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By Office of the Commission Secretary at 2:12 pm, Jun 16, 2022



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 22-20-B1
AGENDA ITEM
For meeting of June 23, 2022

June 16, 2022

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
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Subject: Draft AO 2022-03 (Democracy Engine) – Draft B (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 12:00pm (Eastern Time) on June 22, 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 B (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 page on the Democracy
13 Engine web platform to corporations or their separate segregated funds (“SSFs”).
14 Members of a corporation’s restricted class and the general public who visit the
15 customized page would be able to make contributions through the Democracy Engine
16 platform to those candidates and political committees selected by Democracy Engine’s
17 client to be featured on the page. Democracy Engine would provide payment processing
18 services for contributions made through the platform, and individual contributors would
19 bear the cost of those services by paying Democracy Engine a commercially reasonable
20 convenience fee at the time they make their contribution. Democracy Engine further
21 proposes to provide a corporation or SSF purchasing its service with real-time data about
22 the names and states of residence of individuals who make contributions on Democracy
23 Engine’s platform after visiting the customized page, as well as the amounts and ultimate
24 recipients of those contributions.

25 The Commission concludes, under the circumstances proposed, that a corporate
26 client of Democracy Engine may use a customized page on the Democracy Engine

1 platform to solicit members of its restricted class to contribute to candidates or political
2 committees – and need not operate through an SSF to do so – because Democracy
3 Engine, not its client, would provide the method of transmitting the contributions as a
4 service to individual contributors, and individual contributors — rather than Democracy
5 Engine’s corporate client — would subsidize the cost of transmitting those contributions.
6 The Commission further concludes that Democracy Engine may provide its clients with
7 real-time data about contributions that result from these solicitations because the
8 proposed activity is not covered by the Act’s sale or use prohibition. Finally, a
9 customized page on the Democracy Engine platform available to the general public must
10 include the disclaimers required by 11 C.F.R. § 110.11 because the page would be a
11 public communication by the corporation or SSF soliciting contributions to candidates or
12 political committees.

13 ***Background***

14 The facts presented in this advisory opinion are based on your letter dated April 1,
15 2022.

16 Democracy Engine is a for-profit limited liability company that offers web-based
17 payment services to assist individuals to make contributions to political committees in the
18 ordinary course of Democracy Engine’s business. Advisory Opinion Request (“AOR”) at
19 AOR001.¹ Democracy Engine now proposes to sell a new service to corporations and
20 corporate SSFs. Democracy Engine proposes to charge a corporation or a corporate SSF

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 a fee to create a customized page on the Democracy Engine platform. AOR002-3.²
2 Democracy Engine’s corporate or corporate SSF client would use the customized page to
3 solicit members of the corporation’s restricted class or the general public to make
4 contributions to candidates and political committees selected by that client. AOR002-3,
5 7. Democracy Engine would enable members of the restricted class or general public
6 visiting the customized page to make contributions to its clients’ selected candidates or
7 political committees and would deduct “a commercially reasonable convenience fee”
8 from each contribution before forwarding it to the ultimate recipient candidate or political
9 committee. AOR003-5. Democracy Engine would then provide its client with real-time
10 data about resulting contributions. AOR006-7.³

11 The request provides an example of how the customized page would appear to
12 individuals who visit it. AOR002. This sample page states: “Support our candidates!
13 These candidates are great on our issues!” and provides prospective contributors with
14 various contribution amount options, including the option to fill in the contributor’s own
15 preferred contribution amount. AOR002. Individuals could not make contributions to
16 any candidate or political committee beyond those selected by Democracy Engine’s
17 corporate or SSF client and listed on the customized page. AOR003. Democracy Engine
18 would retain a copyright in the content included on the customized page, and only

² This fee is intended to cover the costs of Democracy Engine’s services to the corporation or corporate SSF and provide Democracy Engine with “a commercially reasonable profit.” AOR003.

³ In some instances, a corporation or corporate SSF may use the customized page to solicit members of the restricted class to make contributions to the corporation’s own SSF. AOR003.

1 Democracy Engine could change the code and conduct technical work to ensure the
2 function of the page. AOR002-3.

3 To direct members of the restricted class to the customized page, a corporation
4 would “email a link to this site to its restricted class, along with a request that individuals
5 consider supporting one or more candidates or committees identified on the site.”

