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June 6, 2022

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
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Subject: Draft AO 2022-03 (Democracy Engine) – Draft A (Revised)

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 9:00am (Eastern Time) on June 8, 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 2022-03
2
3 Carol A. Laham, Esq.
4 Andrew G. Woodson, Esq.
5 Wiley Rein LLP
6 2050 M St. NW
7 Washington, DC 20036

DRAFT A (Revised)

8 Dear Ms. Laham and Mr. Woodson:

9 We are responding to your advisory opinion request on behalf of Democracy
10 Engine, LLC (“Democracy Engine” or “requestor”) concerning the application of the
11 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
12 regulations to Democracy Engine’s proposal to sell a customized website to corporations
13 or their separate segregated funds (“SSFs”). The proposed website would enable
14 members of a corporation’s restricted class and the general public to make contributions
15 through the website to candidates and political committees selected by the corporation or
16 SSF. Democracy Engine further proposes to provide a corporation or SSF purchasing its
17 service with real-time data about the names and states of residence of individuals making
18 contributions through the website, as well as the amounts and ultimate recipients of those
19 contributions.

20 The Commission concludes that, under the circumstances presented here, a
21 corporation not conducting activity through an SSF may not solicit either members of the
22 restricted class or the general public to contribute to candidates or political committees
23 through a website hosted by Democracy Engine because the corporate client would use
24 the website’s contribution function to facilitate the making of contributions to candidates
25 and political committees. The Commission further concludes that a corporate SSF client
26 of Democracy Engine may solicit members of the general public to contribute to

1 candidates or political committees through a website hosted by Democracy Engine and
2 receive real-time data about contributions because that activity is not prohibited corporate
3 facilitation when conducted by an SSF, and the proposed activity is not covered by the
4 Act's sale or use prohibition. Finally, an SSF's website hosted by Democracy Engine
5 and available to the general public must include disclaimers because the proposed
6 customized website would be the website of a political committee.

7 ***Background***

8 The facts presented in this advisory opinion are based on your letter dated April 1,
9 2022.

10 Democracy Engine is a for-profit limited liability company that offers web-based
11 payment services to assist individuals to make contributions to political committees in the
12 ordinary course of Democracy Engine's business. Advisory Opinion Request ("AOR") at
13 AOR001.¹ Democracy Engine now proposes to sell a new service to corporations and
14 corporate SSFs.

15 Democracy Engine proposes to charge a corporation or a corporate SSF a fee to
16 create a customized website on their behalf. AOR002-3. Democracy Engine's corporate
17 or corporate SSF client would solicit members of the corporation's restricted class and
18 the general public to make contributions to candidates and political committees through a
19 contribution function on that customized website, and Democracy Engine would provide

¹ For tax purposes, Democracy Engine has elected treatment as a partnership, and its partners are all natural persons who are U.S. citizens. AOR001.

1 its client with real-time data about resulting contributions. AOR001-3, 6-7.² The fee
2 Democracy Engine would charge a corporation or corporate SSF is intended to cover the
3 costs of Democracy Engine’s services and provide Democracy Engine with “a
4 commercially reasonable profit.” AOR003.

5 Solicitations to make contributions through the customized website would be
6 conducted as follows. The website would include a slate of candidates or political
7 committees supported by the corporation or corporate SSF to whom members of the
8 restricted class or general public may make contributions through the website. AOR002-
9 3, 7. The request provides an example of how the website would appear to individuals
10 who visit it. AOR002. This sample page states: “Support our candidates! These
11 candidates are great on our issues!” and provides prospective contributors with various
12 contribution amount options, including the option to fill in the contributor’s own
13 preferred contribution amount. AOR002. The corporation or SSF would determine “the
14 overall content of this website,” including to which candidates or political committees
15 contributions may be made through the website, and would have “administrative rights”
16 to change the public-facing content on the website. AOR003. Individuals could not
17 make contributions through the website to any candidate or political committee beyond
18 those selected by Democracy Engine’s corporate or SSF client. AOR003.

