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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 14-40**  
**AGENDA ITEM**  
**For meeting of August 14, 2014**  
**SUBMITTED LATE**

August 12, 2014

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AV*  
Deputy General Counsel

Adav Noti *AV*  
Acting Associate General Counsel

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Assistant General Counsel

Theodore M. Lutz *TML*  
Attorney

Subject: AO 2014-07 (Crowdpac) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on August 14, 2014.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2014-07

2

3 Benjamin L. Ginsberg, Esq.

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6 Washington, D.C. 20001

7

8 Marc E. Elias, Esq.

9 Perkins Coie

10 700 Thirteenth Street, N.W., Suite 600

11 Washington, D.C. 20005

12

13 Dear Messrs. Ginsberg and Elias:

14         We are responding to the advisory opinion request that you submitted on behalf of  
15 Crowdpac concerning the application of the Federal Election Campaign Act, 2 U.S.C. §§ 431-57  
16 (the “Act”), and Commission regulations to various aspects of Crowdpac’s proposed web-based  
17 contribution platform. The Commission concludes that (1) Crowdpac’s services would not result  
18 in impermissible contributions by Crowdpac to candidate committees; (2) Crowdpac may permit  
19 its users to earmark contributions for eventual nominees or prospective candidates; (3) Crowdpac  
20 may permit candidates to provide video content for Crowdpac candidate pages; and  
21 (4) Crowdpac may use data derived from Commission reports to display aggregated campaign  
22 finance data about candidates and may also use such data in its algorithm but may not display on  
23 its website the names, cities, and states of individual contributors identified from Commission  
24 reports.

25 ***Background***

26         The facts presented in this advisory opinion are based on your advisory opinion request  
27 received on July 2, 2014 (“AOR”).

28         Crowdpac is a non-partisan, for-profit corporation that is incorporated in Delaware and  
29 based in California. Crowdpac proposes to establish “a data driven political ‘marketplace’” that

**DRAFT A**

1 will provide to voters publicly available information about candidates for federal office in order  
2 to make it easier for voters to find and support candidates who share their priorities and positions  
3 on issues.

4 Crowdpac will provide its users with various tools to help identify like-minded  
5 candidates. Crowdpac will allow users to identify their priority issues and view candidates'  
6 positions on those issues. Users will be able to search for candidates through criteria such as  
7 location, demographics, positions on issues, office sought, and incumbency status. Users will  
8 also be able to create their own "political profiles" that indicate their priority issues and positions  
9 on those issues.

10 To provide these tools, Crowdpac has developed a proprietary algorithm that will analyze  
11 publicly available data — such as floor speeches, proposed bills, and voting records — to  
12 determine which issues candidates prioritize and candidates' positions on those issues. The  
13 algorithm will also utilize certain campaign finance information, including contributor  
14 information contained in reports filed with the Commission. Crowdpac represents that its  
15 algorithm is able to make inferences about issue positions of both candidates and contributors by  
16 analyzing the patterns of which contributors support which candidates. Crowdpac's algorithm  
17 will also incorporate data on candidates' contributions to other campaigns.

18 Additionally, Crowdpac proposes to make available on its website certain information  
19 "regarding the functionality of its algorithm." Because the algorithm incorporates individual  
20 contributor information from campaign finance reports, Crowdpac might display certain  
21 information compiled from reports filed with the Commission, including the names, cities, and  
22 states of individual contributors.

1           Crowdpac’s website will also feature a dedicated page for each federal candidate who has  
2 registered an authorized committee with the Commission. These pages will include information  
3 about each candidate, including office sought, biographical details, and a photo, as well as  
4 information about the candidate’s political positions, including information derived from  
5 Crowdpac’s algorithm.

6           In addition, Crowdpac will allow every candidate, “on an equal and nonpartisan basis,” to  
7 upload certain content to his or her candidate page. For example, Crowdpac will allow each  
8 candidate to upload an introductory video message to Crowdpac users and other videos  
9 explaining his or her positions on priority issues. All candidates will be provided equal  
10 opportunity to upload content to their respective candidate pages. Crowdpac will set subject  
11 matter, duration, and other requirements that will apply equally to all candidates. Crowdpac  
12 states that it will not allow candidates “to upload any content . . . that is for purposes other than  
13 enhancing the quality and accuracy of information about that candidate.” For example,  
14 Crowdpac will not allow candidates to upload content that would solicit contributions outside of  
15 Crowdpac’s platform.

