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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 15-38-A**  
**AGENDA ITEM**  
**For meeting of July 16, 2015**  
**SUBMITTED LATE**

July 13, 2015

**MEMORANDUM**

TO: The Commission

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

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Acting Associate General Counsel

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Subject: AO 2015-03 (Democracy Rules) 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 5:00 pm (Eastern Time) on July 15, 2015.

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 2015-03  
2  
3 Ray Cashman  
4 Executive Director  
5 Democracy Rules, Inc.  
6 P.O. Box 410356  
7 San Francisco, CA 94141-0356  
8  
9 Dear Mr. Cashman:

**DRAFT A**

10 We are responding to your advisory opinion request on behalf of Democracy Rules, Inc.  
11 concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46, and  
12 Commission regulations to a proposal by Democracy Rules to transmit political contributions to  
13 candidates on behalf of its members. The Commission concludes that the proposal is not  
14 permissible under the Act and Commission regulations.

15 ***Background***

16 The facts presented in this advisory opinion are based on your letter received on June 4,  
17 2015, your email dated June 29, 2015, and publicly available information on the Democracy  
18 Rules website (“the website”), at <https://democracyrules.org>.

19 Democracy Rules is a California corporation exempt from federal taxation under section  
20 501(c)(4) of the Internal Revenue Code. It is an “issue oriented” “non-partisan” “citizen’s  
21 lobbying organization,” whose mission is “to enable each American to directly affect every  
22 social welfare issue through lobbying efforts.” Advisory Opinion Request (“AOR”) at AOR001.  
23 To accomplish this goal, Democracy Rules established the website. The website enables  
24 members to vote for their most important issues and their positions on the issues and “to pledge  
25 funds to support the reelection of legislators they believe will act in a generally responsive and  
26 representative manner” or to advocacy groups. *Id.* As described below, Democracy Rules

1 aggregates and forwards its members' funds to the principal campaign committees of federal  
2 officeholders based on the results of online membership polls.

3         As a first step, to become a member of Democracy Rules, an individual must register on  
4 the website by providing his or her name, address, occupation, and employer, and must deposit  
5 funds into the "Members Account." The Members Account is a PayPal account into which all  
6 member funds are deposited. PayPal deducts 2.9% plus 30 cents from each member's deposit as  
7 a processing fee; Democracy Rules deducts 10 cents from each deposit to cover its  
8 administrative expenses. Democracy Rules deposits its fees into a "corporate" account that it  
9 segregates from the Members Account and uses to pay its expenses. The member may use his or  
10 her remaining funds on deposit to participate in Democracy Rules activities, including the  
11 presentation cycles described below. To complete the registration process, each member must  
12 attest to a number of statements that are intended to ensure that the member may legally make  
13 contributions to federal candidates.<sup>1</sup>

14         To determine the recipients of the funds in the Members Account, Democracy Rules  
15 hosts four-week "presentation cycles" on the website. Through these presentation cycles,  
16 members identify the issues that are most important to them, their positions on the issues, and  
17 recipients (whom Democracy Rules refers to as "trustees") of member funds.

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<sup>1</sup> Democracy Rules requires each registrant to attest to the following statements:

- a) This contribution is made from my own funds and not from another.
- b) This contribution is not from the general treasury funds of a corporation, labor organization or national bank.
- c) I am not a federal government contractor.
- d) I am not a foreign national who lacks permanent resident status in the United States.
- e) I am over the age of 18, and if not, I am a minor making this contribution of my own volition, and not at the request or direction of another individual.
- f) I understand contributions to individual legislator's reelection campaigns must not exceed \$2,700 per election.

1 Democracy Rules has organized 355 social welfare issues into 24 categories, each with  
2 several subcategories.<sup>2</sup> During the first week of each presentation cycle, Democracy Rules  
3 presents a number of these issues to its members, who may vote on which issues in each  
4 subcategory are the most important to them, and indicate whether they support or oppose those  
5 issues. The issue positions in each subcategory that receive the greatest number of votes move  
6 on to the second round, which takes place during the second and third weeks of a presentation  
7 cycle.