19 To solicit members of the restricted class to make contributions through the
20 customized website, a corporation would “email a link to this site to its restricted class,
21 along with a request that individuals consider supporting one or more candidates or

² In some instances, a corporation or corporate SSF may solicit the restricted class to make contributions to the corporation’s own SSF through the Democracy Engine hosted website. AOR003.

1 committees identified on the site.” AOR003. Those communications would “include the
2 appropriate disclaimers concerning voluntariness.” AOR003. Similarly, for solicitations
3 to the general public, a corporation or corporate SSF would disseminate communications
4 to the public asking them to make contributions through the customized website and
5 would “determine the content of . . . any solicitations.” AOR007. Democracy Engine
6 “expects that communications to the general public will be made independent of any
7 campaign, and that the costs associated with such communications will be treated as
8 independent expenditures by the corporation or its [SSF] and reported accordingly, and
9 further that any solicitations will include the appropriate disclaimers identified by the
10 Commission in Advisory Opinion 2011-14 (Utah Bankers Association).” AOR007.

11 An individual who clicks on the link in a corporation’s or SSF’s solicitation email
12 would be taken to the customized website. AOR003, 7. If that individual chooses to
13 make a contribution to one of the featured candidates or political committees through the
14 customized website, the individual would be informed that by clicking the “donate”
15 button, the individual confirms that he or she is a U.S. citizen or permanent resident, the
16 contribution is from the individual’s own funds, the individual is not a federal contractor,
17 and the individual is at least 18 years old. AOR004. In addition, the individual
18 contributor would be required to provide his or her name, address, email address,
19 employer, occupation, and credit card, debit card, or electronic check information.
20 AOR005. Democracy Engine currently collects this information as part of its processing
21 services to ensure that the ultimate recipient committees are provided “the data they need

1 under the law” to file reports with the Commission and for Democracy Engine’s own
2 accounting purposes. AOR007.³

3 An individual contributor would also be required to agree to Democracy Engine’s
4 terms of service and privacy policy, which would be provided as links on the contribution
5 page. AOR004. “[T]he Privacy Policy explains that an individual’s information may be
6 shared not only with the recipient of an individual’s contribution, but also with those
7 entities that utilize Democracy Engine’s Services and incorporate Democracy-Engine
8 hosted websites into their communications.” AOR004.

9 Democracy Engine would deposit funds received from an individual contributor
10 into a Democracy Engine account separate from its operating funds and transfer the funds
11 to the recipient political committee within 10 days of receipt, after subtracting “a
12 commercially reasonable convenience fee.” AOR005. At the time of the funds transfer,
13 Democracy Engine would provide the recipient committee with the information
14 necessary to properly report the contribution to the Commission. AOR005. Democracy
15 Engine may enter into a limited agreement with the recipient committee to effectuate the
16 electronic transfer of funds but otherwise would not enter into any agreement with a
17 recipient political committee. AOR006.

18 Democracy Engine plans to provide its corporation and corporate SSF clients with
19 real-time data about contributions submitted through the client’s customized website.

³ The request states that “[t]he platform incorporates safeguards to help ensure that individuals do not contribute more than the applicable monetary limit for a particular committee. Ultimately, however, compliance with the FEC’s contribution limits is up to the candidate and committees who will receive and report the contributions.” AOR003.

1 AOR006-7. Democracy Engine’s software allows corporations to obtain this information
2 without using reports filed with the Commission. AOR006.

3 The request provides a sample display showing the information that would be
4 provided to Democracy Engine’s clients. AOR006-7. This display includes the
5 contributor’s name and state of residence, the date and amount of the individual’s
6 contribution, and the name of the candidate or committee receiving the contribution.

7 AOR006-7. Democracy Engine would not place any limits on the use of this information
8 by its clients, stating in the request that “corporations own the data and can use it as
9 permitted by law and as subject to their . . . privacy policies.” AOR007.⁴

10 ***Questions Presented***

11 1. *May a corporation use Democracy Engine’s platform to communicate*
12 *with its restricted class about contributing to candidates and committees, and then*
13 *receive real-time data about any contributions made using the platform, without*
14 *undertaking such activity through its corporate SSF?*

15 2. *May a corporation or its SSF use Democracy Engine’s platform to*
16 *communicate to the general public about contributing to candidates and committees –*
17 *excluding the corporation’s own PAC and any other SSF – and then receive real-time*
18 *data about any contributions made using the platform?*

⁴ See also Democracy Engine’s Privacy Policy at <https://democracyengine.com/privacy-policy/> (last visited Apr. 25, 2022) (stating “many third-party providers and sites link to or display our web pages and/or online forms (including via Application Program Interfaces or APIs) from their or their customers’ or members’ online properties (‘Sponsors’). We also provide reports to these Sponsors, which can include all of the information described above. Each Sponsor’s use of this information is governed by its own privacy policy.”).

