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Federal Election Commission
Office of the General Counsel
1025 First Street, NE
Washington, D.C. 20463

Re: Advisory Opinion Request (Democracy Engine, LLC)

Dear Commissioners:

On behalf of Democracy Engine, LLC (“Democracy Engine”), we respectfully request an advisory opinion from the Federal Election Commission (“FEC” or “Commission”) pursuant to 52 U.S.C. § 30108. Specifically, we seek confirmation that for-profit and non-profit corporations, including trade associations and labor unions (hereinafter “corporations”), may use Democracy Engine’s platform to solicit members of their restricted class,¹ and also the general public, for contributions to candidates and committees in the manner described.

BACKGROUND

The FEC has a long history of embracing innovations that provide greater opportunities for participation in the political process. Indeed, for nearly two decades, commissioners have endorsed a wide array of online platforms – including Democracy Engine – that make it easier for individuals to contribute to their preferred candidates and committees. See, e.g., FEC Adv. Ops. 2015-15 (WeSupportThat.com), 2014-07 (Crowdpac), 2012-22 (skimmerhat), 2011-06 (Democracy Engine).

Democracy Engine’s latest offering builds upon these prior opinions.² The service proposed here is a web-based mechanism for corporations to share information with potential contributors while receiving real-time data about those who ultimately give. This program is essentially a

¹ To the extent that this request refers to the “restricted class,” that term is intended to encompass all individuals who a corporation may communicate with about candidates, regardless of the type of corporation at issue. See, e.g., 11 C.F.R. § 114.8 (describing those individuals with whom a trade association may communicate).

² As discussed in Advisory Opinion 2011-06, Democracy Engine is a for-profit limited liability company that offers web-based payment services to help individuals make contributions to political committees in the ordinary course of Democracy Engine’s business. For tax purposes, Democracy Engine has elected treatment as a partnership, and its partners/members are all natural persons who are U.S. citizens.


modified version of the existing, Commission-approved process described in Advisory Opinion 2011-06 and works as follows:

1. A corporation contacts Democracy Engine about subscribing to its service. Democracy Engine then works with the corporation to create a branded website that would look something like the following generic example:

SIGN INREGISTER

Support our Candidates!


These candidates are great on our issues!



Nancy Pelosi
U.S. House (D-CA-12)

| | | |
|--------|--------|--------|
| \$5800 | \$2900 | \$1000 |
| \$500 | \$ | |


MAX \$5,800



Mitch McConnell
U.S. Senate (R-KY)

| | | |
|--------|--------|--------|
| \$5800 | \$2900 | \$1000 |
| \$500 | \$ | |


MAX \$5,800



Kevin McCarthy
U.S. House (R-CA-23)

| | | |
|--------|--------|--------|
| \$5800 | \$2900 | \$1000 |
| \$500 | \$ | 2900 |

MAX \$5,800



Chuck Schumer
U.S. Senate (D-NY)

| | | |
|--------|--------|--------|
| \$5800 | \$2900 | \$1000 |
| \$500 | \$ | |