16           Crowdpac also plans to display certain aggregated campaign finance data, such as the  
17 total number of contributors to a candidate’s committee and the total amount of contributions the  
18 candidate has raised. Crowdpac will use information from reports filed with the Commission to  
19 ensure that it is providing current, accurate campaign finance information on candidates.<sup>1</sup>

20           Each candidate page will contain a link (which appears as a “DONATE” button) allowing  
21 users to make contributions to the candidate. Crowdpac itself will not process contributions,

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<sup>1</sup> Additionally, users who create a profile on Crowdpac will have the option of “sharing” information regarding their support of candidates on Crowdpac. Crowdpac might place the name and picture of users who have selected this option on candidate pages. This information would be taken solely from Crowdpac’s own data.

1 deposit contributions into a merchant account in its name, or forward contributions to candidate  
2 committees. Instead, Crowdpac will contract with Democracy Engine<sup>2</sup> — whose online  
3 contribution processing platform the Commission approved in Advisory Opinion 2011-06  
4 (Democracy Engine *et al.*) — to process contributions.

5         Once a Crowdpac user identifies a candidate to whom he or she wishes to contribute, the  
6 user will be required to provide payment processing information, along with other information  
7 that the recipient political committee must maintain or report, such as the user’s name, mailing  
8 address, employer, and occupation. The user will also view disclaimer and “best efforts”  
9 language<sup>3</sup> and will be required to attest to certain facts as a condition to having his or her  
10 contribution processed.<sup>4</sup> The platform will not process contributions that exceed the relevant  
11 contribution limits. Each user will be required to agree to Democracy Engine’s terms of service  
12 before Democracy Engine processes the user’s contributions.<sup>5</sup>

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

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

<sup>4</sup> The contribution processing platform will require an attestation similar to the following:

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

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

1 Contributions will be deposited in a bank account belonging to Democracy Engine. This  
2 account will be segregated from Democracy Engine's corporate operating funds. No  
3 contributions to federal committees will be deposited into a Crowdpac bank account.  
4 Democracy Engine will deduct a fee from each contribution before forwarding the contribution  
5 to the recipient committee. Crowdpac and Democracy Engine have not yet determined the  
6 amount of this fee, but they expect that it will be approximately 8% of the contribution amount.  
7 Crowdpac and Democracy Engine will set the fee rate to cover all costs incurred by Democracy  
8 Engine and Crowdpac in providing their respective services — including credit card processing  
9 fees — and to provide both entities with a reasonable profit.<sup>6</sup> Except for contributions to  
10 prospective candidates (as discussed below), Democracy Engine will then transmit the remaining  
11 amount of the contribution to the recipient committee as instructed by the user no later than ten  
12 days after the user authorizes the contribution. Democracy Engine will also provide the recipient  
13 committee with the contribution date and amount and the contributor's name, mailing address,  
14 occupation, and employer.

15 Neither Crowdpac nor Democracy Engine will enter into contractual relationships with  
16 candidate committees in connection with processing and forwarding contributions.<sup>7</sup> Crowdpac  
17 states that neither it nor Democracy Engine will exercise any direction or control over  
18 contributions deposited in Democracy Engine's segregated account.

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

<sup>7</sup> Democracy Engine, however, might contract with candidate committees on a limited basis solely to facilitate the electronic deposit of funds.

