



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 22-36-B**  
**AGENDA ITEM**  
**For meeting of August 11, 2022**

August 2, 2022

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *ALR for LJS*  
Acting General Counsel

Neven F. Stipanovic *ALR for NFS*  
Associate General Counsel

Amy Rothstein *ALR*  
Assistant General Counsel

Heather Filemyr *HF*  
Attorney

Subject: Draft AO 2022-12 (Ready for Ron) – Draft B

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 12:00 pm (Eastern Time) on August 10, 2022.

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 <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2022-12  
2  
3 Lilian Rodriguez-Baz, Esq.  
4 Ready for Ron  
5 66 West Flagler Street  
6 Suite 900  
7 Miami, FL 33130

**DRAFT B**

8 Dear Ms. Rodriguez-Baz:

9           We are responding to your advisory opinion request on behalf of Ready for Ron  
10 (“R4R”) concerning the application of the Federal Election Campaign Act, 52 U.S.C.  
11 §§ 30101-45 (the “Act”), and Commission regulations to R4R’s proposal to provide to  
12 Governor Ron DeSantis without charge a petition containing the names and contact  
13 information of thousands of individuals who wish to encourage him to run for President  
14 in the 2024 election. The Commission concludes that R4R may provide the names and  
15 compiled contact information included in its petition to Governor DeSantis before he  
16 begins testing the waters for a potential federal candidacy because neither the Act nor  
17 Commission regulations prohibit that activity. However, R4R may not provide the names  
18 and contact information to Governor DeSantis after he either becomes a federal candidate  
19 or begins testing the waters for a potential federal candidacy because the value of that  
20 information would exceed applicable contribution limits and limits on funds used to test  
21 the waters. The proposal to provide the contact information to Governor DeSantis after  
22 he becomes a federal candidate or begins testing the waters is also contrary to restrictions  
23 on the use of funds in the non-contribution accounts of political committees with both  
24 contribution and non-contribution accounts (“hybrid PACs”).

1 ***Background***

2 The facts presented in this advisory opinion are based on your letter dated May  
3 25, 2022, your email dated June 17, 2022, disclosure reports filed with the Commission,  
4 and publicly available information.

5 On May 23, 2022, R4R registered with the Commission as a hybrid,  
6 nonconnected, unauthorized political committee.<sup>1</sup> It describes itself as a “draft”  
7 committee “that seeks to encourage Florida Governor Ron DeSantis . . . to declare his  
8 candidacy for the 2024 Republican nomination for President.”<sup>2</sup> Governor DeSantis is  
9 currently a candidate for re-election to state office and is not a party to this request.<sup>3</sup>

10 R4R states that it accepts contributions subject to the Act’s source prohibitions  
11 and contribution limits to its contribution account and “solicits and accepts unlimited  
12 contributions” from individuals other than prohibited sources to its non-contribution  
13 account.<sup>4</sup> R4R does not plan to seek or qualify for multicandidate political committee  
14 status.

15 R4R proposes to use funds from both its contribution and non-contribution  
16 accounts to fund a nationwide petition drive to encourage Governor DeSantis to run for

---

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

<sup>2</sup> Advisory Opinion Request (“AOR”) at AOR001.

<sup>3</sup> See [www.rondesantis.com](http://www.rondesantis.com).

<sup>4</sup> AOR002.

1 President in 2024.<sup>5</sup> Individuals supporting a potential DeSantis presidential campaign  
2 may “sign” the petition through R4R’s website or by phone. R4R requires all petition  
3 signatories to provide their names, phone numbers, email addresses, and zip codes; any  
4 individual not wishing to provide this information cannot sign the petition. R4R will  
5 notify individuals that, by signing the petition, they agree to have their names and contact  
6 information provided to Governor DeSantis. R4R proposes to provide this information to  
7 Government DeSantis without charge.