1 ***Legal Analysis***

2 1. *May a corporation use Democracy Engine’s platform to communicate*
3 *with its restricted class about contributing to candidates and committees, and then*
4 *receive real-time data about any contributions made using the platform, without*
5 *undertaking such activity through its corporate SSF?*

6 Under the circumstances presented here, a corporation not conducting activity
7 through an SSF may not solicit members of its restricted class to make contributions
8 through a customized website hosted by Democracy Engine because such a client would
9 use the website’s contribution function to facilitate the making of contributions to
10 candidates and political committees.⁵ The requestor’s proposal, therefore, would not
11 comply with Commission regulations.

12 “Corporations . . . may make communications on any subject, including
13 communications containing express advocacy, to their restricted class.” 11 C.F.R.
14 § 114.3(a)(1); *see also Citizens United v. FEC*, 558 U.S. 310, 365 (2010) (striking Act’s
15 restrictions on corporate independent expenditures and use of general treasury funds for
16 express advocacy); Advisory Opinion 2011-04 (American Israel PAC) at 3 (membership
17 organization may communicate with its members on any subject including express
18 advocacy). To that end, corporations “may solicit or suggest that [a member of the
19 restricted class] make a contribution to a particular candidate so long as the corporation
20 limits its activity to communication only and does not actually facilitate the making of the

⁵ The request does not ask whether a corporate SSF may solicit members of the restricted class to make contributions to candidates and political committees through a website hosted by Democracy Engine, and so the Commission does not address such activity in its response.

1 member's contribution to the candidate nor act as a conduit.” Advisory Opinion 1996-21
2 (Business Council of Alabama) at 3; *see also* Advisory Opinion 2000-03 (American
3 Society of Anesthesiologists) at 3 (corporation may “suggest that members of the
4 restricted class contribute to [a] candidate” but cannot collect contributions or “provide
5 materials for the purpose of transmitting or delivering contributions”).

6 The Commission’s regulations prohibit corporations and “representatives acting
7 as agents of corporations” from “facilitating the making of contributions to candidates
8 and political committees,” except for contributions to the corporation’s own SSF.
9 11 C.F.R. § 114.2(f)(1); *see* Advisory Opinion 2021-07 at 8 (PAC Management Services)
10 (summarizing the corporate facilitation prohibition and concluding that services provided
11 by commercial contribution processor to individual contributors would not result in
12 facilitation). The regulation defines facilitation as “using corporate . . . resources or
13 facilities to engage in fundraising activities in connection with any federal election.”
14 11 C.F.R. § 114.2(f)(1); *see also* Advisory Opinion 2018-02 (Alabama Academy of
15 Radiology) at 13 (“Using corporate resources to engage in fundraising activities in
16 connection with a federal election would constitute facilitating the making of
17 contributions to a political committee . . . unless the corporations receive advance
18 payment for the fair market value of such services”).

19 The regulation further provides a non-exhaustive list of activities that do and do
20 not constitute corporate facilitation. 11 C.F.R. § 114.2(f)(2)-(5). Among the examples of
21 corporate activities that constitute prohibited facilitation is “[p]roviding materials” to be
22 used to transmit or deliver contributions “such as stamps, envelopes addressed to a
23 candidate or political committee” other than the corporation’s own SSF, or providing

1 “other similar items which would assist in transmitting or delivering contributions, but
2 not including providing the address of the candidate or political committee.” 11 C.F.R.
3 § 114.2(f)(2)(ii). Examples of activities that do not constitute corporate facilitation
4 include “[s]oliciting contributions to be sent directly to candidates if the solicitation is
5 directed to the restricted class.” 11 C.F.R. § 114.2(f)(4)(ii).