1           Crowdpac will allow users to designate a contribution either to (1) a specific party's  
2           eventual nominee for a specific office ("eventual nominee") or (2) a specific prospective  
3           candidate who has not yet registered an authorized committee ("prospective candidate"). When  
4           a user designates a contribution to be transmitted to either an eventual nominee or a prospective  
5           candidate, those funds will be held by Democracy Engine PAC, rather than Democracy Engine,  
6           until disbursement. Crowdpac will inform the user that such funds are "earmarked"  
7           contributions within the meaning of 11 C.F.R. § 110.6, that they must comply with the amount  
8           limitations for contributions to candidates in accordance with 11 C.F.R. § 110.1, and that the  
9           contribution will be forwarded to the candidate committee when the designated nominee or  
10          candidate has been identified and has registered an authorized committee with the Commission.  
11          Democracy Engine PAC will forward the contribution to the authorized committee within 10  
12          days after these events occur.

13           For any reporting period in which it receives earmarked contributions, Democracy  
14          Engine PAC will disclose on its regular reports to the Commission each such contribution, its  
15          source, and the eventual candidate for whom it is earmarked. For any reporting period in which  
16          it forwards earmarked contributions, Democracy Engine PAC will report the disbursement to the  
17          Commission and the recipient candidate in accordance with 11 C.F.R. § 110.6(c)(1).

18           If no prospective or eventual candidate meeting the contributor's criteria is identified and  
19          registers an authorized committee with the Commission within seven days of the respective state  
20          or federal nominating convention, Democracy Engine PAC will forward the contribution to the  
21          respective national congressional or senatorial party committee as a "default committee." The  
22          user will be notified of this policy prior to submitting a contribution.

1 ***Questions Presented***

- 2 1. *May Crowdpac provide its services of matching users with candidates and utilizing the*  
3 *Democracy Engine platform to process and forward users' contributions to candidates*  
4 *without making impermissible contributions to federal candidate committees?*
- 5 2. *Is Crowdpac's proposal for users to earmark contributions for eventual nominees or*  
6 *prospective candidates permissible under the Act and Commission regulations?*
- 7 3. *May Crowdpac allow candidates to provide video content for their Crowdpac candidate*  
8 *pages without making impermissible contributions to those candidates?*
- 9 4. *Is Crowdpac's proposal to use information taken from reports filed with the Commission*  
10 *permissible under the Act and Commission regulations?*

11 ***Legal Analysis and Conclusions***

- 12 1. *May Crowdpac provide its services of matching users with candidates and utilizing the*  
13 *Democracy Engine platform to process and forward users' contributions to candidates*  
14 *without making impermissible contributions to federal candidate committees?*

15 Yes, Crowdpac may provide its services of matching users with candidates and utilizing  
16 the Democracy Engine platform to process and forward users' contributions to candidates  
17 without making impermissible contributions to federal candidates committees.

18 The Act and Commission regulations prohibit corporations from making a contribution in  
19 connection with a Federal election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1). In this  
20 context, a "contribution" includes any "direct or indirect payment, distribution, loan, advance,  
21 deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign  
22 committee, or political party or organization, in connection with any [federal] election." 2  
23 U.S.C. § 441b(b)(2); 11 C.F.R. § 114.2(b)(1); *see also* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R.



1 § 100.52(a). “Anything of value” includes in-kind contributions, such as the provision of goods  
2 or services without charge or at a charge that is less than the usual and normal charge. *See* 11  
3 C.F.R. § 100.52(d)(1). Commission regulations define “usual and normal charge” as the price of  
4 goods in the market from which they ordinarily would have been purchased at the time of the  
5 contribution, or the commercially reasonable rate prevailing at the time the services were  
6 rendered.” *See* 11 C.F.R. § 100.52(d)(2).

7 In several advisory opinions, the Commission has concluded that companies that process  
8 contributions as a service to contributors without receiving compensation from the recipient  
9 political committees are not making contributions because the companies are not providing any  
10 services to the recipient political committees. *See, e.g.*, Advisory Opinion 2012-22 (skimmerhat)  
11 (distinguishing between companies that process contributions as service to contributors and  
12 companies that process contributions as service to recipient political committees); Advisory  
13 Opinion 2011-19 (GivingSphere) (same); Advisory Opinion 2011-06 (Democracy Engine)  
14 (same). Additionally, the Commission has approved proposals in which companies that process  
15 contributions as a service to contributors provide contributors with tools to gather information  
16 about and to evaluate potential recipient candidates. For example, in Advisory Opinion 2012-22  
17 (skimmerhat), the Commission approved a requestor’s proposal to offer its customers a  
18 searchable database and “candidate pages” to enable them to identify potential recipients. *Id.* at  
19 6-7; *see also* Advisory Opinion 2011-19 (GivingSphere) (approving proposal to provide  
20 customers with searchable database of potential political committee recipients and “basic factual  
21 information” on those recipients). The Commission has reasoned that providing such  
22 information is a “corollary of creating a web platform through which users [can] identify