8 During the second round, members may pledge funds online to any of the winning issue  
9 positions, using some or all of the funds that they have deposited in the Members Account. The  
10 minimum pledge is one dollar. Members must agree that their pledged funds can go to any of  
11 the potential trustees identified by Democracy Rules (as described below), and members cannot  
12 cancel their pledges once made.

13 The third and final round takes place during the last week of a presentation cycle. For  
14 each issue position that received pledges in the second round, Democracy Rules selects two  
15 possible trustees, and the members who have made pledges to an issue position can vote on  
16 which trustee will be the recipient of all of the funds pledged to that issue position. Democracy  
17 Rules “unilateral[ly] deci[des]” the trustee candidates, although it accepts suggestions from  
18 members on “worthy trustees” and states that its decision “is constrained by the requirement to  
19 best affect legislation associated with an issue, leaving little to the discretion of administrators.”  
20 AOR004; *see also Frequently Asked Questions*, DEMOCRACY RULES,

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<sup>2</sup> The subcategories under the category “energy,” for example, include clean energy, electricity, and energy extraction. *Issues*, DEMOCRACY RULES, <https://democracyrules.org/dr3/issues/categories> (last visited June 23, 2015). The issues under the subcategory “clean energy” include geothermal power, solar power, and wind power. *Id.*

1 [https://democracyrules.org/user\\_faq.php](https://democracyrules.org/user_faq.php) (last visited June 18, 2015) (“Democracy Rules FAQ”)  
2 (“Creative trustee candidate recommendations, if submitted before the 10th cycle day, could be  
3 included in that cycle or used in a future one.”).<sup>3</sup> Specifically, if the majority of voting members  
4 supports an issue with pending legislation, the choice of trustees is usually between the principal  
5 campaign committee of the chair of the full legislative committee to which the legislation was  
6 assigned when the presentation cycle began,<sup>4</sup> or an advocacy group. If the majority supports an  
7 issue not tied to pending legislation, the choice of trustees is usually between the principal  
8 campaign committee of a legislator with a demonstrated interest in the issue or an advocacy  
9 group. If the majority opposes an issue, the choice is usually the principal campaign committee  
10 of either the Speaker of the House or the Senate Majority Leader.<sup>5</sup> Unless Democracy Rules  
11 nullifies the results of the trustee vote (as described below), Democracy Rules transmits funds to  
12 the trustee within 10 days of the conclusion of the trustee vote. If the trustee is a campaign  
13 committee, Democracy Rules provides it with the contributors’ names, contribution amounts,  
14 and identifying information, including address, occupation, and employer. Although members  
15 do not know the identity of the trustee to whom their money will go when they pledge funds,

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<sup>3</sup> The website further explains that legislators’ responsiveness to the wishes of Democracy Rules’ members “could affect the degree to which they are considered as future trustee candidates.” Democracy Rules FAQ.

<sup>4</sup> Ten percent of the total pledge amount is designated for the campaign committee of the sponsor of the legislation if pledges exceed \$1,000.

<sup>5</sup> The process differs somewhat for “longterm campaigns,” which Democracy Rules conducts for issues that require “unusually prolonged support.” AOR003. If the winning issue after the first round of a presentation cycle lends itself to a longterm campaign — such as, for example, amending the Constitution — members can vote during the third round to have the issue so designated. Such campaigns remain active for as long as they receive donations or until their issue is resolved. Members may donate to a variety of recipients, including the principal campaign committee of a legislator chosen by Democracy Rules. Rather than having members vote to select a trustee for the issue, Democracy Rules transmits the funds to the designated recipient. If the designated recipient is a principal campaign committee, Democracy Rules transmits the funds within 10 days.

1 they can go to the “Archives” section of the website to find real-time polling results and discover  
2 to whom the funds ultimately went.