6 The Commission’s regulation further clarifies that a corporation does not facilitate
7 the making of a contribution by “provid[ing] goods or services in the ordinary course of
8 its business as a commercial vendor ... at the usual and normal charge.” 11 C.F.R.
9 § 114.2(f)(1). The Commission has explained that a vendor does not violate the
10 corporate facilitation regulation by processing contributions from individuals to political
11 committees where the vendor does not provide any service to the recipient political
12 committees. Advisory Opinion 2021-07 (PAC Management Services) at 8. The
13 Commission has not previously considered whether a vendor may contract with a
14 corporation to process contributions by members of the corporation’s restricted class to
15 candidates or political committees. Under the circumstances presented here, the
16 Commission concludes that a vendor may not do so because its proposal would enable
17 the corporation to facilitate the making of contributions to candidates and political
18 committees.⁶

⁶ Pursuant to *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), and *Carey v. FEC*, 791 F.Supp.2d 121 (D.D.C. 2011), corporations may make contributions to nonconnected political committees that make only independent expenditures (*i.e.*, Super PACs), or to separate accounts maintained by nonconnected political committees for making only independent expenditures (*i.e.*, Hybrid PACs). Accordingly, the Commission’s regulations prohibiting corporate facilitation would not prohibit a corporation from soliciting contributions to such committees through the Democracy Engine web platform.

1 Under Democracy Engine’s proposal, a website paid for by a corporation not
2 conducting activity through an SSF would “assist in transmitting or delivering
3 contributions,” similar to an envelope addressed to a political committee provided by the
4 corporation. *See* 11 C.F.R. § 114.2(f)(2)(ii). Because the corporation’s customized
5 website would have a function through which a contributor would make a contribution to
6 a candidate or political committee, Democracy Engine’s corporate client would go
7 beyond providing members of the restricted class with the addresses and websites of
8 candidates or political committees. *See id.* Further, while “[s]oliciting contributions to
9 be sent *directly* to candidates” is not corporate facilitation if the solicitation is directed to
10 the restricted class, 11 C.F.R. § 114.2(f)(4)(ii) (emphasis added), Democracy Engine’s
11 corporate client would not solicit direct contributions to candidates or political
12 committees under the requestor’s proposal. Democracy Engine’s proposal to provide its
13 corporate client with “real-time data about the amount and recipients of contributions
14 made through the service” and the names of those who contribute, without using
15 Commission reports, demonstrates that a contribution made through the customized
16 website is not made by the individual contributor directly to the candidate or committee.
17 AOR006-7. This functionality would not be possible if the individual contributors made
18 their contributions directly to ultimate recipient candidates or political committees.

19 The proposal in the request is distinguishable from previous proposals by vendors
20 providing contribution processing services to *individuals*, including a previous proposal
21 from Democracy Engine itself. In those advisory opinions, the Commission concluded
22 that a vendor processed contributions on behalf of the individual contributor where the
23 vendor transferred funds and information about an individual only at the request of the

1 individual, and not at the request of the recipient political committee. *See, e.g.*, Advisory
2 Opinion 2015-15 (WeSupportThat.com) at 4-5; Advisory Opinion 2011-06 (Democracy
3 Engine) at 5. In reaching this conclusion, the Commission noted that because the vendor
4 would process contributions “at the request and for the benefit of” the individual
5 contributors, “the [vendor’s] services are akin to delivery services, bill-paying services,
6 or check writing services.” *Id.* By contrast, here, Democracy Engine is processing
7 contributions and transferring information about individual contributors at the request and
8 for the benefit of the corporate client.⁷ Furthermore, the corporate client has sole
9 discretion to select which candidates or committees will be featured on its site and
10 individuals do not have the option to contribute to a candidate not featured on the
11 corporation’s website. AOR003. Therefore, Democracy Engine is not providing services
12 to individual contributors akin to “delivery services, bill-paying services, or check
13 writing services.”