1 political committees and transmit contributions.” *See* Advisory Opinion 2012-22 (skimmerhat)  
2 at 7 (citing Advisory Opinion 2011-19 (GivingSphere) at 9).

3         Crowdpac’s proposed service closely resembles the services approved by the  
4 Commission in Advisory Opinion 2012-22 (skimmerhat) and Advisory Opinion 2011-19  
5 (GivingSphere). Here, as in those advisory opinions, a commercial entity proposes to develop a  
6 for-profit, web-based platform through which customers can identify and make contributions to  
7 political committees. Users’ funds will be transmitted only at their own request and not pursuant  
8 to negotiated agreements with political committees. *See* Advisory Opinion 2012-22  
9 (skimmerhat). *Compare* Advisory Opinion 2011-06 (Democracy Engine) (hosting website  
10 through which contributors identify recipients and transmit funds) *with* Advisory Opinion  
11 2007-04 (Atlatl) (processing online credit card contributions made via political committees’ own  
12 websites). Because Crowdpac will provide these services to its customers — rather than to  
13 political committees — Crowdpac’s proposal is analogous to widely available services that  
14 contributors may use to send contributions, such as United Parcel Service or electronic bill-pay  
15 services provided by banks. *See* Advisory Opinion 2012-22 (skimmerhat) at 5-6; *see also*  
16 Advisory Opinion 2011-06 (Democracy Engine) at 5. And because the user fees that Crowdpac  
17 will collect are for services rendered ““for the benefit of the contributors, not of the recipient  
18 political committees,”” such fees “d[o] not ‘relieve the recipient political committees of a  
19 financial burden they would otherwise have had to pay for themselves.’” Advisory Opinion  
20 2012-22 (skimmerhat) at 6 (quoting Advisory Opinion 2011-06 (Democracy Engine)).  
21 Accordingly, consistent with the prior advisory opinions, neither Crowdpac’s services nor its  
22 fees are contributions to the recipient political committees. *Id.*

1           In addition, like the requestors in Advisory Opinion 2012-22 (skimmerhat) and Advisory  
2           Opinion 2011-19 (GivingSphere), Crowdpac will provide users with the ability to search  
3           candidates' backgrounds, positions, and incumbency status and otherwise review information  
4           about candidates and their positions to identify potential recipients. These search tools that  
5           Crowdpac will offer its customers will merely "supplement the overall service offered by the  
6           site." Advisory Opinion 2012-22 (skimmerhat) at 7. Accordingly, Crowdpac's proposal to  
7           match users with candidates and utilize the Democracy Engine platform to process and forward  
8           users' contributions to candidates would not result in impermissible contributions by Crowdpac  
9           to federal candidate committees.

10           2. *Is Crowdpac's proposal for users to earmark contributions for eventual nominees or*  
11           *prospective candidates permissible under the Act and Commission regulations?*

12           Yes, Crowdpac's proposal for users to designate contributions for eventual nominees or  
13           prospective candidates is permissible under the Act and Commission regulations.