6 AOR003. Those communications would “include the appropriate disclaimers concerning
7 voluntariness.” AOR003. Similarly, for solicitations to the general public, a corporation
8 or corporate SSF would disseminate communications to the public directing them to the
9 customized page and would “determine the content of . . . any solicitations.” AOR007.

10 Democracy Engine “expects that communications to the general public will be made
11 independent of any campaign, and that the costs associated with such communications
12 will be treated as independent expenditures by the corporation or its [SSF] and reported
13 accordingly, and further that any solicitations will include the appropriate disclaimers
14 identified by the Commission in Advisory Opinion 2011-14 (Utah Bankers
15 Association).” AOR007.

16 An individual who clicks on the link in a corporation’s or SSF’s solicitation email
17 would be taken to the customized page. AOR003, 7. If that individual chooses to make a
18 contribution to one of the featured candidates or political committees on the customized
19 page, the individual would be informed that by clicking the “donate” button, the
20 individual confirms that he or she is a U.S. citizen or permanent resident, the contribution
21 is from the individual’s own funds, the individual is not a federal contractor, and the
22 individual is at least 18 years old. AOR004. In addition, the individual contributor
23 would be required to provide his or her name, address, email address, employer,

1 occupation, and credit card, debit card, or electronic check information. AOR005.
2 Democracy Engine currently collects this information as part of its processing services to
3 ensure that the ultimate recipient committees are provided “the data they need under the
4 law” to file reports with the Commission and for Democracy Engine’s own accounting
5 purposes. AOR007.⁴

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

12 Democracy Engine would deposit funds received from an individual contributor
13 into a Democracy Engine account separate from its operating funds and transfer the funds
14 to the recipient political committee within 10 days of receipt, after deducting a payment
15 processing fee, which it describes as a “commercially reasonable convenience fee,” from
16 the contribution. AOR005. At the time of the funds transfer, Democracy Engine would
17 provide the recipient committee with the information necessary to properly report the
18 contribution to the Commission. AOR005. Democracy Engine may enter into a limited
19 agreement with the recipient committee to effectuate the electronic transfer of funds but

⁴ 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 otherwise would not enter into any agreement with a recipient political committee.

2 AOR006.

3 Democracy Engine plans to provide its corporate and corporate SSF clients with

4 real-time data about contributions that result from solicitations on the customized page.

5 AOR006-7. Democracy Engine’s software allows its clients to obtain this information

6 without using reports filed with the Commission. AOR006.

7 The request provides a sample display showing the information that would be

8 provided to Democracy Engine’s clients. AOR006-7. This display includes the

9 contributor’s name and state of residence, the date and amount of the individual’s

10 contribution, and the name of the candidate or committee receiving the contribution.

11 AOR006-7. Democracy Engine would not place any limits on the use of this information

12 by its clients, stating in the request that “corporations own the data and can use it as

13 permitted by law and as subject to their . . . privacy policies.” AOR007.⁵

14 ***Questions Presented***

15 1. *May a corporation use Democracy Engine’s platform to communicate*

16 *with its restricted class about contributing to candidates and committees, and then*

17 *receive real-time data about any contributions made using the platform, without*

18 *undertaking such activity through its corporate SSF?*

⁵ 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 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 ***Legal Analysis***

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

10 Yes, a corporate client of Democracy Engine may use a customized page on the
11 Democracy Engine platform to solicit members of its restricted class to make
12 contributions to candidates and political committees – and need not conduct the activity
13 through its SSF – because: (1) a corporation is permitted under the Act and Commission
14 regulations to solicit its restricted class to make contributions to candidates or political
15 committees; (2) Democracy Engine, not its corporate client, would provide the method of
16 transmitting the contributions as a service to individual contributors in the ordinary
17 course of its payment processing business; (3) individual contributors, rather than
18 Democracy Engine's corporate client, would pay any processing or convenience fees
19 related to their contributions; and (4) the proposed activity is not covered by the Act's
20 prohibition on the sale or use of contributor data. The requestor's proposal, therefore,
21 would comply with the Act and Commission regulations.