14 As described in the request, the means of transmitting the contribution to
15 Democracy Engine – the link – is part and parcel of the package of services for which the
16 corporation is paying and, in turn, making available to individuals through its website.
17 As a result, a corporate client of Democracy Engine not conducting activity through an
18 SSF may not solicit members of its restricted class to make contributions through a
19 customized website hosted by Democracy Engine.

⁷ The corporate clients will “own the data [about contributions made through the customized website].” AOR007.

1 2. *May a corporation or its SSF use Democracy Engine’s platform to*
2 *communicate to the general public about contributing to candidates and committees –*
3 *excluding the corporation’s own PAC and any other SSF – and then receive real-time*
4 *data about any contributions made using the platform?*

5 Under the circumstances presented here, a corporation not conducting activity
6 through an SSF may not solicit the general public to make contributions through a
7 customized website hosted by Democracy Engine because the corporation would use the
8 website’s contribution function to facilitate the making of contributions to candidates and
9 political committees. This aspect of the proposal, therefore, would not comply with
10 Commission regulations. A corporate SSF, on the other hand, may do so and receive
11 real-time data about any resulting contributions because that activity is not prohibited
12 corporate facilitation when conducted by an SSF, and the proposed activity is not covered
13 by the Act’s sale or use prohibition. However, the SSF’s customized website hosted by
14 Democracy Engine must include the disclaimers required by 11 C.F.R. § 110.11 because
15 it would be the website of a political committee available to the general public.

16 **A. Solicitation by a Corporation to the General Public**

17 A corporation may make independent expenditures and endorse candidates in
18 communications directed to the general public. *See Citizens United*, 558 U.S. at 365
19 (striking Act’s restrictions on corporate independent expenditures and use of general
20 treasury funds for express advocacy); 11 C.F.R. §§ 114.4(c)(1), (6), 114.10(a). However,
21 as explained in depth above, a corporation may not facilitate the making of a contribution
22 to a candidate or political committee. 11 C.F.R. § 114.2(f).

1 As discussed above, a corporation’s customized website with a contribution
2 function hosted by Democracy Engine would “assist in transmitting or delivering
3 contributions.” *See* 11 C.F.R. § 114.2(f)(2)(ii). In soliciting contributions to be
4 submitted using the contribution function on a corporation’s website hosted by
5 Democracy Engine, the corporate client’s activity would also be outside the exclusion
6 from the definition of facilitation for “[s]oliciting contributions to be sent *directly* to
7 candidates if the solicitation is directed to the restricted class.” 11 C.F.R.
8 § 114.2(f)(4)(ii) (emphasis added). Instead, the contribution would be submitted
9 indirectly to the ultimate recipient using the Democracy Engine platform, and the
10 corporation would direct its solicitation to individuals outside the corporation’s restricted
11 class. Accordingly, a corporation not conducting activities through an SSF would
12 facilitate the making of contributions to candidates and political committees under the
13 proposal.⁸

14 **B. Solicitation by a Corporate SSF to the General Public**

15 A corporate SSF client of Democracy Engine may solicit the general public to
16 make contributions to candidates and political committees through a customized website

⁸ Requestor cites Advisory Opinion 2011-14 (Utah Bankers Association) as support for the proposition that its proposal is permissible. In that advisory opinion, the Commission concluded that a proposal by the SSF of an incorporated trade association to solicit the general public by email and a branded website to make contributions to candidates was permissible under the Act and Commission regulations. Democracy Engine’s proposal is different from that in Advisory Opinion 2011-14 in two important ways. First, the email solicitations and website in that advisory opinion were conducted as a project of an SSF, not its connected organization, although the connected organization was permitted to pay the administrative costs of the SSF. Further, the SSF in that advisory opinion proposed to “provide the website and mailing address of the recommended Federal candidates so that any interested individuals receiving the Project’s communications can send their contributions directly to the candidates.” *Id.* at 2. Accordingly, the activity in Advisory Opinion 2011-14 was squarely within the activity permitted by 11 C.F.R. § 114.2(f)(2)(ii), which states that providing the address of a political committee is not facilitation. The requestors in Advisory Opinion 2011-14 did not propose to include a contribution function on the branded website through which individuals could submit contributions.