3         Once a presentation cycle for an issue has ended, the cycle starts all over again for that  
4 issue. However, if a majority of the voting members adopts a position on the issue during the  
5 subsequent presentation cycle that conflicts with the position members adopted in the previous  
6 cycle, Democracy Rules “nullifies” the presentation cycle that received the fewest votes to avoid  
7 being “put . . . in the awkward position of having to award funds to a trustee to both support and  
8 oppose an issue.” AOR005. Democracy Rules might also nullify the results of presentation  
9 cycle if a trustee refuses the pledges, if the issue has been resolved, or if the status of a bill has  
10 changed before the funds are distributed. If Democracy Rules nullifies the results, it credits  
11 nullified pledges back to the Members Account within 10 days of the conclusion of the trustee  
12 vote.

13         Democracy Rules states that it operates on a commercial basis and expects the 10-cent  
14 fee assessed against each member’s deposit to cover its costs and expenses and yield an adequate  
15 profit. But if the 10-cent fee, online merchandise sales, and member donations do not generate  
16 sufficient revenue, Democracy Rules will charge either membership fees or a commission on its  
17 members’ pledges. Democracy Rules plans to dispose of any surplus revenue consistent with the  
18 wishes of its membership as determined through online opinion polls. Democracy Rules does  
19 not propose to enter into any contractual relationship with any recipient political committees.

20 ***Question Presented***

21         *May Democracy Rules transmit contributions to federal candidates as proposed?*

22

1 ***Legal Analysis and Conclusion***

2 No, Democracy Rules may not transmit contributions to federal candidates as proposed.

3 The Act and Commission regulations prohibit a corporation from making a contribution

4 in connection with a Federal election. *See* 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b)(1). In

5 this context, a “contribution” includes any “direct or indirect payment, distribution, loan,

6 advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate,

7 [or] campaign committee . . . in connection with any [federal] election.” 52 U.S.C.

8 § 30118(b)(2); 11 C.F.R. § 114.2(b)(1); *see also* 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R.

9 § 100.52(a). “Anything of value” includes in-kind contributions, such as the provision of goods

10 or services without charge or at a charge that is less than the usual and normal charge. *See*

11 11 C.F.R. § 100.52(d)(1). Commission regulations define “usual and normal charge” as the price

12 of goods in the market from which they ordinarily would have been purchased at the time of the

13 contribution, or the commercially reasonable rate prevailing at the time the services were

14 rendered. *See* 11 C.F.R. § 100.52(d)(2).

15 In several recent advisory opinions, the Commission concluded that companies that

16 process contributions as a service to contributors are not making contributions because they are

17 not providing services or anything of value to the recipient committees. In Advisory Opinion

18 2014-07 (Crowdpac), for example, the Commission concluded that a commercial entity that

19 established a website to help users identify like-minded candidates and enabled users to make

20 contributions from which the processor deducted fees did not make contributions to the recipient

21 political committees. *See also* Advisory Opinion 2012-22 (skimmerhat) (distinguishing between

22 companies that process contributions as service to contributors and companies that process

1 contributions as service to political committees); Advisory Opinion 2011-19 (GivingSphere) at 7  
2 (same); Advisory Opinion 2011-06 (Democracy Engine) at 4-6 (same). The Commission has  
3 analogized these processors to “widely available delivery services, such as United Parcel  
4 Service,” or “an electronic bill-pay service, such as those provided by banks.” Advisory Opinion  
5 2012-22 (skimmerhat) at 5-6; *see also* Advisory Opinion 2014-07 (Crowdpac) at 6 (same);  
6 Advisory Opinion 2011-06 (Democracy Engine) at 5 (analogizing company’s contribution  
7 processing services to “delivery services, bill-paying services, or check-writing services for its  
8 subscribers”).

9         Several aspects of the Democracy Rules proposal are similar to those previously  
10 approved by the Commission. Like the requestors in Advisory Opinion 2014-07 (Crowdpac),  
11 Advisory Opinion 2012-22 (skimmerhat), Advisory Opinion 2011-19 (GivingSphere), and  
12 Advisory Opinion 2011-06 (Democracy Engine), Democracy Rules has developed a web-based  
13 platform that individuals can use to make contributions to political committees. Also like those  
14 requestors, Democracy Rules will forward contributions to the political committees but will not  
15 enter into contracts with, or receive payments from, the committees. Finally, Democracy Rules  
16 will charge members a fee for its services that it expects to cover its costs and generate a profit,  
17 as did the prior requestors.