MAX \$5,800

\$2,900.00 clear

Kevin McCarthy \$2,900.00

CONTINUE

Divide amount equally

\$SPLIT

Donate the max to each

MAX OUT

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DONATION MODULE SECURELY POWERED BY DEMOCRACY ENGINE

2. The corporation, in its discretion, determines the overall content of this website, including which candidates will be featured on the site – e.g., some corporations may choose to feature all major party candidates, whereas others may feature only selected candidates. The software can also be used to make non-political contributions to U.S.-based entities if the client wishes to use it that way.
3. The corporation has administrative rights to change the content on the website as it relates to that entity. Democracy Engine performs back-end technical work to ensure that the site is functional. In other words, clients cannot change the code, but they can change the user-facing elements of the site and feature whichever candidates, committees, or other entities they wish to feature.
4. The 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.
5. While most corporations use the program to solicit contributions to candidates, the program is set up to allow members of the corporation’s restricted class to contribute directly to the corporation’s own separate segregated fund as well.
6. The site does not provide the option to contribute to a candidate not featured on the site, but it does enable contributors to give to multiple candidates at one time rather than having to go to multiple sites to make contributions. All of the contributions chosen to be made by individuals can be made in a single transaction.
7. The corporation pays Democracy Engine a fee for this service. Note that in some cases, the corporation’s PAC may be the entity paying to retain Democracy Engine’s services rather than the corporation. At all times, Democracy Engine will charge customers its “usual and normal” charge – i.e., a fee that Democracy Engine anticipates will cover its expenses and provide a commercially reasonable profit – for all services rendered under this agreement.
8. The platform cannot be used to send any communications. Instead, from time to time, the corporation will email a link to this site to its restricted class, along with a request that individuals consider supporting one or more candidates or committees identified on the site. Such communications, which will include the appropriate disclaimers concerning voluntariness, are merely recommendations to the restricted class; the corporation does not exercise any direction or control over any individual’s decision to contribute, or how much he or she will contribute.
9. An individual who wishes to contribute to a particular candidate or committee will be presented with – and must agree to – the following disclaimer:

DONATE \$2,900

By clicking on the "Donate" button you confirm that the following statements are true and accurate:

- I am a United States citizen or a permanent resident alien.
- This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution.
- I am making this contribution with my own personal credit card and not with a corporate or business credit card or a card issued to another person.
- I am not a federal contractor.
- I have read and accept the Democracy Engine LLC [Terms of Service](#) and [Privacy Policy](#).
- I am at least eighteen years old.

Contributions or gifts are not tax deductible.

Federal law requires political committees to report the name, mailing address, occupation, and name of employer for each individual whose contributions aggregate in excess of \$200 in an election cycle.

I understand that my payment is being made to Democracy Engine, who accepts the responsibility of distributing the funds to my designated recipient(s). My card or bank statement will show a payment to "Democracy Engine" and if there are any issues or discrepancies with the payment or I wish to revoke the payment, I can contact Democracy Engine at support@democracyengine.com.

Of particular note, the Privacy Policy explains that an individual's information may be shared not only with the recipient of an individual's contribution, but also with those entities that utilize Democracy Engine's Services and incorporate Democracy-Engine hosted websites into their communications. See Democracy Engine, *Privacy Policy*, at <https://democracyengine.com/privacy-policy/>.

10. The individual must also complete the following form as part of the contribution process:

Complete your donation

Contact

| | | |
|-----------------|------------------|----------|
| First Name | Last Name | |
| Jonathan | Zucker | |
| Address | | |
| 123 Main Street | | |
| City | State | Zip Code |
| Washington | GA | 20001 |
| Email | Phone (optional) | |
| jonathan@de.com | 2021231234 | |

\$2,900.00 [Edit](#)
Nancy Pelosi \$2,900.00





Employment

Check here if you are retired or not employed.

| | |
|----------------------|------------|
| Employer | Occupation |
| Democracy Engine Inc | CEO |

Payment

Credit Card Electronic Check

| | |
|--------------------|--|
| Credit Card Number |     |
| Expiration | |
| Month | Year |
| Security Code | |

Remember my payment information so I can use Express Donate next time

DONATE \$2,900

11. Once the individual reviews the terms and completes the requisite form, he or she clicks the “donate” button to agree to the terms and to make the contribution via credit card, debit card, or electronic check. The funds are deposited into a Democracy Engine transfer account that is a separate account from Democracy Engine’s operating funds. Democracy Engine then transfers the funds to the intended recipient political committee within ten days, minus a commercially reasonable convenience fee. At this same time, Democracy Engine also provides the recipient committee with access to a link to download the information necessary to properly report the contributor’s contribution to the FEC. See FEC Adv. Op. 2011-06, at 3-4 (describing the transmittal process for the relevant information).

12. To enable Democracy Engine to electronically transfer the contributions received, it will often enter into a limited agreement with the recipient committees “to ensur[e] that authorized clearinghouse electronic transfers of funds may be effectuated.” *Id.* at 4. Otherwise, Democracy Engine does not enter into any contractual agreement with the recipient committees under this program. Alternatively, the contributions are sent by check, the stub of which explains how to access a link to the necessary FEC reporting data within the timeframe required by law. If Democracy Engine transmits the contributions by check it does not enter into any agreement with the recipient committee.