8 R4R plans extensive media outreach to support its petition. R4R represents that,  
9 as of June 12, 2022, it has aired approximately 86 television advertisements promoting  
10 the petition, including on Fox News and other channels; run online advertisements with a  
11 total of 318,779 impressions; and received over one million views of its advertisements  
12 through social media. In addition, R4R states that its petition has received news coverage  
13 by Fox News, *Politico*, the Associated Press, MarketWatch, and the *Boston Herald*. R4R  
14 plans to continue to promote the petition through television and online advertisements, as  
15 well as “through radio, podcast, Skywriting, direct mail, billboards, blimps, and other  
16 media,” and estimates that it will spend an average of \$25,000-\$50,000 per week on  
17 advertisements in support of the petition through 2024.<sup>6</sup>

18 As a result of these efforts, R4R expects to receive contact information from more  
19 than 58,000 petition signatories during the pendency of this advisory opinion and

---

<sup>5</sup> AOR003. R4R’s petition drive became active on May 23, 2022. AOR019. R4R explains that the purpose of its petition is “to demonstrate the breadth of public support for [Governor DeSantis] and attempt to persuade him to become, and subsequently to remain, a candidate for the Republican nomination for President in the 2024 election.” AOR004.

<sup>6</sup> AOR003.

1 “projects it will likely amass well over a million virtual signatures for its petition, along  
2 with accompanying [contact information], by the end of 2022.”<sup>7</sup> R4R states that its  
3 petition will likely eventually include the contact information of “millions” of petition  
4 signers.<sup>8</sup> After initially submitting its petition to Governor DeSantis, R4R proposes to  
5 submit “regular updates” to him through the 2024 election, “accompanied by the names  
6 and [contact information] of people who have joined the petition since it was last  
7 updated.”<sup>9</sup> R4R estimates the value of each signatory’s contact information to be five  
8 cents, based on a “reasonable sample market value of contact information in political  
9 distribution lists,” and states that the market value of the information it plans to provide  
10 to Governor DeSantis will exceed \$2900.<sup>10</sup>

11 R4R represents that neither it “nor its agents are coordinating with Governor Ron  
12 DeSantis, his gubernatorial campaign, or any federal or state political committees  
13 authorized by Governor DeSantis.”<sup>11</sup> R4R states that if it uses any common vendors with  
14 Governor DeSantis, it “will require firewalls.”<sup>12</sup> Finally, R4R asserts that, “to the best of

---

7 AOR004.

8 *Id.*

9 *Id.*

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

11 AOR003.

12 *Id.*

1 its knowledge,” it does not employ and will not employ any former employees or  
2 independent contractors of Governor DeSantis’s gubernatorial campaign.<sup>13</sup>

3 ***Questions Presented***

4 1. *May R4R provide its petition, along with the accompanying list of over*  
5 *58,000 signatories and their contact information, to Governor Ron DeSantis to attempt to*  
6 *persuade him to become a candidate for the Republican nomination for President in*  
7 *2024?*

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

10 a. *starts testing the waters to become a candidate for the office of President,*

11 *or*

12 b. *becomes a candidate for the office of President?*

13 ***Legal Analysis***

14 R4R may provide the list of over 58,000 signatories’ names and compiled contact  
15 information from its petition to Governor DeSantis before he begins testing the waters for  
16 a federal candidacy because neither the Act nor Commission regulations prohibit that  
17 activity. However, R4R may not provide Governor DeSantis with the list of names and  
18 compiled contact information from its petition after Governor DeSantis either becomes a  
19 federal candidate or begins testing the waters for a federal candidacy. Providing the list  
20 to Governor DeSantis after he becomes a federal candidate (should he do so) would  
21 exceed the Act’s contribution limits, and providing the list to Governor DeSantis after he

---

<sup>13</sup> *Id.*

1 begins testing the waters for a federal candidacy would be contrary to the Commission’s  
2 regulation at 11 C.F.R. § 100.72(a). R4R’s proposal to provide the compiled contact  
3 information to Governor DeSantis either after he becomes a federal candidate or begins  
4 testing the waters is also contrary to restrictions on the non-contribution accounts of  
5 hybrid PACs.