1 **A. Express Advocacy and Corporate Facilitation**

2 “Corporations . . . may make communications on any subject, including
3 communications containing express advocacy, to their restricted class.” 11 C.F.R.
4 § 114.3(a)(1); *see also Citizens United v. FEC*, 558 U.S. 310, 365 (2010) (striking Act’s
5 restrictions on corporate independent expenditures and use of general treasury funds for
6 express advocacy); Advisory Opinion 2011-04 (American Israel PAC) at 3 (membership
7 organization may communicate with its members on any subject including express
8 advocacy). To that end, corporations “may solicit or suggest that [a member of the
9 restricted class] make a contribution to a particular candidate so long as the corporation
10 limits its activity to communication only and does not actually facilitate the making of the
11 member’s contribution to the candidate nor act as a conduit.” Advisory Opinion 1996-21
12 (Business Council of Alabama) at 3; *see also* Advisory Opinion 2000-03 (American
13 Society of Anesthesiologists) at 3 (corporation may “suggest that members of the
14 restricted class contribute to [a] candidate” but cannot collect contributions or “provide
15 materials for the purpose of transmitting or delivering contributions”).

16 The Commission’s regulations prohibit corporations and “representatives acting
17 as agents of corporations” from “facilitating the making of contributions to candidates
18 and political committees,” except for contributions to the corporation’s own SSF.
19 11 C.F.R. § 114.2(f)(1); *see* Advisory Opinion 2021-07 at 8 (PAC Management Services)
20 (summarizing the corporate facilitation prohibition and concluding that services provided
21 by commercial contribution processor to individual contributors would not result in
22 facilitation). The regulation defines facilitation as “using corporate . . . resources or
23 facilities to engage in fundraising activities in connection with any federal election.”

1 11 C.F.R. § 114.2(f)(1); *see also* Advisory Opinion 2018-02 (Alabama Academy of
2 Radiology) at 13 (“Using corporate resources to engage in fundraising activities in
3 connection with a federal election would constitute facilitating the making of
4 contributions to a political committee . . . unless the corporations receive advance
5 payment for the fair market value of such services”).

6 The regulation further provides a non-exhaustive list of activities that do and do
7 not constitute corporate facilitation. 11 C.F.R. § 114.2(f)(2)-(5). For example, a
8 corporation engages in prohibited corporate facilitation if it engages in certain
9 “fundraising” activities without receiving advance payment for the fair market value of
10 its services, including if corporate officials or employees “order[] or direct[] subordinates
11 or support staff . . . to plan, organize, or carry out the fundraising project as part of their
12 work responsibilities using corporate . . . resources” or if the corporation uses “a
13 corporate . . . list of customers, clients or other vendors or others who are not in the
14 restricted class to solicit contributions.” 11 C.F.R. § 114.2(f)(2)(i)(A), (C). Additional
15 examples of corporate facilitation include: (1) “[p]roviding materials” to be used to
16 transmit or deliver contributions “such as stamps, envelopes addressed to a candidate or
17 political committee,” or “other similar items which would assist in transmitting or
18 delivering contributions, but not including providing the address of the candidate or
19 political committee,” and (2) “[u]sing coercion . . . to urge any individual to make a
20 contribution or engage in fundraising activities on behalf of a candidate or political
21 committee.” 11 C.F.R. § 114.2(f)(2)(ii), (iv). Examples of activities that do not
22 constitute corporate facilitation include “[s]oliciting contributions to be sent directly to

1 candidates if the solicitation is directed to the restricted class.” 11 C.F.R.

2 § 114.2(f)(4)(ii).

3 The Commission’s regulation further clarifies that a corporation does not facilitate
4 the making of a contribution if it “provides goods or services in the ordinary course of its
5 business as a commercial vendor” to a candidate or political committee “at the usual and
6 normal charge.” 11 C.F.R. § 114.2(f)(1); *see also* 11 C.F.R. § 116.1(c) (defining
7 commercial vendor). Similarly, the Commission has explained that a vendor does not
8 violate the corporate facilitation regulation by processing contributions from individuals
9 to political committees in the ordinary course of its business where the vendor does not
10 provide any service to the recipient political committees. Advisory Opinion 2021-07
11 (PAC Management Services) at 8; *see also* Advisory Opinion 2011-06 (Democracy
12 Engine *et al.*) (approving proposal by Democracy Engine to collect and forward
13 contributions from individuals to political committees, after deducting a convenience fee
14 as payment for its services, in the ordinary course of Democracy Engine’s donation-
15 processing business) *and* Advisory Opinion 2006-08 (Matthew Brooks) (approving
16 proposal where individual contributors paid a vendor directly for the “incidental cost in
17 making [the] contributions”).