13. While the corporation will not exercise direction or control over the contributions or the contributor’s decision to contribute, one of the notable benefits to the corporation is that it can obtain real-time data about the amount and recipients of contributions made through the service. This information will, of course, generally be publicly available when the candidate committees disclose their contributors on their FEC reports. But Democracy Engine’s software allows corporations to obtain this information in real-time, without scouring FEC reports and using staff resources to gather this information into spreadsheets after the FEC reporting deadline. The following are examples of how the information is presented:

TRANSACTIONS REPORT

Today Export

| Date ↓ | Last Name | First Name | Amount | | | | |
|-----------------|-----------|-------------|------------------------|------------|-------------------------|----------|--------|
| 03/03/22 | Jackson | Frederick | \$5,800.00 | | | | |
| Display Name | | Office/Org | State | Amount | Voided | Credited | Active |
| Mitch McConnell | | U.S. Senate | KY | \$5,800.00 | false | false | true |
| 03/03/22 | James | Stacey | \$5,800.00 | | | | |
| Display Name | | Office/Org | State | Amount | Voided | Credited | Active |
| Nancy Pelosi | | U.S. House | CA | \$5,800.00 | false | false | true |
| 03/03/22 | Smith | Jack | \$250.00 | | | | |
| Display Name | | Office/Org | State | Amount | Voided | Credited | Active |
| Mitch McConnell | | U.S. Senate | KY | \$125.00 | false | false | true |
| Chuck Schumer | | U.S. Senate | NY | \$125.00 | false | false | true |
| 03/03/22 | Doe | Jane | \$100.00 | | | | |
| Display Name | | Office/Org | State | Amount | Voided | Credited | Active |
| Kevin McCarthy | | U.S. House | CA | \$25.00 | false | false | true |
| Nancy Pelosi | | U.S. House | CA | \$25.00 | false | false | true |
| Chuck Schumer | | U.S. Senate | NY | \$25.00 | false | false | true |
| Mitch McConnell | | U.S. Senate | KY | \$25.00 | false | false | true |
| Total: 4 | | | Total: \$11,950 | | Average: \$2,988 | | |

1 - 4 of 4 items

| Date...↓ | Last Name | First Name | State | Amount | Recipient | Office/Org | District |
|-----------------|-----------|------------|-------|---|-----------------|-------------|----------|
| 03/03/22 | Jackson | Frederick | GA | \$5,800.00 | Mitch McConnell | U.S. Senate | R-KY |
| 03/03/22 | James | Stacey | WA | \$5,800.00 | Nancy Pelosi | U.S. House | D-CA-12 |
| 03/03/22 | Smith | Jack | CA | \$125.00 | Mitch McConnell | U.S. Senate | R-KY |
| 03/03/22 | Smith | Jack | CA | \$125.00 | Chuck Schumer | U.S. Senate | D-NY |
| 03/03/22 | Doe | Jane | DC | \$25.00 | Kevin McCarthy | U.S. House | R-CA-23 |
| 03/03/22 | Doe | Jane | DC | \$25.00 | Nancy Pelosi | U.S. House | D-CA-12 |
| 03/03/22 | Doe | Jane | DC | \$25.00 | Chuck Schumer | U.S. Senate | D-NY |
| 03/03/22 | Doe | Jane | DC | \$25.00 | Mitch McConnell | U.S. Senate | R-KY |
| Total: 8 | | | | Total: \$11,950 Avg: \$1,494 | | | |

Note that the term “voided” here means that the transaction was refunded prior to submission to the credit card company for billing, “credited” means that the transaction was submitted to the credit card company but subsequently refunded, and “active” means that the transaction was submitted to the credit card company and has not been refunded.