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

7 The Act prohibits a political committee, other than a multicandidate political  
8 committee, from contributing more than \$2900 to any candidate with respect to any  
9 election for federal office.<sup>14</sup> A contribution includes “any gift, subscription, loan,  
10 advance, or deposit of money or anything of value made by any person for the purpose of  
11 influencing any election for Federal office.”<sup>15</sup> “[T]he provision of any goods or services  
12 without charge or at a charge that is less than the usual and normal charge” is an “in-  
13 kind” contribution.<sup>16</sup> The value or “amount of the in-kind contribution is the difference  
14 between the usual and normal charge for the goods or services at the time of the  
15 contribution and the amount charged the political committee.”<sup>17</sup>

16 As “the product of time-consuming, labor-intensive activities that can cost a  
17 political committee thousands, even millions, of dollars” to compile, a political

---

<sup>14</sup> See 52 U.S.C. §§ 30101(11) (defining “person” to include committees), 30116(a)(1)(A), (a)(2)(A); see also 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 86 Fed. Reg. 7867, 7869 (Feb. 2, 2021) (adjusting limit for inflation pursuant to 52 U.S.C. § 30116(c)).

<sup>15</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>16</sup> 11 C.F.R. § 100.52(d)(1).

<sup>17</sup> *Id.*

1 committee’s list of persons sympathetic to its cause is among “its most valuable assets.”<sup>18</sup>  
2 Accordingly, the Commission has “long recognized” that political committee mailing and  
3 email lists have commercial value and are “frequently sold, rented, or exchanged in a  
4 market.”<sup>19</sup> Indeed, rather than spending the time and money to start its petition drive  
5 completely from scratch, R4R itself states that it “will rent access to distribution lists  
6 from commercial vendors to send e-mails and text messages to potential DeSantis  
7 supporters” and that it has already paid more the \$2900 for a contact list of persons who  
8 it believes are likely sympathetic to its cause.<sup>20</sup>

9         The Commission’s regulation specifically identifies “membership lists” and  
10 “mailing lists” as examples of goods that are in-kind contributions when provided to a  
11 candidate or political committee without charge or at less than their usual and normal  
12 charge.<sup>21</sup> And the Commission has long recognized this principle in its advisory opinions  
13 as well. For example, in Advisory Opinion 1979-18 (FEC’s Former Employees  
14 Committee), the Commission found that a political committee would make an in-kind  
15 contribution to a candidate if it provided its contributor list to the candidate at less than

---

<sup>18</sup> *FEC v. Int’l Funding Inst.*, 969 F.2d 1110, 1116 (D.C. Cir. 1992) (en banc) (internal citations omitted); *see also* Notice of Proposed Rulemaking, Mailings Lists of Political Committees, 68 Fed. Reg. 52,531, 51,531 (Sept. 4, 2003) (“One of the principal assets of many political committees is their mailing list.”).

<sup>19</sup> Advisory Opinion 2014-06 (Ryan for Congress, *et. al*) at 8 (collecting examples); *see also, e.g.*, Advisory Opinion 2011-02 (Scott Brown for U.S. Senate Committee) at 7 (same); Advisory Opinion 2002-14 (Libertarian National Committee) at 2.

<sup>20</sup> AOR002, 18 (stating R4R purchased list of contact information for registered Republicans who contributed to Republican candidates, but not President Trump or Save America PAC, for more than \$2900 to invite those individuals to sign R4R’s petition).

<sup>21</sup> 11 C.F.R. § 100.52(d)(1).



1 “the usual and normal charge for such a list in the market from which it would ordinarily  
2 be purchased.”

3       2.       *R4R’s proposal to provide the signatories’ contact information to*  
4       *Governor DeSantis without charge after Governor DeSantis becomes a federal*  
5       *candidate would result in an excessive contribution.*

6       The Act prohibits a political committee, other than a multicandidate political  
7       committee, from contributing more than \$2900 to any candidate with respect to any  
8       election for federal office.<sup>22</sup> R4R is not a multicandidate political committee, and so it is  
9       subject to the \$2900 limit.

