



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary ^{VFV}

DATE: August 30, 2022

SUBJECT: AO 2022-12 (Ready for Ron) Comment

Attached is a comment on AO 2022-12 (Ready for Ron) Drafts A and B from Elias Law Group.

Attachment

RECEIVED

By Office of the Commission Secretary at 3:30 pm, Aug 30, 2022

August 30, 2022

BY ELECTRONIC MAIL DELIVERY

Federal Election Commission
1050 First Street NE
Washington, DC 20463
ao@fec.gov

Re: Comment Regarding AO 2022-12 Drafts A and B

Dear Commissioners:

We submit this comment on behalf of Elias Law Group LLP in response to the Federal Election Commission's (the "FEC's or the "Commission's") Agenda Document Nos. 22-36-A ("Draft A") and No. 22-36-B ("Draft B") in Advisory Opinion 2022-12 (Ready for Ron). We submit the comment not on behalf of any client, but instead as practitioners with experience advising clients on the laws, regulations, and precedents that govern "testing the waters" activities and contribution and source limits. Ready for Ron ("RFR"), a hybrid political committee, proposes to launch a nationwide advertising campaign to amass a list of names and contact information for a petition that it plans to submit to Ron DeSantis, on an ongoing basis and at no charge, to persuade him to run for president.¹

DeSantis's receipt of such a list would be unmistakable proof that he is either a candidate for president or, at the very least, testing-the-waters for a potential presidential run. We strongly encourage the Commission to adopt Draft A, which correctly concludes that RFR's proposal would violate the amount and source restrictions of the Federal Election Campaign Act of 1971, as amended (the "Act").

The Act prohibits any person, including a political committee, from making contributions or expenditures in excess of \$2,900 per election.² The Act and Commission regulations define "contribution" to include "anything of value" made by a person for the purpose of influencing a federal election.³ "Anything of value" includes in-kind contributions, defined as the provision of any goods or services without charge or at a charge that is less than the usual and normal charge

¹ Advisory Op. Request ("AOR") 2022-12 (Ready for Ron) at 1.

² 52 U.S.C. § 30116(a)(1)(A), (a)(2)(A); 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)).

³ 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.51(a).

for such goods or services.⁴ Commission regulations identify “membership lists” and “mailings lists” as examples of goods and services that would result in in-kind contributions.⁵

Although the Act requires individuals to register as a federal candidate if they receive contributions or make expenditures in excess of \$5,000,⁶ the Commission has established limited “testing the waters” regulations that exempt from the definition of “contribution” and “expenditure” funds received and payments made to test the feasibility of a campaign for federal office.⁷ However, only funds that are subject to the amount limitations and source prohibitions may be used to fund testing-the-waters activities.⁸ Because hybrid PACs may accept funds not subject to these restrictions into their non-contribution accounts, they are prohibited from using those funds to make contributions, including in-kind contributions to the campaigns of federal candidates.⁹

Draft A correctly concludes that RFR may not provide the names and contact information to DeSantis because it violates the source and amount restrictions. RFR states that it plans to spend \$25,000-\$50,000 per week over the next two years on various forms of advertising to generate interest in the petition and expects to collect 58,000 signatures while its advisory opinion request is pending and will likely have over a million by the end of the year.¹⁰ RFR acknowledges that it is compiling this list to submit to DeSantis “to demonstrate the breadth of public support for him and attempt to persuade him to become . . . a candidate for the Republican nomination for president in the 2024 election.”¹¹ RFR also acknowledges that the market value of the list exceeds its \$2,900 contribution limit,¹² yet it plans to provide DeSantis with the petition and contact information for free and on an ongoing basis, even if he becomes a candidate.¹³ Draft A correctly observes that RFR’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.”¹⁴ Draft A accurately determines that RFR is prohibited from simply giving the list to DeSantis while he is testing the waters or after he comes a candidate because it exceeds RFR’s contribution limit and violates the prohibition on a hybrid PAC’s use of its soft money account to make contributions.¹⁵

Draft B reaches the incredible conclusion that RFR may provide the petition to DeSantis before he begins testing the waters for a potential presidential candidacy on grounds that nothing in the Act or Commission regulations bar donations to individuals who are neither federal candidates

⁴ 11 C.F.R. § 100.52(d)(1).

⁵ *Id.*

⁶ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a)(1).

⁷ 11 C.F.R. §§ 100.72(a), 100.131(a).

⁸ 11 C.F.R. §§ 100.72(a), 100.131.

⁹ *See* Advisory Opinion 2016-21 (Great America PAC) at 3-4.

¹⁰ AOR at 3.

¹¹ *Id.* at 4.

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ Draft A at 9.

¹⁵ *Id.* at 12-15.

nor testing the waters.¹⁶ Assuming for the sake of argument that DeSantis is not testing the waters now, which is debatable, surely his receipt of a list containing thousands—if not millions—of supporters is a clear, objective act that establishes that he has decided, at the very least, to begin exploring a federal candidacy, making his activity subject to the testing-the-waters rules. Compiling a list of supporters is classic testing-the-waters activity. Draft B completely ignores the significance of receiving such information, and in doing so, would create a massive loophole where testing-the-waters activities can be funded with millions in impermissible soft money at no cost to prospective candidates so long as they claim they are not testing the waters. Worse, if adopted, Draft B would permit DeSantis to make use of this highly valuable information without even having to disclose it should he decide to become a candidate. Draft B effectively creates an entirely new “pre-testing-the-waters period” where prospective candidates will seek to *test the waters* exempt from *any* Commission regulation. In doing so, Draft B would further complicate an already complex area of campaign finance law, which will lead to more uncertainty in the regulated community regarding what constitutes testing-the-waters activities. The Commission should treat RFR’s proposal for what it is—activity that is subject to regulation under the Act and Commission regulations.

For the foregoing reasons, we urge the Commission to adopt Draft A as its final Advisory Opinion.

Very truly yours,



Ezra W. Reese
Jonathan A. Peterson

¹⁶ Draft B at 15.