18 Here, Democracy Engine proposes that its corporate client would use a
19 customized page on the Democracy Engine platform to solicit members of the client’s
20 restricted class to make contributions to candidates or political committees. The

1 proposed activity involves the type of corporate expenditure that is expressly permitted
2 by the Commission’s regulation at 11 C.F.R. § 114.3(a)(1) and is therefore permitted.⁶

3 Democracy Engine would separately provide contribution payment processing
4 services to individual contributors who visit the customized page. This additional service
5 provided by Democracy Engine does not convert the permissible activity of its corporate
6 clients into prohibited corporate facilitation. Democracy Engine, not its corporate client,
7 would provide the method of transmitting contributions through its web-based payment
8 processing platform and would receive and forward all contributions made by
9 individuals. AOR001, 5. These individual contributors, not a corporation or corporate
10 SSF, would pay for Democracy Engine’s payment processing services through a
11 “commercially reasonable convenience fee” deducted by Democracy Engine before
12 forwarding the contribution to the recipient candidate or political committee. AOR005.
13 Such web payment processing services are already provided by Democracy Engine in the
14 ordinary course of its business. AOR001. This aspect of requestor’s proposal is
15 consistent with previous proposals by vendors providing contribution processing services
16 to individuals, including a previous proposal from Democracy Engine itself. *See, e.g.,*
17 Advisory Opinion 2021-07 (PAC Management Services) at 8; Advisory Opinion 2011-06

⁶ The request focuses on the use of Democracy Engine’s platform by its corporate and corporate SSF clients. The request does not provide detailed information about communications from Democracy Engine’s corporate and corporate SSF clients that would direct members of the restricted class or the general public to the customized page on the Democracy Engine platform, including how those communications would be conducted. The request states that Democracy Engine will not determine the content of or disseminate such communications. AOR007. Given that Democracy Engine would not be involved in these communications, the Commission does not address the application of the Act and Commission regulations to these third-party activities in this advisory opinion. A corporate client of Democracy Engine may submit an advisory opinion request if it has questions about the application of the Act and Commission regulations to such communications.

1 (Democracy Engine); Advisory Opinion 2006-08 (Matthew Brooks). Accordingly, the
2 proposal is permissible under the Act and Commission regulations.

3 **B. Sale or Use of Contributor Data**

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

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

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

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

22 2. *May a corporation or its SSF use Democracy Engine’s platform to*
23 *communicate to the general public about contributing to candidates and committees –*

1 *excluding the corporation's own PAC and any other SSF – and then receive real-time*
2 *data about any contributions made using the platform?*

3 Under the circumstances presented here, a corporation or its SSF may use a
4 customized page on the Democracy Engine platform to solicit members of the general
5 public to make contributions to candidates and political committees because a
6 corporation or a corporate SSF is permitted under the Act and Commission regulations to
7 solicit the general public to make contributions to candidates or political committees, and
8 Democracy Engine, not its client, would provide the method of transmitting the
9 contributions as a service to individual contributors in the ordinary course of its payment
10 processing business.⁸ The requestor's proposal, therefore, would comply with the Act
11 and Commission regulations. However, a client's customized page on the Democracy
12 Engine platform must include the disclaimers required by 11 C.F.R. § 110.11 because the
13 customized page would be a public communication by the corporation or SSF soliciting
14 contributions to candidates or political committees.

15 **A. Express Advocacy and Corporate Facilitation**

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

⁸ As discussed in response to question one, the proposed activity is not covered by the Act's prohibition on the sale or use of contributor data.

1 Similarly, under Commission regulations, a corporate SSF may communicate
2 with the general public, including communications that solicit contributions to a
3 candidate or political committee, if the communications are made using only voluntary
4 contributions and do not solicit contributions to any SSF. 11 C.F.R. § 114.5(i). Beyond
5 the general definition of corporate facilitation in the Commission’s regulation, the
6 regulation lists additional activities that are not prohibited facilitation when conducted by
7 an SSF. These additional activities that are not facilitation include “soliciting
8 contributions to a candidate or political committee.” 11 C.F.R. § 114.2(f)(3)(i).