18         But a key difference between the Democracy Rules proposal and those approved  
19 previously is that Democracy Rules will allow its members to make contributions only to  
20 candidates it has vetted and approved, based on whom it considers best able to accomplish its  
21 members’ policy goals. *See, e.g.*, AOR004 (describing selection of “trustee candidates” as  
22 “unilateral decision [of] Democracy Rules administrators”); Democracy Rules FAQ (“Over time,

1 representatives will demonstrate how responsive they are to the wishes of the majority, and this  
2 could affect the degree to which they are considered as future trustee candidates.”). By contrast,  
3 Crowdpac allowed users of its website to search for and contribute to any candidate who had  
4 registered an authorized committee with the Commission, as well as prospective candidates and  
5 eventual party nominees. Advisory Opinion 2014-07 (Crowdpac) at 2, 4. Similarly, skimmerhat  
6 allowed users to contribute to any federal candidate. Advisory Opinion 2012-22 (skimmerhat) at  
7 2. GivingSphere’s website enabled users to contribute to “all active political committees  
8 registered with the Commission.” Advisory Opinion 2011-19 (GivingSphere) at 2. And if a  
9 subscriber wished to make a contribution to a political committee not already in Democracy  
10 Engine’s directory of potential recipients, Democracy Engine would add it to the directory.  
11 Advisory Opinion 2011-06 (Democracy Engine) at 2.

12 Another significant difference is that Democracy Rules will nullify the results of a  
13 presentation cycle if the results conflict from one month to the next, to avoid being “put . . . in  
14 the awkward position of having to award funds to a trustee to both support and oppose an issue.”  
15 AOR005. While nullification in such situations may be consistent with the mission of an entity  
16 that uses political contributions to influence policy, it is not consistent with an entity that  
17 processes contributions as a commercial service ““akin to delivery services, bill-paying services,  
18 or check writing services.”” Advisory Opinion 2012-22 (skimmerhat) at 10 (citing Advisory  
19 Opinion 2011-06 (Democracy Engine)).

20 Because a commercial service provider may not unilaterally determine the potential  
21 recipients of its users’ contributions — much less override users’ choices of recipients — the  
22 Commission concludes that Democracy Rules would not be acting as a commercial service

1 provider when it transmits contributions to principal campaign committees as proposed.  
2 Accordingly, Democracy Rules does not qualify for the commercial-service exception that the  
3 Commission has recognized to the prohibition on corporate contributions in 52 U.S.C.  
4 § 30118(a) and 11 C.F.R. § 114.2(b)(1). The Commission therefore concludes that Democracy  
5 Rules's proposal to transmit contributions to candidate committees is inconsistent with the Act  
6 and Commission regulations.<sup>6</sup>

7 The Commission expresses no opinion regarding any implications of the requestor's  
8 proposal under the Internal Revenue Code because those issues are outside the Commission's  
9 jurisdiction.

10 This response constitutes an advisory opinion concerning the application of the Act and  
11 Commission regulations to the specific transaction or activity set forth in the advisory opinion  
12 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of  
13 the facts or assumptions presented, and such facts or assumptions are material to a conclusion  
14 presented in this advisory opinion, then the requestor may not rely on that conclusion as support  
15 for its proposed activity. Any person involved in any specific transaction or activity which is  
16 indistinguishable in all its material aspects from the transaction or activity with respect to which  
17 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
18 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
19 affected by subsequent developments in the law including, but not limited to, statutes,

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<sup>6</sup> Some of the Commission's prior decisions regarding online contribution processors have analyzed whether the contributions at issue would be "earmarked" within the meaning of the Commission's regulations, but the Commission need not and does not decide that question here because it would not affect the result. Even if the contributions from Democracy Rules's members were deemed to be earmarked, without the commercial-service exception Democracy Rules would be prohibited from serving as a conduit or intermediary for those contributions. *See* 11 C.F.R. § 110.6(b)(2)(ii) (prohibiting corporations from acting as conduits or intermediaries for earmarked contributions).

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

3 On behalf of the Commission,

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Ann M. Ravel  
Chair