

Make Your Laws PAC, Inc. (MYL PAC)
FEC ID # C00529743
Make Your Laws Advocacy, Inc. (MYL C4)
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Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463
ao@fec.gov

Re: [AO 2015-03 Democracy Rules](#), drafts B & C

August 8, 2015

Dear Commissioners:

Please accept this comment regarding AO 2015-03 drafts B and C on behalf of Make Your Laws PAC, Inc. (MYL PAC) and Make Your Laws Advocacy, Inc. (MYL C4), in opposition to AOR 2015-03 in its current form.

1. DR's proposal is an exercise of "direction and control"

"Democracy Rules members may make contributions only to candidates whom Democracy Rules has vetted and approved." AO Draft B, p. 7, lines 12-13.

Although "each member has the ability to cancel a pledge after the actual candidate trustee has been identified and before a contribution has been made" AO Draft B, p. 9, lines 3-4, their members do *not* have the ability to contribute to any recipient, nor even to recipients filtered based on some neutral, purely administrative criteria. They may only contribute to recipients of whom DR¹ approves ideologically.

The member's ability to cancel a pledge, and DR's supplemental attestation that DR will not cancel a pledge already made (2015-07-22, first major paragraph), do significantly *improve* the

¹ DR makes decisions indirectly based on the votes of its members, but these nevertheless result in actions by DR itself. This is a basic principle of corporate law: a binding decision of the corporation's members (or of a board) *is* a decision of the corporation itself.

amount of direction and control possessed by the contributor.

However, “[i]f a conduit or intermediary exercises *any* direction or control over the choice of the recipient candidate, the earmarked contribution shall be considered a contribution by both the original contributor and the conduit or intermediary.” [11 CFR 110.6\(d\)\(2\)](#) (emphasis added).

DR specifically admits that it is seeking to *direct* the choice of the recipient candidate, and it *controls* which candidates may be recipients based on political, not commercial, considerations.

Accordingly, any resulting contribution is a contribution from DR. DR — which is a 501(c)(4), not a PAC — is forbidden from making any such contribution.

2. DR’s proposal involves election-related advocacy, not pure issue advocacy.

Democracy Rules will “[identify] ... candidates best able to advance its members’ policy goals, and [] process[] contributions to those candidates.” AO Draft B, p. 8, lines 7-10.

Although we agree that neutral third parties — even a 501(c)(3) — may engage in strictly *non-partisan, neutral* voter education, such as assisting any person in finding a candidate who may match that person’s preferences, DR is not acting in an individually tailored manner for each contributor. It is instead acting in the best political interests of DR itself², i.e. directing people to those candidates best able to advance the policy goals of *the aggregate total of its membership*, not of the specific individual member soliciting information.

Furthermore, this activity is specifically intended to, and has the actual effect of, promoting particular candidates. “[A]nything of value made by any person for the purpose of influencing any election for Federal office is a contribution”. [11 CFR 100.52\(a\)](#). DR’s proposed activity is a thing of value which has the purpose of increasing contributions to those candidates that DR, through its members, chooses to support — thereby influencing their election.

“By making a “unilateral decision” about which candidates can be the ultimate recipients of members’ funds, Democracy Rules would be providing something of value to the recipient candidates”. AO Draft C, p. 8, lines 7-9.

If DR limited itself to merely e.g. running *issue* advertisements in ways decided by its members,

² As above, the members’ binding interests *are* the corporation’s interests.

this would not be a problem. But it does not.

Likewise, if DR were a PAC, such contributions would be permissible. But, again, it is not.

3. DR's proposed activity is electioneering advocacy, not mere commercial processing.

DR is proposing to "operat[e] in a way that does not resemble a widely-available delivery or bill-paying service. Accordingly, Democracy Rules does not qualify for the commercial service exception that the Commission has recognized to the prohibition on corporate contributions in [52 U.S.C. § 30118\(a\)](#) and [11 C.F.R. § 114.2\(b\)\(1\)](#)." AO Draft C, p. 9, lines 9-12.

"A collecting agent is an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related." [11 CFR 102.6\(b\)\(1\)](#). DR is not a collecting agent; it is not related to any SSF. Nor is it a "commercial fundraising firm" exempt under [11 CFR 1102.6\(b\)\(3\)\(i\)](#). Rather, it is an *issue advocacy* organization proposing to engage in direct *electioneering* and *conduit* activity.

4. DR's proposal could be achieved lawfully by using an SSF.

DR is a 501(c)(4) organization, and must establish an SSF (or otherwise cooperate with a PAC) to engage in election related activity, such as that proposed in this AOR.

We suggest³ that DR:

1. establish an SSF,
2. have all money that may be used for election related purposes, including contributions to candidates, be collected and reported by the SSF and never held in a (c)(4) account,
3. allocate all administrative expenses proportionally, based on activity level, between the (c)(4) and the SSF, and
4. either

³ Sai is not a lawyer, MYL PAC & MYL C4 are not law firms, we have no legal relationship with DR, and this is not legal advice. Rather, this is a proposal for an alternative approach that we would support, that we believe would achieve DR's fundamental objectives while being consistent with the FECA, and that we believe could win unanimous approval from the Commission.

- a. obey limits on non-earmarked contributions directly from SSF to selected candidates, due to DR / its SSF's direction and control, or
- b. completely segregate the process of suggesting candidates from any official action, member, agent, or other representative of DR or the SSF, entirely divesting DR and its SSF of "any direction or control".

We suggest that the Commission obtain an extension from DR and hold over this request by another month, to enable DR to submit further supplemental information that would permit a unanimous approval of their request.

I request to appear at any hearing on this issue, on behalf of MYL PAC and MYL C4.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,
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