



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 28, 2022

ADVISORY OPINION 2022-12

Lilian Rodriguez-Baz, Esq.
Ready for Ron
66 West Flagler Street
Suite 900
Miami, FL 33130

Dear Ms. Rodriguez-Baz:

We are responding to your advisory opinion request on behalf of Ready for Ron (“R4R”) concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to R4R’s proposal to provide to Governor Ron DeSantis without charge a petition containing the names and contact information of thousands of individuals who wish to encourage him to run for President in the 2024 election. The Commission concludes that R4R may not provide the names and contact information to Governor DeSantis if he either becomes a federal candidate or begins testing the waters for a potential federal candidacy because the value of that information would exceed applicable contribution limits and limits on funds used to test the waters. The proposal to provide the contact information to Governor DeSantis after he becomes a federal candidate or begins testing the waters is also contrary to restrictions on the use of funds in the non-contribution accounts of political committees with both contribution and non-contribution accounts (“hybrid PACs”). The Commission could not approve a response by the required four affirmative votes as to whether R4R may otherwise provide the contact information from its petition to Governor DeSantis when Governor DeSantis is neither testing the waters nor a federal candidate.¹

Background

The facts presented in this advisory opinion are based on your letters dated May 25 and August 29, 2022, your emails dated June 17 and September 14, 2022, disclosure reports filed with the Commission, and publicly available information.

¹ See 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

On May 23, 2022, R4R registered with the Commission as a hybrid, nonconnected, unauthorized political committee.² It describes itself as a “draft” committee “that seeks to encourage Florida Governor Ron DeSantis . . . to declare his candidacy for the 2024 Republican nomination for President.”³ Governor DeSantis is currently a candidate for re-election to state office and is not a party to this request.⁴

R4R states that it accepts contributions subject to the Act’s source prohibitions and contribution limits to its contribution account and “solicits and accepts unlimited contributions” from individuals other than prohibited sources to its non-contribution account.⁵ R4R does not plan to seek or qualify for multicandidate political committee status.

R4R proposes to use funds from both its contribution and non-contribution accounts to fund a nationwide petition drive to encourage Governor DeSantis to run for President in 2024.⁶ Individuals supporting a potential DeSantis presidential campaign may “sign” the petition through R4R’s website or by phone. R4R allows all petition signatories to provide their names, phone numbers, email addresses, and zip codes; any individual wishing to sign the petition online who does not provide a name and email address cannot sign the petition. R4R will notify individuals that, by signing the petition, they agree to have their names and contact information provided to Governor DeSantis. R4R proposes to provide this information to Government DeSantis without charge.

R4R plans extensive media outreach to support its petition. R4R represents that, as of June 12, 2022, it has aired approximately 86 television advertisements promoting the petition, including on Fox News and other channels; run online advertisements with a total of 318,779 impressions; and received over one million views of its advertisements through social media. In addition, R4R states that its petition has received news coverage by Fox News, *Politico*, the Associated Press, MarketWatch, and the *Boston Herald*. R4R plans to continue to promote the petition through television and online advertisements, as well as “through radio, podcast, Skywriting, direct mail, billboards, blimps, and other

² Ready for Ron, Statement of Organization, FEC Form 1 (May 23, 2022), <https://docquery.fec.gov/cgi-bin/forms/C00815928/1597424/>. R4R has reported making \$1,250,000 in independent expenditures since registering with the Commission in May 2022. Ready for Ron, 48 Hour Notice Filing, Amendment 1, FEC Form 24, Schedule E (July 15, 2022), <https://docquery.fec.gov/cgi-bin/forms/C00815928/1612461/se>.

³ Advisory Opinion Request (“AOR”) at AOR001.

⁴ See www.rondesantis.com.

⁵ AOR002.

⁶ AOR003. R4R’s petition drive became active on May 23, 2022. AOR019. R4R explains that the purpose of its petition is “to demonstrate the breadth of public support for [Governor DeSantis] and attempt to persuade him to become, and subsequently to remain, a candidate for the Republican nomination for President in the 2024 election.” AOR004.

media,” and estimates that it will spend an average of \$25,000-\$50,000 per week on advertisements in support of the petition through 2024.⁷