10       R4R states that it expects its petition will include the contact information of more  
11       than 58,000 petition signatories during the pendency of this advisory opinion request and  
12       “likely” more than one million by the end of 2022.<sup>23</sup> R4R estimates that the market value  
13       of the list of signatories’ contact information will exceed \$2900.<sup>24</sup> Accordingly,  
14       providing Governor DeSantis with the contact information in the petition without charge  
15       after he becomes a candidate for federal office would constitute an in-kind contribution in  
16       excess of contribution limits and thus is prohibited.

17       R4R states that the Commission should not treat the compiled contact information  
18       from the petition as a contribution by R4R because the value of the individual contact

---

<sup>22</sup>       52 U.S.C. §§ 30101(11), 30116(a)(1)(A), (a)(2)(A); *see also* 11 C.F.R. § 110.1(b)(1); Price Index  
Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold,  
86 Fed. Reg. at 7869.

<sup>23</sup>       AOR004.

<sup>24</sup>       AOR004, 5; *see also* AOR020 (stating “[t]he market value of the list of signatories (which  
contains [contact information]) who wish to associate with Governor DeSantis and support him running for  
President in 2024 that Ready for Ron wishes to provide to Governor DeSantis will exceed federal  
contribution limits”).

1 information provided by each petition signatory should be considered a *de minimis*  
2 contribution by that individual to Governor DeSantis with R4R acting as a conduit.<sup>25</sup> As  
3 discussed above, it is well established under the Commission’s regulation that “mailing  
4 lists” or “membership lists” compiled by political committees are an in-kind contribution  
5 under the Act if provided at less than the “usual and normal charge.” As the D.C. District  
6 Court recognized in *FEC v. Christian Coalition*, “[e]ven if the names on the . . . list were  
7 publicly available, the fact that the [respondent] expended resources to compile the list”  
8 of persons likely to support a candidate “created value that was passed on” when that list  
9 was provided to the candidate.<sup>26</sup> R4R states it intends to spend a significant amount of  
10 money to compile the list of contact information in its petition — an estimated \$25,000-  
11 \$50,000 per week over a period of more than two years, with more than \$2900 already  
12 spent to acquire a mailing list in support of its efforts — and asserts that the resultant list  
13 will have a commercial value in excess of \$2900.<sup>27</sup> The contact information in R4R’s  
14 petition would be of significant value to Governor DeSantis not only because of its  
15 expensive development costs, but also because it exclusively includes persons who are  
16 advocating in favor of Governor DeSantis running for President. Accordingly, R4R may  
17 not provide the contact information to Governor DeSantis without charge if and when he  
18 becomes a federal candidate because the value of the information would exceed the  
19 contribution limits.

---

<sup>25</sup> AOR013-14.

<sup>26</sup> 52 F. Supp. 2d 45, 96 (D.D.C. 1999).

<sup>27</sup> AOR003-4, 20.

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

4           The Commission's "testing the waters" regulation at 11 C.F.R. § 100.72(a)  
5 provides that "[f]unds received solely for the purpose of determining whether an  
6 individual should become a candidate are not contributions"; however, "[i]f the  
7 individual subsequently becomes a candidate, the funds received are contributions subject  
8 to the reporting requirements of the Act."<sup>28</sup> "Only funds permissible under the Act may  
9 be used for [testing the waters] activities."<sup>29</sup> The Commission long ago determined that  
10 "funds received" for purposes of the testing the waters regulation "include in-kind gifts of  
11 anything of value."<sup>30</sup> Thus, "funds received from any committee, *whether in-kind or*  
12 *direct*, for an individual's testing-the-waters activities are aggregated with any  
13 contributions from the same committee to such individual as a candidate (or to his or her  
14 authorized committees)."<sup>31</sup>

15           "Through its regulations, the Commission, in essence, has excepted 'testing the  
16 waters' activity from the reporting rules that would otherwise apply."<sup>32</sup> The Commission  
17 promulgated the "limited exceptions" in the testing the waters regulations from the  
18 requirements to report contributions and expenditures in order "to permit individuals to

---

<sup>28</sup> 11 C.F.R. § 100.72(a).