1 hosted by Democracy Engine because such activity is excluded from the definition of
2 facilitation when conducted by an SSF, and the proposed activity is not covered by the
3 Act's sale or use prohibition. As the website of a political committee available to the
4 general public, the customized website of an SSF hosted by Democracy Engine must
5 include required disclaimers.

6 *1. Facilitation*

7 A corporate SSF may communicate with the general public, including
8 communications that solicit contributions to a candidate or political committee, if the
9 communications are made using only voluntary contributions and do not solicit
10 contributions to any SSF. 11 C.F.R. § 114.5(i); *see also* 11 C.F.R. § 114.5(g) (limiting
11 who an SSF may solicit for contributions to an SSF but not limiting who an SSF may
12 solicit for contributions to candidates and other political committees). Beyond the
13 general exclusions from the definition of corporate facilitation in the Commission's
14 regulation, the regulation lists additional activities that are not prohibited facilitation
15 when conducted by an SSF. These activities are: (1) "[a]ny activity specifically
16 permitted under 11 C.F.R. 110.1, 110.2, or 114.5 through 114.8, including soliciting
17 contributions to a candidate or political committee, and making in kind contributions to a
18 candidate or political committee," and (2) "[c]ollecting and forwarding contributions
19 earmarked to a candidate." 11 C.F.R. § 114.2(f)(3)(i), (ii).

20 The scope of permissible activities under this regulation is much broader for SSFs
21 than for corporations. As discussed above, the Commission's regulation provides that a
22 corporation does not facilitate the making of a contribution by "[s]oliciting contributions
23 to be sent *directly* to candidates if the solicitation is directed to the restricted class."

1 11 C.F.R. § 114.2(f)(4)(ii) (emphasis added). Conversely, a corporate SSF does not
2 facilitate the making of a contribution by “soliciting contributions to a candidate or
3 political committee.” 11 C.F.R. § 114.2(f)(3)(i). The regulation does not require the
4 solicitation to be for direct contributions to candidates or limited to the restricted class to
5 fall within this exclusion when the activity is conducted by an SSF. *Id.* Accordingly, in
6 soliciting contributions from the general public to be submitted indirectly using the
7 Democracy Engine platform, the activities of Democracy Engine’s corporate SSF clients
8 would not be prohibited corporate facilitation under 11 C.F.R. § 114.2(f)(3).

9 The conclusion that the proposed activity may be conducted by a corporate SSF
10 but not a corporation itself is consistent with the generally differing treatment under the
11 Act of SSFs and corporations using general treasury funds. *See Stop This Insanity, Inc.,*
12 *Emp. Leadership Fund, et al. v. FEC*, 761 F.3d 10, 11-12 (D.C. Cir. 2014) (outlining
13 different legal limitations for corporations and corporate SSFs under the Act). SSFs may
14 engage in many activities that are not permitted by corporations using general treasury
15 funds, including making in kind or monetary contributions to candidates and collecting
16 and forwarding contributions earmarked to candidates. 11 C.F.R. §§ 110.1, 110.2,
17 110.6(b)(2)(ii), 114.2(f)(3)(ii).⁹

⁹ While, as discussed above, a corporation is not permitted to contract with Democracy Engine to solicit members of the general public or the restricted class, the connected corporation of an SSF may use its general treasury funds to pay the administrative costs associated with the SSF’s customized website without those payments being contributions to the SSF. Advisory Opinion 2011-14 (Utah Bankers Association) at 6.

1 2. *Sale or Use of Contributor Data*

2 A key component of the service that Democracy Engine proposes to sell to an
3 SSF is the provision of “real-time data about the amount and recipients of contributions
4 made through the service,” as well as the name and state of residence of each contributor.
5 AOR006-7. Democracy Engine would make this data available to its clients so that its
6 clients may obtain the data without using reports filed with the Commission. AOR006.
7 This raises the issue of whether the proposed activity is barred by the Act’s prohibition
8 on the sale or use of data from Commission reports. The Commission concludes that the
9 sale or use prohibition does not apply to the proposed activity because the data provided
10 by Democracy Engine would not be copied from Commission reports or statements but
11 instead obtained from Democracy Engine’s own records of contributions processed on its
12 platform.¹⁰