14           The Act provides that "all contributions made by a person, either directly or indirectly  
15           . . . , including contributions which are in any way earmarked or otherwise directed through an  
16           intermediary or conduit to [a] candidate, shall be treated as contributions from such person to  
17           such candidate." 2 U.S.C. § 441a(a)(8). "Earmarked" means "a designation, instruction, or  
18           encumbrance, whether direct or indirect, express or implied, oral or written, which results in all  
19           or any part of a contribution . . . being made to . . . a clearly identified candidate." 11 C.F.R.  
20           § 110.6(b)(1). A person who is prohibited from making contributions or expenditures in  
21           connection with federal elections may not serve as a conduit or intermediary for an earmarked  
22           contribution. 11 C.F.R. § 110.6(b)(2)(ii). Each person who receives a contribution for an  
23           authorized committee, including a conduit or intermediary under 11 C.F.R. § 110.6, must

1 forward the contribution to the committee’s treasurer within ten days after receipt. 2 U.S.C.  
2 § 432(b)(1); 11 C.F.R § 102.8(a), (c).

3 Crowdpac proposes that certain contributions made through its website — *i.e.*, those  
4 designated for eventual nominees and prospective candidates — will be received and held by  
5 Democracy Engine PAC (rather than by Democracy Engine itself) as earmarked contributions  
6 under 11 C.F.R. § 110.6. Democracy Engine PAC will report the contributions as earmarked on  
7 its regular reports to the Commission and will forward the contributions within 10 days after the  
8 relevant triggering event (which will generally be either the candidate’s nomination or the  
9 candidate’s registration of a campaign committee). If no candidate meeting the contributor’s  
10 criteria is identified and registers an authorized committee with the Commission within seven  
11 days of the respective state or federal nominating convention, Democracy Engine PAC will  
12 forward the contribution to the respective national congressional or senatorial party committee as  
13 a “default committee.”<sup>8</sup> The user will be notified of this policy prior to submitting a contribution  
14 for an eventual nominee or prospective candidate.

15 This proposal is similar to one that the Commission approved in Advisory Opinion 2006-  
16 30 (ActBlue).<sup>9</sup> There, ActBlue, a nonconnected political committee, proposed to collect  
17 contributions earmarked for prospective candidates. The Commission concluded that the ten-day

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<sup>8</sup> The Commission assumes that a user will be required to choose which national party’s congressional or senatorial committee the user wishes to designate as the default committee.

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

1 forwarding requirement under 2 U.S.C. § 432(b) was “tolled until *both* the recipient’s identity  
2 and candidacy status are known.” Advisory Opinion 2006-30 (ActBlue) at 4. The Commission  
3 also approved ActBlue’s proposal to identify a “‘default recipient’ for earmarked contributions in  
4 the event that a [p]rospective [c]andidate does not register” an authorized committee by a pre-  
5 established deadline. *Id.* at 5. The Commission emphasized, however, that ActBlue was  
6 required to “clearly state in its solicitations how it will distribute the earmarked contributions  
7 under such circumstances.” *Id.*

8         The Commission also concluded that ActBlue was required to disclose on its regular  
9 reports to the Commission when it received the earmarked contributions, including the sources of  
10 the contributions and the prospective candidate for whom each contribution was earmarked.  
11 Advisory Opinion 2006-30 (ActBlue) at 6 (citing 2 U.S.C. § 441a(a)(8) and 11 C.F.R.  
12 § 110.6(c)(1)(i), (ii)). Additionally, the Commission concluded that ActBlue was required to  
13 disclose on its regular reports when it ultimately disbursed the earmarked contributions to the  
14 ultimate recipients. *Id.*

15         Because Crowdpac’s proposal complies with these forwarding, reporting, and (in the case  
16 of default committees) notification requirements, the proposal is consistent with Advisory  
17 Opinion 2006-30 (ActBlue). Crowdpac therefore may permit its users to earmark contributions  
18 for eventual nominees or prospective candidates as described in the request.<sup>10</sup>

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<sup>10</sup> Democracy Engine PAC’s status as a separate segregated fund, rather than a nonconnected committee, does not change this result because the proposal does not contemplate the solicitation of contributions by or to Democracy Engine PAC. *See* 2 U.S.C. § 441b(b)(4)(A)(i) (prohibiting connected organizations and separate segregated funds from soliciting contributions to separate segregated funds from other than restricted class); *see also* Advisory Opinion 2007-27 (ActBlue) (concluding that nonconnected committee may not solicit the public for contributions to separate segregated funds); *cf.* Advisory Opinion Request 2009-28 (Democracy Engine PAC) (reaching no conclusion by four affirmative votes as to whether separate segregated fund could solicit general public for contributions earmarked to candidates); Advisory Opinion Request 2006-14 (National Restaurant Association PAC) (same).