Ultimately, however, the corporations own the data and can use it as permitted by law and as subject to their its privacy policies. Democracy Engine does not own the data collected through its software. Instead, any information collected by Democracy Engine is used only for compliance – including ensuring recipients have the data they need under the law – and accounting.

14. Democracy Engine’s software also can be repurposed by a corporation or its PAC to solicit funds for candidates and committees from the general public. Just as with its restricted class solicitations, when soliciting funds in this manner, the corporation and its PAC – rather than Democracy Engine – will determine the content of and actually disseminate any solicitations. Moreover, because the law so requires, Democracy Engine expects that communications to the general public will made be independent of any campaign, and that the costs associated with such communications will be treated as independent expenditures by the corporation or its PAC and reported accordingly, and further that any solicitations will include the appropriate disclaimers identified by the Commission in Advisory Opinion 2011-14 (Utah Bankers Association). The actual contributions will be processed by Democracy Engine’s platform in the same way described above for contributions by restricted class members.
15. Democracy Engine’s role here is to provide a service to the individual contributors and also a platform for the corporation to use in obtaining after-the-fact information about the contributions made using the platform. Democracy Engine does not itself solicit contributions for any political committee or other entity, nor does it exercise any direction or control over any individual’s choice of recipient political committee.
16. Finally, and unlike other Democracy Engine offerings, this program does not permit individuals to contribute toward the campaign of a yet-to-determined nominee – i.e., all contributions are to existing, FEC-registered candidates or committees.

QUESTIONS PRESENTED

1. *May a corporation use Democracy Engine’s platform to communicate with its restricted class about contributing to candidates and committees, and then receive real-time data about any contributions made using the platform, without undertaking such activity through its corporate PAC?*
2. *May a corporation or its separate segregated fund use Democracy Engine’s platform to communicate to the general public about contributing to candidates and committees – excluding the corporation’s own PAC and any other separate segregated fund – and then receive real-time data about any contributions made using the platform?*

DISCUSSION

1. **A corporation may use Democracy Engine’s platform to communicate with its restricted class about contributing to candidates and committees, and then receive real-time data about the contributions.**

FEC regulations permit corporations to communicate with their restricted class on any subject, including communicating messages containing express advocacy. See 11 C.F.R. § 114.3. Corporate “communications under section 114.3 may [also] solicit or suggest that [an individual in the restricted class] make a contribution to a particular candidate so long as the corporation limits its activity to communication only and does not actually facilitate the making of the member’s contribution to the candidate nor act as a conduit.” FEC Adv Op. 1996-21 at 3 (Business Council of Alabama). To that end, the Commission has repeatedly held that providing the address of the candidate or political committee, or soliciting contributions be sent directly to candidates, does not violate the facilitation prohibition. See *id.* (collecting authority); see also FEC Adv. Op. 1987-29 (Nat’l Ass’n of Life Underwriters) (finding no facilitation where entity merely made recommendations of “worthy candidates” to the restricted class and provided campaign addresses so individuals could make their own contributions). Finally, to avoid conduit status, an entity must not “receive[or] forward[] an earmarked contribution to a candidate or a candidate’s authorized committee.” 11 C.F.R. §110.6(b)(2).

A corporation’s use of the Democracy Engine platform is consistent with each of these requirements. As in other contexts, the corporation intends to communicate with its restricted class about candidates that are worthy of support. Under the proposal, some of these communications will contain links to a company-specific version of the Democracy Engine platform, thereby providing an opportunity for individuals to independently contract with a commercial vendor to make contributions to the candidates and committees of their choice. But the corporation is not “facilitating” the contribution, as the FEC has defined that concept, since the corporation is merely providing a website link where individuals separately contract with – and are charged a fee by – a commercial vendor for the contribution-processing service. See, e.g., FEC Adv. Op. 2004-19 (DollarVote.org) (facilitation does not include a corporate vendor providing good and services at the usual and normal charge); cf. FEC Adv. Op. 2021-07 at 8 (PACMS) (reasoning that “corporate facilitation does not result . . . where a vendor “is not providing services to any candidate or political committee” but rather to the individual contributor). And as to the Commission’s conduit requirements, neither the company nor its

PAC are receiving or forwarding the contributed funds, as the conduit provisions require. Thus, everything in this proposal is consistent with the Commission's regulatory requirements.