13 The Act requires the Commission to post “reports and statements filed with it”
14 within 48 hours after receipt. 52 U.S.C. § 30111(a)(4). The Act further provides that
15 “any information copied from such reports or statements may not be sold or used by any
16 person for the purpose of soliciting contributions or for commercial purposes, other than
17 using the name and address of any political committee to solicit contributions from such
18 committee.” *Id.* Similarly, the Commission’s regulation provides that “[a]ny information
19 copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or
20 publication thereof, filed under the Act, shall not be sold or used by any person for the
21 purpose of soliciting contributions or for any commercial purpose,” except that the name

¹⁰ The Commission expresses no view on whether requestor’s proposal is consistent with any law not administered by the Commission, including federal and state privacy laws.

1 and address of a political committee may be used to solicit contributions from the
2 committee. 11 C.F.R. § 104.15(a). The Commission has determined that a political
3 committee’s use of the names of its own contributors is not within the sale or use
4 prohibition where the contributor names were not obtained from Commission reports but
5 compiled by the committee “on the basis of its own information.” Advisory Opinion
6 1977-66 (Title Industry PAC) at 2; *see also* Advisory Opinion 1991-16 (Feigenbaum) at
7 3 (sale or use prohibition “would not prohibit a political committee from selling or
8 renting its own contributor list for use by someone else to solicit contributions” but “does
9 prohibit the use of any list to solicit contributions which is copied or otherwise obtained
10 from disclosure reports filed under the Act”).

11 While Democracy Engine is not a political committee, a similar analysis applies
12 here. The data that Democracy Engine would sell to an SSF would not include “any
13 information copied from” reports or statements filed with the Commission, *see*
14 52 U.S.C. § 30111(a)(4), but instead would be gathered from Democracy Engine’s own
15 records of contributions processed on its platform. Because the data would not be copied
16 from Commission reports or statements, the Commission concludes that the data’s sale or
17 use is outside of the Act’s sale or use prohibition, and the proposed activity is
18 permissible.

19 *3. Disclaimers*

20 An SSF’s customized website hosted by Democracy Engine must include
21 disclaimers as required by 11 C.F.R. § 110.11 because it would be the website of a
22 political committee. The request states that Democracy Engine expects that SSFs will
23 include disclaimers in their solicitations directing members of the public to the SSF’s

1 website hosted by Democracy Engine, but there are no disclaimers on the sample website
2 display provided in the advisory opinion request, and the request makes no mention of
3 any such disclaimers on the customized website. AOR002, 7.

4 Under 11 C.F.R. § 110.11(a)(1), “all Internet websites of political committees
5 available to the general public” must include appropriate disclaimers. *See also* Advisory
6 Opinion 2011-14 (Utah Bankers Association) at 9 (requiring website of SSF project that
7 solicited contributions directly to candidates to include appropriate disclaimers as the
8 website of a political committee). As explained in the request, while the customized
9 website would be hosted by Democracy Engine, the SSF would “in its discretion,
10 determine[] the overall content of this website, including which candidates will be
11 featured on the site” and would have “administrative rights to change the content on the
12 website.” AOR003. As a result, the customized website would be a website of a political
13 committee available to the general public and must include required disclaimers by the
14 SSF under 11 C.F.R. § 110.11.

15 ***Conclusions***

16 The Commission concludes that a corporation not conducting activity through an
17 SSF may not solicit either members of the restricted class or the general public to
18 contribute to candidates or political committees through a website hosted by Democracy
19 Engine because the corporate client would use the website’s contribution function to
20 facilitate the making of contributions to candidates and political committees. The
21 Commission further concludes that a corporate SSF client of Democracy Engine may
22 solicit members of the general public to contribute to candidates or political committees
23 through a website hosted by Democracy Engine and receive real-time data about

1 contributions because that activity is not prohibited corporate facilitation when conducted
2 by an SSF, and the proposed activity is not covered by the Act's sale or use prohibition.
3 Finally, an SSF's customized website hosted by Democracy Engine and available to the
4 general public must include the disclaimers required by 11 C.F.R. § 110.11 because the
5 website would be the website of a political committee.

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

18 On behalf of the Commission,

19 Allen J. Dickerson
20 Chairman