1       3. *May Crowdpac allow candidates to provide video content for their Crowdpac candidate*  
2             *pages without making impermissible contributions to those candidates?*

3             Yes, Crowdpac may allow candidates to provide video content for their Crowdpac  
4 candidate pages without making impermissible contributions to those candidates.

5             In Advisory Opinion 2012-22 (skimmerhat), the requestor proposed to develop and host  
6 “candidate pages” that would include, for each federal candidate, a picture of the candidate,  
7 biographical information, campaign finance data, recent updates, and issue positions. *Id.* at 2-3,  
8 7. Candidates could assume “limited managerial control” over basic biographical information on  
9 their candidate pages and set positions on issues. *Id.* at 7. Candidates’ control of their pages,  
10 however, was conditioned on agreeing to terms of service that prohibited use of the requestor’s  
11 platform to fundraise outside of that platform or “for any activity that can be reasonably deemed  
12 outside of that which enhances the quality and accuracy of candidate information available to  
13 users.” *Id.* at 4.

14             In approving the proposal, the Commission noted that it was similar to those in which  
15 candidates were able to refine biographical information and issue positions presented on  
16 commercial vendors’ websites. Advisory Opinion 2012-22 (skimmerhat) at 7-8 (citing Advisory  
17 Opinion 1999-25 (Democracy Network) and Advisory Opinion 1999-24 (Election Zone)).  
18 Additionally, the Commission emphasized several of the requestor’s representations, including  
19 that (1) allowing candidate modification to the pages would “increase the accuracy of the site’s  
20 data and the effectiveness of the [requestor’s] matching process, both of which advance the  
21 [requestor’s] commercial interests”; (2) the website was “operated on a commercial basis only”;  
22 and (3) rather than influence federal elections, the requestor had a “vested commercial interest in  
23 seeking participation of users from all political parties and ideological background.” *Id.* at 8.

1            Similar elements are present in Crowdpac’s proposal. Crowdpac’s candidate pages will  
2 present candidates’ biographies and photographs and identify offices sought and positions on  
3 issues. Candidates will then have the opportunity to provide content to augment their Crowdpac  
4 pages, subject to a restriction similar to that presented by the requestor in Advisory Opinion  
5 2012-22 (skimmerhat) at 3-4: Candidates will not be able to upload content “for purposes other  
6 than enhancing the quality and accuracy of information about that candidate available to  
7 Crowdpac’s users.” *See* AOR at 2, 8. That Crowdpac proposes to allow candidates to provide  
8 content through videos, instead of through graphics or text, does not materially distinguish  
9 Crowdpac’s proposal from those previously approved by the Commission. *Cf.* Advisory Opinion  
10 2012-22 (skimmerhat); Advisory Opinion 1999-25 (Democracy Net); Advisory Opinion 1999-24  
11 (Election Zone).

12            Additionally, like the requestor in Advisory Opinion 2012-22 (skimmerhat), Crowdpac  
13 represents that its interests are commercial, not to influence any federal election. Indeed, to that  
14 end, Crowdpac will provide all candidates with an equal opportunity to upload content and will  
15 subject all candidates to the same restrictions on that content. *See* AOR at 2-3. And because  
16 candidate videos “help[] users accurately identify federal candidates they may wish to support,”  
17 the videos serve Crowdpac’s commercial interest in providing its users with tools to identify  
18 recipient candidates. *Id.* at 3.

19            Accordingly, Crowdpac may allow candidates to provide video content for their  
20 Crowdpac candidate pages, as described in the request, without resulting in contributions by  
21 Crowdpac to those candidates.

1       4. *Is Crowdpac’s proposed use of information taken from reports filed with the Commission*  
2             *permissible under the Act and Commission regulations?*

3             Crowdpac may display aggregated campaign finance data about candidates and use  
4     Commission data in its algorithm. Crowdpac may not, however, display the names, cities, and  
5     states of individual contributors drawn from reports filed with the Commission.