As a result of these efforts, R4R expects to receive contact information from more than 58,000 petition signatories during the pendency of this advisory opinion⁸ and “projects it will likely amass well over a million virtual signatures for its petition, along with accompanying [contact information], by the end of 2022.”⁹ R4R states that its petition will likely eventually include the contact information of “millions” of petition signers.¹⁰ After initially submitting its petition to Governor DeSantis, R4R proposes to submit “regular updates” to him through the 2024 election, “accompanied by the names and [contact information] of people who have joined the petition since it was last updated.”¹¹ R4R estimates the value of each signatory’s contact information to be five cents, based on a “reasonable sample market value of contact information in political distribution lists,” and states that the market value of the information it plans to provide to Governor DeSantis will exceed \$2900.¹²

R4R represents that neither it “nor its agents are coordinating with Governor Ron DeSantis, his gubernatorial campaign, or any federal or state political committees authorized by Governor DeSantis.”¹³ R4R states that if it uses any common vendors with Governor DeSantis, it “will require firewalls.”¹⁴ Finally, R4R asserts that, “to the best of its knowledge,” it does not employ and will not employ any former employees or independent contractors of Governor DeSantis’s gubernatorial campaign.¹⁵

⁷ AOR003.

⁸ On September 14, 2022, R4R filed a supplement to its request, stating that it had “collected approximately 43,750 signatures for its petition as of that date, including the signatory’s contact information . . . and reasonably anticipates having over 60,000 signatures by the end of September 2022.” AOR Supplement at 1.

⁹ AOR004.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* R4R bases its estimate on the following. In support of its petition, R4R purchased a distribution list of registered Republicans who contributed to Republican candidates, but not to President Trump or Save America PAC. R4R represents that it paid five cents per name to purchase this list with contact information, and more than \$2900 for the list. AOR018. R4R also consulted “with commercial data vendors experienced in political marketing.” *Id.*

¹³ AOR003.

¹⁴ *Id.*

¹⁵ *Id.*

Questions Presented

1. *May R4R provide its petition, along with the accompanying list of over 58,000 signatories and their contact information, to Governor Ron DeSantis to attempt to persuade him to become a candidate for the Republican nomination for President in 2024?*

2. *If the answer to question one is “yes,” must R4R do so, if at all, before Governor DeSantis:*

- a. *starts testing the waters to become a candidate for the office of President, or*
- b. *becomes a candidate for the office of President?*

Legal Analysis

R4R states that Governor DeSantis has not “begun testing the waters” for a potential federal candidacy.¹⁶ However, R4R also acknowledges that it “lacks any knowledge, insight, or control” over Governor DeSantis’s “independent decisions.”¹⁷ As the Commission has explained, a key purpose of the testing the waters regulations is “to permit individuals to conduct certain activities while deciding whether to become a candidate for Federal office, without making their activities immediately public.”¹⁸ Governor DeSantis is not a party to this request, and the Commission expresses no view on whether he may be engaged in activity that would constitute testing the waters for a potential federal candidacy. The Commission further expresses no opinion regarding the application of any state laws to R4R’s proposal because those laws are not within the Commission’s jurisdiction.

R4R may not provide Governor DeSantis with the list of names and compiled contact information from its petition if Governor DeSantis either becomes a federal candidate or begins testing the waters for a federal candidacy. Providing the list to Governor DeSantis after he becomes a federal candidate (should he do so) would exceed the Act’s contribution limits, and providing the list to Governor DeSantis after he begins testing the waters for a federal candidacy (should he do so) would be contrary to the Commission’s regulation at 11 C.F.R. § 100.72(a). R4R’s proposal to provide the compiled contact information to Governor DeSantis in the event he becomes a federal candidate or begins testing the waters is also contrary to restrictions on the non-contribution accounts of hybrid PACs.

¹⁶ AOR002.

¹⁷ AOR004.

¹⁸ Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985).

1. *The compiled contact information in R4R's petition is a thing of value.*

The Act prohibits a political committee, other than a multicandidate political committee, from contributing more than \$2900 to any candidate with respect to any election for federal office.¹⁹ A contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”²⁰ “[T]he provision of any goods or services without charge or at a charge that is less than the usual and normal charge” is an “in-kind” contribution.²¹ The value or “amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.”²²

As “the product of time-consuming, labor-intensive activities that can cost a political committee thousands, even millions, of dollars” to compile, a political committee’s list of persons sympathetic to its cause is among “its most valuable assets.”²³ Accordingly, the Commission has “long recognized” that political committee mailing and email lists have commercial value and are “frequently sold, rented, or exchanged in a market.”²⁴ Indeed, rather than spending the time and money to start its petition drive completely from scratch, R4R itself states that it “will rent access to distribution lists from commercial vendors to send e-mails and text messages to potential DeSantis supporters” and that it has already paid more the \$2900 for a contact list of persons who it believes are likely sympathetic to its cause.²⁵

The Commission’s regulation specifically identifies “membership lists” and “mailing lists” as examples of goods that are in-kind contributions when provided to a candidate or political committee without charge or at less than their usual and normal

¹⁹ See 52 U.S.C. §§ 30101(11) (defining “person” to include committees), 30116(a)(1)(A), (a)(2)(A); see also 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021) (adjusting limit for inflation pursuant to 52 U.S.C. § 30116(c)).