9 Provided that Democracy Engine’s corporate clients not conducting activity
10 through an SSF act independently from the ultimate recipient candidates and political
11 committees, the proposed activity involves the type of corporate expenditure that the
12 Supreme Court recognized as constitutionally protected in *Citizens United*, 558 U.S. at
13 365, and the activity is expressly permitted under Commission regulations. 11 C.F.R.
14 §§ 114.4(c)(1), (6), 114.10(a). If this activity is conducted by a corporate SSF client, the
15 activity further falls under the exclusion from the definition of facilitation in the
16 Commission’s regulation for solicitations by SSFs of contributions to candidates or
17 political committees. 11 C.F.R. § 114.2(f)(3)(i).⁹ Accordingly, the requestor’s proposal
18 is permissible under the Act and Commission regulations.¹⁰

⁹ A corporate SSF may make coordinated communications, but such coordinated communications are in-kind contributions subject to limitations and reporting by both the recipient political committee and the SSF. 11 C.F.R. §§ 109.21, 114.2(f)(3)(i).

¹⁰ As discussed in response to question one, Democracy Engine’s proposal to separately provide payment processing services to individual contributors who visit the customized page does not change the nature of its client’s activity.

1 **B. Disclaimers**

2 A client’s customized page on the Democracy Engine platform available to the
3 general public must include the disclaimers required by 11 C.F.R. § 110.11 because the
4 customized page would be a public communication by the corporation or SSF soliciting
5 contributions to candidates or political committees.¹¹ The request states that Democracy
6 Engine expects that its clients will include disclaimers in their solicitations directing
7 members of the public to the customized page, but there are no disclaimers on the sample
8 page display provided in the advisory opinion request, and the request makes no mention
9 of any such disclaimers on the customized page. AOR002, 7.

10 Under the Commission’s regulation, “all public communications . . . by any
11 person that solicit any contribution” must include disclaimers. 11 C.F.R. § 110.11(a)(3).
12 A public communication is “a communication by means of any broadcast, cable, or
13 satellite communication, newspaper, magazine, outdoor advertising facility, mass
14 mailing, or telephone bank to the general public, or any other form of *general public*
15 *political advertising*.” 11 C.F.R. § 100.26 (emphasis added). The term general public
16 political advertising excludes communications over the Internet, except for
17 “communications placed for a fee on another person’s Web site.” *Id.*

18 Here, a client’s customized page on the Democracy Engine platform would be a
19 public communication because the customized page would be placed for a fee by
20 Democracy Engine’s clients on the Democracy Engine website and available to the

¹¹ Disclaimers under 11 C.F.R. § 110.11 are not required if access to the webpage is limited to members of a corporation’s restricted class because that regulation does not apply when an SSF or its connected organization “makes a communication” to the restricted class. 11 C.F.R. § 110.11(f)(2).

1 general public. Democracy Engine retains a copyright for the public facing contents of
2 its platform, including the customized page of its corporate or corporate SSF client, and
3 would retain technical control over all aspects of the customized page. AOR002-3.
4 Accordingly, the customized page would be the Democracy Engine’s website. Because
5 Democracy Engine’s client would pay a fee for placement of its customized page and
6 solicit contributions to candidates or political committees on that page, AOR003, 7,
7 disclaimers are required.

8 ***Conclusions***

9 The Commission concludes, under the circumstances proposed, that a corporate
10 client of Democracy Engine may use a customized page on the Democracy Engine
11 platform to solicit members of its restricted class to contribute to candidates or political
12 committees – and need not operate through an SSF to do so – because Democracy
13 Engine, not its corporate client, would provide the method of transmitting the
14 contributions as a service to individual contributors. For the same reason, a corporation
15 or its SSF may use a customized page to solicit members of the general public to
16 contribute to candidates or political committees. The Commission further concludes that
17 Democracy Engine may provide its clients with real-time data about contributions that
18 result from these solicitations because the proposed activity is not covered by the Act’s
19 sale or use prohibition. Finally, a customized page on the Democracy Engine platform
20 available to the general public must include the disclaimers required by 11 C.F.R.
21 § 110.11 because the page would be a public communication by the corporation or SSF
22 soliciting contributions to candidates or political committees.