6             Crowdpac proposes to use data from reports filed with the Commission in three ways.  
7     First, Crowdpac proposes to display certain aggregated campaign finance data on candidates,  
8     such as the total number of contributors to a candidate’s committee and the total amount of  
9     contributions the candidate has raised. Second, Crowdpac’s algorithm will analyze (1) the  
10    candidates and political committees who have contributed to particular candidates and (2) the  
11    contribution histories of individuals who have contributed to particular candidates, including any  
12    other candidates to whom those contributors have given. Finally, Crowdpac asks whether it may  
13    display the names, cities, and states of certain contributors, drawn from Commission reports, on  
14    its website in order to provide information on “the functionality of its algorithm.” AOR at 11.

15            The Act requires each political committee to report the name, mailing address,  
16    occupation, and employer name of any individual who contributes more than \$200 to the  
17    committee in a calendar year. *See* 2 U.S.C. §§ 431(13)(A), 434(b)(3)(A); *see also* 11 C.F.R.  
18    §§ 100.12, 104.8(a). The Act also requires the Commission to make these reports available for  
19    public inspection and copying. *See* 2 U.S.C. § 438(a)(4); *see also* 2 U.S.C. § 438a (requiring  
20    Commission to make all reports publicly available online). But in enacting these requirements,  
21    Congress was concerned about “protect[ing] the privacy of the generally very public-spirited  
22    citizens who may make a contribution to a political campaign or a political party.” 117 Cong.  
23    Rec. S30057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon). Accordingly, the Act



1 prohibits any information copied from Commission reports from being “sold or used by any  
2 person for the purpose of soliciting contributions or for commercial purposes, other than using  
3 the name and address of any political committee to solicit contributions from such committee.”  
4 2 U.S.C. § 438(a)(4); *see also* 11 C.F.R. § 104.15(a). The Commission has characterized this  
5 limitation as “a broad prophylactic measure intended to protect the privacy of the contributors  
6 about whom information is disclosed” in reports and statements filed with the Commission.  
7 Advisory Opinion 2003-24 (National Center for Tobacco-Free Kids) at 4; *see generally* *FEC v.*  
8 *Legi-Tech, Inc.*, 967 F. Supp. 523 (D.D.C. 1997) (discussing scope and purpose of provision).

9       Mere aggregations of data regarding contributions to candidates, without identifiable  
10 contributor information, do not implicate the privacy concerns that the solicitation and  
11 commercial use prohibitions in section 438(a)(4) are intended to mitigate. *See* Advisory Opinion  
12 2012-22 (skimmerhat) at 9 (concluding that vendor may “use . . . campaign finance data  
13 regarding candidate fundraising totals . . . because the information . . . concerns political  
14 committees, rather than individual contributors”). Thus, Crowdpac may present on its website  
15 aggregated campaign finance data regarding candidate committees, such as the number of  
16 persons who have contributed to a committee and the amount of contributions received. This  
17 conclusion is consistent with a long line of advisory opinions in which the Commission has  
18 approved proposals to sell or use information from reports filed with the Commission where that  
19 information did not include the names and addresses of individual contributors. *See, e.g., id.*;  
20 Advisory Opinion 1989-19 (Johnson) (approving proposal to sell portions of committee reports  
21 identifying contributions from other political committees and “not the names of individual  
22 contributors”); Advisory Opinion 1983-44 (Cass) (approving use of Commission reports to  
23 solicit candidates for advertising services); Advisory Opinion 1980-101 (Weinberger) (approving

1 proposal to publish directory of political committees that omits identities of individual  
2 contributors).