²⁰ 52 U.S.C. § 30101(8)(A)(i).

²¹ 11 C.F.R. § 100.52(d)(1).

²² *Id.*

²³ *FEC v. Int’l Funding Inst.*, 969 F.2d 1110, 1116 (D.C. Cir. 1992) (en banc) (internal citations omitted); see also Notice of Proposed Rulemaking, Mailings Lists of Political Committees, 68 Fed. Reg. 52,531, 51,531 (Sept. 4, 2003) (“One of the principal assets of many political committees is their mailing list.”).

²⁴ Advisory Opinion 2014-06 (Ryan for Congress, *et. al*) at 8 (collecting examples); see also, *e.g.*, Advisory Opinion 2011-02 (Scott Brown for U.S. Senate Committee) at 7 (same); Advisory Opinion 2002-14 (Libertarian National Committee) at 2.

²⁵ AOR002, 18 (stating R4R purchased list of contact information for registered Republicans who contributed to Republican candidates, but not President Trump or Save America PAC, for more than \$2900 to invite those individuals to sign R4R’s petition).

charge.²⁶ And the Commission has long recognized this principle in its advisory opinions as well. For example, in Advisory Opinion 1979-18 (FEC’s Former Employees Committee), the Commission found that a political committee would make an in-kind contribution to a candidate if it provided its contributor list to the candidate at less than “the usual and normal charge for such a list in the market from which it would ordinarily be purchased.”

2. *R4R’s proposal to provide the signatories’ contact information to Governor DeSantis without charge after Governor DeSantis becomes a federal candidate, should he do so, would result in an excessive contribution.*

The Act prohibits a political committee, other than a multicandidate political committee, from contributing more than \$2900 to any candidate with respect to any election for federal office.²⁷ R4R is not a multicandidate political committee, and so it is subject to the \$2900 limit.

R4R states that it expects its petition will include the contact information of more than 58,000 petition signatories during the pendency of this advisory opinion request and “likely” more than one million by the end of 2022.²⁸ R4R estimates that the market value of the list of signatories’ contact information will exceed \$2900.²⁹ Accordingly, providing Governor DeSantis with the contact information in the petition without charge if he becomes a candidate for federal office would constitute an in-kind contribution in excess of contribution limits and thus is prohibited.

R4R states that the Commission should not treat the compiled contact information from the petition as a contribution by R4R because the value of the individual contact information provided by each petition signatory should be considered a *de minimis* contribution by that individual to Governor DeSantis with R4R acting as a conduit.³⁰ As discussed above, it is well established under the Commission’s regulation that “mailing lists” or “membership lists” compiled by political committees are an in-kind contribution under the Act if provided at less than the “usual and normal charge.” As the D.C. District Court recognized in *FEC v. Christian Coalition*, “[e]ven if the names on the . . . list were publicly available, the fact that the [respondent] expended resources to compile the list” of persons likely to support a candidate “created value that was passed on” when that list

²⁶ 11 C.F.R. § 100.52(d)(1).

²⁷ 52 U.S.C. §§ 30101(11), 30116(a)(1)(A), (a)(2)(A); *see also* 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. at 7869.

²⁸ AOR004.

²⁹ AOR004, 5; *see also* AOR020 (stating “[t]he market value of the list of signatories (which contains [contact information]) who wish to associate with Governor DeSantis and support him running for President in 2024 that Ready for Ron wishes to provide to Governor DeSantis will exceed federal contribution limits”).

³⁰ AOR013-14.

was provided to the candidate.³¹ R4R states it intends to spend a significant amount of money to compile the list of contact information in its petition — an estimated \$25,000-\$50,000 per week over a period of more than two years, with more than \$2900 already spent to acquire a mailing list in support of its efforts — and asserts that the resultant list will have a commercial value in excess of \$2900.³² 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. Accordingly, R4R may not provide the contact information to Governor DeSantis without charge if and when he becomes a federal candidate because the value of the information would exceed the contribution limits.