The corporation's use of the Democracy Engine platform does not raise related concerns that have troubled the Commission in other contexts. In 1986, for example, the Commission considered an Armstrong World Industries ("Armstrong") initiative that, at least on its face, was designed to "broaden the participation of its executive and administrative personnel in the political contributions process" while still providing feedback to the company. FEC Adv. Op. 1986-4 at 1. Rather than facilitating individual contributions, however, the Commission found that the program was a "corporate endeavor" that enhanced the company's collective fundraising prowess in a way that necessitated running the program through a corporate PAC. *Id.* at 3, 5. Why? Because Armstrong:

- Sought to obtain an advance "commitment or pledge at a specific contribution amount" from the 80 restricted class members enrolling in the contribution program;
- Determined "whether a [candidate] contribution should be made, what the aggregate amount of the contribution should be, and whether a company representative should attend" any fundraising event;
- Canvassed "Armstrong's executives until the desired aggregate contribution [was] reached;" and
- Required contributions to incumbents to be "mailed to the Washington office, which [would] deliver them to the candidate or his or her committee in connection with Armstrong's participation in [a] fundraising event."

Id. at 1-2, 5. In short, the company, rather than the individual, would be determining "the recipient of a contribution, its aggregate amount, and its timing." *Id.* at 5.

To be sure, Armstrong's program also involved the company doing other commonplace things like disseminating information about congressional races to executives and monitoring the amount of any contributions made by individuals. *See id.* at 4. But these secondary elements, by themselves, did not convert the program into a collective enterprise subject to corporate PAC formalities and a single contribution limit. Instead, the Commission's conclusion in 1986-4 was rooted in "the totality of the[program's] circumstances," *id.* at 5, including the significant corporate oversight component outlined above.

Fundamentally, a corporation's use of Democracy Engine's program is different than Armstrong's heavy-handed, communal enterprise. The corporation is not asking employees to commit to specific giving levels, nor is the company setting/enforcing corporate-wide pledge targets, nor is it requesting funds be sent to a Washington D.C. office. Instead, individuals make their own decisions about whether to contribute and how much. Regardless of whether Armstrong was rightly decided, its conclusion simply doesn't fit the factual circumstances here.

2. A corporation and its separate segregated fund may use Democracy Engine’s platform to communicate to the general public about contributing to candidates and committees – excluding the corporation’s own PAC and any other separate segregated fund – and then receive real-time data about the contributions.

Corporations and their PACs are permitted to make independent expenditures advocating for or against candidates, as well as to encourage individuals to contribute to candidates and other political committees. See, e.g., *Citizens United v. FEC*, 558 U.S. 310 (2010); see also 11 C.F.R. §§ 114.1(b), 114.2(a) (allowing a connected organization to pay the expenses incurred in setting up and running a [corporate PAC]). In Advisory Opinion 2011-14, the Commission allowed an incorporated entity and its PAC to pay for costs related to a “specially branded . . . public website” that such entities would use, in conjunction with emails, to “solicit individual members of the public . . . to make contributions from their personal funds to particular Federal candidates during each election cycle.” *Id.* at 2. Ultimately, the costs associated with the website were reported as independent expenditures. See *id.* at 2; Advisory Opinion Request Letter of the Utah Bankers Association (June 8, 2011), at 1 n.2.

This is precisely the scenario contemplated by Democracy Engine and the users of its service here. Accordingly, the Commission should affirm that a corporation or its PAC may send communications to the general public, with a link to the corporation’s branded platform, that will enable individuals to contribute directly to candidates and committees.

CONCLUSION

Democracy Engine’s platform, and this advisory opinion request, present the Commission with an important opportunity to enhance individual political giving and, ultimately civic participation. We urge the Commission to answer the above questions in the affirmative, thus enabling corporations and individuals to begin using this non-partisan platform.

Sincerely,



Carol A. Laham
Andrew G. Woodson