3 Similarly, Crowdpac may also use data derived from Commission reports in its  
4 algorithm, provided that doing so does not entail disclosing individual contributors' identifying  
5 information. As the Second Circuit concluded in *FEC v. Political Contributions Data*, a vendor  
6 does not violate section 438(a)(4) where its use of Commission data is not "of the type that could  
7 infringe on contributors' privacy interests." 943 F.2d 190, 197-98 (2d Cir. 1991). Permitting  
8 analysis of Commission data without public identification of individual contributors  
9 accomplishes "FECA's broader aim of full disclosure" and "further[s] first-amendment values"  
10 in a manner that "protect[s] the privacy of campaign contributors." *Id.* at 196-97 (analyzing  
11 purpose and legislative history of section 438(a)(4)); *c.f.* 11 C.F.R. § 104.15(c) (permitting use of  
12 Commission data "in newspapers, magazines, books, or other similar communications" where  
13 "the principal purpose of such communications is not to communicate any contributor  
14 information"); Advisory Opinion 2003-24 (National Center for Tobacco-Free Kids) at 4 (finding  
15 impermissible proposal that risked "possibility of repetitive and intrusive communications").

16 Crowdpac may not, however, display on its website the names, cities, and states of  
17 individual contributors drawn from Commission reports. Although Crowdpac asserts that it  
18 "does not make available any individual contributor information to . . . commercial entities,"  
19 Crowdpac proposes to use such information itself "solely to further th[e] purpose" of "help[ing]  
20 voters find and identify candidates to support." AOR at 10. "Support" in this context means  
21 making contributions: Each candidate page on Crowdpac's website will direct users to "donate"  
22 to that candidate through the website, and Crowdpac will receive fees from users only when such  
23 contributions are made. *See id.* at 3 & Attachment 4. In other words, this aspect of Crowdpac's

1 business model involves publicly posting identifiable contributor information — information that  
2 implicates the privacy interests protected by section 438(a)(4) — to increase the likelihood that  
3 Crowdpac’s users will contribute to specific candidates.<sup>11</sup> Thus, Crowdpac’s proposed display  
4 on its website of identifying information taken from reports filed with the Commission is “for the  
5 purpose of soliciting contributions.” As such, this use of contributor information is prohibited by  
6 the Act and Commission regulations.<sup>12</sup> 2 U.S.C. § 438(a)(4); 11 C.F.R. § 104.15(a); Advisory  
7 Opinion 1995-05 (14th District TRIM Committee) at 3 (concluding that “us[ing] the names of  
8 contributors whose privacy is protected by 2 U.S.C. 438(a)(4)” to solicit donations is unlawful);  
9 Advisory Opinion 1984-02 (Gramm) at 2 (“Requesting or suggesting that contributions be made  
10 to your authorized campaign committee . . . would involve use of contributor information in a  
11 manner that is prohibited by [section] 438(a)(4)”)<sup>13</sup>.

12 The Commission expresses no opinion regarding any implications of the Requestor’s  
13 proposal under the Internal Revenue Code because those issues are outside the Commission’s  
14 jurisdiction.

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<sup>11</sup> To the extent that Crowdpac seeks to use contributor information merely to explain “the functionality of its algorithm,” AOR at 11, it could do so without displaying individual contributor data obtained from reports filed with the Commission, such as by using pseudonyms rather than actual contributor names.

<sup>12</sup> Because the Commission concludes that Crowdpac’s proposed display of contributor information would be for the unlawful purpose of soliciting contributions, the Commission need not analyze whether the proposed use would also be for unlawful commercial purposes. *See* 2 U.S.C. § 438(a)(4).

<sup>13</sup> The Commission is not persuaded by Crowdpac’s assertion that its proposed display of individual contributor information is analogous to the permissible use of such information in “newspapers, magazines, books or other similar communications.” *See* 11 C.F.R. § 104.15(c). For these uses to be permissible, the principal purpose of the communication must not be “to communicate any contributor information . . . for the purpose of soliciting contributions or for other commercial purposes.” *Id.* As discussed above, Crowdpac proposes to display individual contributor information on its website for the purpose of soliciting contributions.

The situation presented here is readily distinguishable from that in Advisory Opinion 1998-04 (White Oak Technologies), in which the Commission approved a vendor’s display of individual contributor data in materials that promoted data-mining software. Unlike here, the requestor in that advisory opinion was not in the business of soliciting contributions and did not seek to use contributor data for the purpose of such solicitations.