<sup>29</sup> *Id.*

<sup>30</sup> Advisory Opinion 1985-40 (Republican Majority Fund) at 3 (citing Advisory Opinion 1981-32 (Askew)); *see also* Advisory Opinion 1998-18 (Washington State Democratic Committee) (applying testing the waters regulations to state party committee's donation of poll results to individual who was testing the waters and subsequently decided not to become a candidate).

<sup>31</sup> Advisory Opinion 1985-40 (Republican Majority Fund) at 3 (emphasis added).

<sup>32</sup> Advisory Opinion 1998-18 (Washington State Democratic Committee) at 2.

1 conduct certain activities while deciding whether to become a candidate for Federal  
2 office, without making their activities immediately public.”<sup>33</sup>

3 Prior to March 1985, the Commission’s regulations permitted a candidate to  
4 refund any excessive or prohibited contributions received during the “testing the waters”  
5 period within 10 days after the individual became a candidate.<sup>34</sup> However, the  
6 Commission “reconsidered this issue and determined that permitting prohibited funds to  
7 be used for ‘testing the waters’ activities extended the exemptions beyond the narrow  
8 range of activities they were originally intended to encompass.”<sup>35</sup> Accordingly, the  
9 Commission revised the regulations to require that funds received to test the waters must  
10 be permissible under the Act’s source prohibitions and contribution limits.<sup>36</sup> The  
11 Commission rejected comments objecting to the proposed regulatory revision, explaining  
12 that it “view[ed] the amended regulations as reducing the potential for circumvention of  
13 the prohibitions and limitations of the Act,” and “ensur[ing] consistent application of the  
14 Act’s contribution limitations and prohibitions.”<sup>37</sup> As a result, “[o]nly funds permissible  
15 under the Act may be used for [testing the waters] activities.”<sup>38</sup>

---

<sup>33</sup> Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985);  
see also Advisory Opinion 1998-18 (Washington State Democratic Committee) at 2.

<sup>34</sup> Payments Received for Testing the Waters Activities, 50 Fed. Reg. at 9994 (discussing changes to  
testing the waters regulations).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*; 11 C.F.R. § 100.72(a).

<sup>37</sup> *Id.*

<sup>38</sup> 11 C.F.R. § 100.72(a).

1           Accordingly, if R4R provides its petition with names and compiled contact  
2 information to Governor DeSantis after he begins testing the waters for a potential federal  
3 candidacy, the petition and contact information must comply with the amount limitations  
4 and source prohibitions of the Act. Because their value would exceed the applicable  
5 amount limitation, R4R would not be able to provide them to Governor DeSantis without  
6 charge.<sup>39</sup>

7           R4R offers several arguments as to why the Commission should not apply the  
8 testing the waters regulation at 11 C.F.R. § 100.72(a) or the Act's contribution limits to  
9 its proposal. The Commission has considered these arguments and does not find them to  
10 be persuasive for the following reasons. First, the Commission has previously concluded  
11 that political committee mailing and membership lists have value and that the provision  
12 of such lists to a candidate or political committee at no charge or at less than the usual  
13 and normal charge is a contribution.<sup>40</sup> The requestor has not provided any information  
14 that would materially distinguish the information it proposes to provide to Governor  
15 DeSantis from that previously considered by the Commission. Second, the testing the  
16 waters regulation was duly promulgated by the Commission after notice and comment  
17 rulemaking and has not been struck down by any court. Accordingly, the Commission

---

<sup>39</sup> The provided information would also become an in-kind contribution and subject to the Act's reporting requirements if Governor DeSantis subsequently becomes a candidate. 11 C.F.R. § 100.72(a).