3. *R4R’s proposal to provide the signatories’ contact information to Governor DeSantis after he begins testing the waters for a federal candidacy, should he do so, is contrary to the Commission’s regulation at 11 C.F.R. § 100.72(a).*

The Commission’s “testing the waters” regulation at 11 C.F.R. § 100.72(a) provides that “[f]unds received solely for the purpose of determining whether an individual should become a candidate are not contributions;” however, “[i]f the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act.”³³ “Only funds permissible under the Act may be used for [testing the waters] activities.”³⁴ The Commission long ago determined that “funds received” for purposes of the testing the waters regulation “include in-kind gifts of anything of value.”³⁵ Thus, “funds received from any committee, *whether in-kind or direct*, for an individual’s testing-the-waters activities are aggregated with any contributions from the same committee to such individual as a candidate (or to his or her authorized committees).”³⁶

“Through its regulations, the Commission, in essence, has excepted ‘testing the waters’ activity from the reporting rules that would otherwise apply.”³⁷ The Commission promulgated the “limited exceptions” in the testing the waters regulations from the

³¹ 52 F. Supp. 2d 45, 96 (D.D.C. 1999).

³² AOR003-4, 20.

³³ 11 C.F.R. § 100.72(a).

³⁴ *Id.*

³⁵ Advisory Opinion 1985-40 (Republican Majority Fund) at 3 (citing Advisory Opinion 1981-32 (Askew)); *see also* Advisory Opinion 1998-18 (Washington State Democratic Committee) (applying testing the waters regulations to state party committee’s donation of poll results to individual who was testing the waters and subsequently decided not to become a candidate).

³⁶ Advisory Opinion 1985-40 (Republican Majority Fund) at 3 (emphasis added).

³⁷ Advisory Opinion 1998-18 (Washington State Democratic Committee) at 2.

requirements to report contributions and expenditures in order “to permit individuals to conduct certain activities while deciding whether to become a candidate for Federal office, without making their activities immediately public.”³⁸

Prior to March 1985, the Commission’s regulations permitted a candidate to refund any excessive or prohibited contributions received during the “testing the waters” period within 10 days after the individual became a candidate.³⁹ However, the Commission “reconsidered this issue and determined that permitting prohibited funds to be used for ‘testing the waters’ activities extended the exemptions beyond the narrow range of activities they were originally intended to encompass.”⁴⁰ Accordingly, the Commission revised the regulations to require that funds received to test the waters must be permissible under the Act’s source prohibitions and contribution limits.⁴¹ The Commission rejected comments objecting to the proposed regulatory revision, explaining that it “view[ed] the amended regulations as reducing the potential for circumvention of the prohibitions and limitations of the Act,” and “ensur[ing] consistent application of the Act’s contribution limitations and prohibitions.”⁴² As a result, “[o]nly funds permissible under the Act may be used for [testing the waters] activities.”⁴³

Accordingly, if Governor DeSantis were to begin testing the waters for a potential federal candidacy, and were R4R to provide its petition with names and compiled contact information to him, the petition and contact information must comply with the amount limitations and source prohibitions of the Act. Because their value would exceed the applicable amount limitation, R4R would not be able to provide them to Governor DeSantis without charge.⁴⁴

R4R offers several arguments as to why the Commission should not apply the testing the waters regulation at 11 C.F.R. § 100.72(a) or the Act’s contribution limits to its proposal. The Commission has considered these arguments and does not find them to be persuasive for the following principal reasons. First, the Commission has previously concluded that political committee mailing and membership lists have value and that the provision of such lists to a candidate or political committee at no charge or at less than

³⁸ Payments Received for Testing the Waters Activities, 50 Fed. Reg. at 9993; *see also* Advisory Opinion 1998-18 (Washington State Democratic Committee) at 2.

³⁹ Payments Received for Testing the Waters Activities, 50 Fed. Reg. at 9994 (discussing changes to testing the waters regulations).

⁴⁰ *Id.*

⁴¹ *Id.*; 11 C.F.R. § 100.72(a).

⁴² Payments Received for Testing the Waters Activities, 50 Fed. Reg. at 9994.

⁴³ 11 C.F.R. § 100.72(a).

