement_description=list+rental (last viewed Aug. 5, 2022).

war chests and engage in campaign activities that are paid for by their leadership PACs.²⁶ Draft B would escalate matters by incentivizing prospective candidates to claim they have not even begun testing the waters, gaming the system in order to obtain valuable election materials while evading FECA's oversight, all in violation of the public's statutory right to information.

Draft A correctly concludes that under FECA and the Commission's regulations, the RFR petition is a thing "of value" that cannot be provided to DeSantis at no charge. We therefore respectfully urge the Commission to adopt Draft A as its Final Opinion and thank the Commission for the opportunity to submit this comment.

Sincerely,

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²⁶ See Paul S. Ryan, "Testing the Waters or Diving Right In?" (Jan. 2019), <https://www.commoncause.org/wp-content/uploads/2019/01/TestingtheWatersv3.pdf>.