<sup>40</sup> 11 C.F.R. § 100.52(d)(1); Advisory Opinion 2014-06 (Ryan for Congress) at 8; Advisory Opinion 2011-02 (Scott Brown for U.S. Senate Committee) at 7; *see also* Advisory Opinion 2002-14 (Libertarian National Committee) at 4-5; Advisory Opinion 1982-41 (Committee for Congressman Ron Dellums) at 2.

1 has a legal obligation to apply the regulation to R4R’s proposal.<sup>41</sup> Finally, under its  
2 proposal, R4R would be more than a mere conduit of other people’s information. As  
3 discussed above, the “thing of value” that R4R proposes to provide to Governor DeSantis  
4 does not consist solely, or even primarily, of any individual signatory’s name or contact  
5 information. Instead, it lies in R4R’s collection and compilation of information from tens  
6 of thousands, if not “millions,” of individuals nationwide who would have already  
7 demonstrated their support for Governor DeSantis and his potential presidential campaign  
8 by participating in R4R’s petition project — a project on which R4R plans to expend  
9 considerable resources of its own.<sup>42</sup> This regularly updated repository of names and  
10 contact information of current supporters and potential future contributors and volunteers  
11 would be particularly valuable to Governor DeSantis if he decides to run for federal  
12 office.

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

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

---

<sup>41</sup> *Cf. Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (observing that the “Commission’s unwillingness to enforce its own rule” in enforcement proceedings would be “contrary to law”).

<sup>42</sup> AOR004.

1 to candidates . . . , including in-kind contributions . . . , from its non-contribution  
2 account.”<sup>43</sup>

3 Hybrid PACs may accept contributions from individuals to their non-contribution  
4 accounts in excess of the amount limitations of the Act.<sup>44</sup> Candidates, by contrast, shall  
5 not “receive . . . or spend funds in connection with an election for Federal office . . .  
6 unless the funds are subject to the limitations, prohibitions, and reporting requirements of  
7 [the] Act.”<sup>45</sup> In addition, all funds received or spent for testing the waters purposes are  
8 subject to the amount limitations and source prohibitions of the Act.<sup>46</sup> As a result, a  
9 hybrid PAC may make neither in-kind contributions nor testing the waters donations  
10 from its non-contribution account.

11 Here, R4R “solicits and accepts unlimited contributions” to its non-contribution  
12 account.<sup>47</sup> R4R proposes to use those funds for its petition drive, and then to provide  
13 signatories’ names and contact information without charge to Governor DeSantis. If R4R  
14 provides that information to Governor DeSantis when he is either a federal candidate or

---

<sup>43</sup> Advisory Opinion 2016-21 (Great America PAC) at 3-4.

<sup>44</sup> Following the decision of the U.S. District Court for the District of Columbia in *Carey v. FEC*, 791 F.Supp.2d 121 (D.D.C. 2011), the Commission announced that it will no longer enforce contribution limits against any nonconnected political committee for excessive and prohibited contributions received from individuals, political committees, corporations, and labor organizations, as long as the committee maintains separate bank accounts to: (1) receive such contributions for the purpose of making independent expenditures, other advertisements that refer to a federal candidate, and generic voter drives (the “non-contribution account”); (2) receive source- and amount-limited contributions for the purpose of making candidate contributions; and (3) pay a percentage of the committee’s administrative expenses that closely corresponds to the percentage of activity for that account. FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account” (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec/>.

<sup>45</sup> 52 U.S.C. § 30125(e)(1)(A).

<sup>46</sup> 11 C.F.R. §§ 100.72(a), 100.131(a).

<sup>47</sup> AOR002.

1 testing the waters for a potential federal candidacy, R4R may not pay for the proposed  
2 activity using funds from its non-contribution account.