⁴⁴ The provided information would also become an in-kind contribution and subject to the Act’s reporting requirements if Governor DeSantis subsequently becomes a candidate. 11 C.F.R. § 100.72(a).

the usual and normal charge is a contribution.⁴⁵ The requestor has not provided any information that would materially distinguish the information it proposes to provide to Governor DeSantis from that previously considered by the Commission. Second, under its proposal, R4R would be more than a mere conduit of other people’s information. As discussed above, the “thing of value” that R4R proposes to provide to Governor DeSantis does not consist solely, or even primarily, of any individual signatory’s name or contact information. Instead, it lies in R4R’s collection and compilation of information from tens of thousands, if not “millions,” of individuals nationwide who would have already demonstrated their support for Governor DeSantis and his potential presidential campaign by participating in R4R’s petition project — a project on which R4R plans to expend considerable resources of its own.⁴⁶

4. *R4R’s proposal to provide the compiled contact information from its petition to Governor DeSantis in the event he either becomes a federal candidate or begins testing the waters is inconsistent with restrictions on a hybrid PAC’s use of its non-contribution account.*

R4R’s proposal to fund its petition activities, in part, from its non-contribution account, and then provide that information without charge to Governor DeSantis either after he becomes a federal candidate or begins testing the waters for a potential federal candidacy, is not permissible, because a “hybrid committee may not make contributions to candidates . . . , including in-kind contributions . . . , from its non-contribution account.”⁴⁷

Hybrid PACs may accept contributions from individuals to their non-contribution accounts in excess of the amount limitations of the Act.⁴⁸ Candidates, by contrast, shall not “receive . . . or spend funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements of

⁴⁵ 11 C.F.R. § 100.52(d)(1); Advisory Opinion 2014-06 (Ryan for Congress) at 8; Advisory Opinion 2011-02 (Scott Brown for U.S. Senate Committee) at 7; *see also* Advisory Opinion 2002-14 (Libertarian National Committee) at 4-5; Advisory Opinion 1982-41 (Committee for Congressman Ron Dellums) at 2.

⁴⁶ AOR004.

⁴⁷ Advisory Opinion 2016-21 (Great America PAC) at 3-4.

⁴⁸ Following the decision of the U.S. District Court for the District of Columbia in *Carey v. FEC*, 791 F.Supp.2d 121 (D.D.C. 2011), the Commission announced that it will no longer enforce contribution limits against any nonconnected political committee for excessive and prohibited contributions received from individuals, political committees, corporations, and labor organizations, as long as the committee maintains separate bank accounts to: (1) receive such contributions for the purpose of making independent expenditures, other advertisements that refer to a federal candidate, and generic voter drives (the “non-contribution account”); (2) receive source- and amount-limited contributions for the purpose of making candidate contributions; and (3) pay a percentage of the committee’s administrative expenses that closely corresponds to the percentage of activity for that account. FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account” (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>.

[the] Act.”⁴⁹ In addition, all funds received or spent for testing the waters purposes are subject to the amount limitations and source prohibitions of the Act.⁵⁰ As a result, a hybrid PAC may make neither in-kind contributions nor testing the waters donations from its non-contribution account.

Here, R4R “solicits and accepts unlimited contributions” to its non-contribution account.⁵¹ R4R proposes to use those funds for its petition drive, and then to provide signatories’ names and contact information without charge to Governor DeSantis. If R4R were to provide that information to Governor DeSantis when he is either a federal candidate or testing the waters for a potential federal candidacy, R4R may not pay for the proposed activity using funds from its non-contribution account.

The Commission could not approve a response by the required four affirmative votes as to whether R4R may provide the contact information from its petition to Governor DeSantis when Governor DeSantis is neither testing the waters nor a federal candidate.⁵² Governor DeSantis is not a party to this request, and the Commission expresses no view on his status. The Commission further expresses no opinion regarding the application of any state laws to R4R’s proposal because those laws are not within the Commission’s jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request.⁵³ The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion.⁵⁴ Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes,

⁴⁹ 52 U.S.C. § 30125(e)(1)(A).

⁵⁰ 11 C.F.R. §§ 100.72(a), 100.131(a).

⁵¹ AOR002.

⁵² *See* 52 U.S.C. § 30106(c); 11 C.F.R. § 112.4(a).

⁵³ *See* 52 U.S.C. § 30108.

⁵⁴ *See id.* § 30108(c)(1)(B).

regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen J. Dickerson". The signature is stylized with a large, sweeping initial "A" and a long horizontal stroke at the end.

Allen J. Dickerson
Chairman