3 *5. R4R may provide the names and compiled contact information in its*  
4 *petition to Governor DeSantis before he begins testing the waters for a potential*  
5 *federal candidacy because neither the Act nor Commission regulations prohibit*  
6 *that activity.*

7 The Act establishes amount limitations on contributions by political committees  
8 to federal candidates.<sup>48</sup> Similarly, the Commission’s “testing the waters” regulation at  
9 11 C.F.R. § 100.72(a) provides that “[o]nly funds permissible under the Act may be used  
10 for [testing the waters] activities.”

11 Neither the Act nor Commission regulations, however, govern donations of things  
12 of value to individuals who are neither federal candidates nor testing the waters for  
13 federal office,<sup>49</sup> except in limited circumstances not relevant to R4R’s request.<sup>50</sup>  
14 Whether an individual is a candidate or is testing the waters for federal candidacy is  
15 based on that individual’s own conduct.<sup>51</sup> Accordingly, nothing in the Act or  
16 Commission regulations prohibits R4R from providing the names and compiled contact

---

<sup>48</sup> See 52 U.S.C. §§ 30101(11), 30116(a)(1)(A), (a)(2)(A); see also 11 C.F.R. § 110.1(b)(1).

<sup>49</sup> See Advisory Opinion 1986-06 (Fund for America’s Future) at 4, 5 (concluding payment by multicandidate political committee of costs for federal officeholder to appear in support of Republican candidates and Party “need not be allocated to a potential candidacy,” when officeholder was not current candidate or testing the waters).

<sup>50</sup> See 11 C.F.R. § 110.14 (governing funds received and disbursements made for purpose of furthering selection of delegates to national nominating conventions).

<sup>51</sup> See 52 U.S.C. § 30101(2) (defining “candidate” as “an individual who seeks nomination for election, or election, to Federal office”); 11 C.F.R. 100.72(b) (distinguishing between candidacy and testing the waters activity based on whether individual has undertaken “activities indicating that [the] individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign”).



1 information from its petition to Governor DeSantis when Governor DeSantis is neither a  
2 federal candidate nor testing the waters.

3 R4R states that Governor DeSantis has not “begun testing the waters” for a  
4 potential federal candidacy.<sup>52</sup> However, R4R also acknowledges that it “lacks any  
5 knowledge, insight, or control” over Governor DeSantis’s “independent decisions.”<sup>53</sup> As  
6 the Commission has explained, a key purpose of the testing the waters regulations is “to  
7 permit individuals to conduct certain activities while deciding whether to become a  
8 candidate for Federal office, without making their activities immediately public.”<sup>54</sup>  
9 Governor DeSantis is not a party to this request, and the Commission expresses no view  
10 on whether he may be engaged in activity that would constitute testing the waters for a  
11 potential federal candidacy. The Commission further expresses no opinion regarding the  
12 application of any state laws to R4R’s proposal because those laws are not within the  
13 Commission’s jurisdiction.

14 This response constitutes an advisory opinion concerning the application of the  
15 Act and Commission regulations to the specific transaction or activity set forth in your  
16 request.<sup>55</sup> The Commission emphasizes that, if there is a change in any of the facts or  
17 assumptions presented, and such facts or assumptions are material to a conclusion  
18 presented in this advisory opinion, then the requestor may not rely on that conclusion as  
19 support for its proposed activity. Any person involved in any specific transaction or

---

<sup>52</sup> AOR002.

<sup>53</sup> AOR004.

<sup>54</sup> Payments Received for Testing the Waters Activities, 50 Fed. Reg. at 9993.

<sup>55</sup> See 52 U.S.C. § 30108.

1 activity that is indistinguishable in all its material aspects from the transaction or activity  
2 with respect to which this advisory opinion is rendered may rely on this advisory  
3 opinion.<sup>56</sup> Please note that the analysis or conclusions in this advisory opinion may be  
4 affected by subsequent developments in the law including, but not limited to, statutes,  
5 regulations, advisory opinions, and case law. Any advisory opinions cited herein are  
6 available on the Commission's website.

7

On behalf of the Commission,

8

Allen J. Dickerson

9

Chairman

---

<sup>56</sup> See *id.* § 30108(c)(1)(B).