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May 25, 2022

Office of the General Counsel  
Attn: Lisa Stevenson  
Federal Election Commission  
1050 First Street, NE  
Washington, D.C. 20463

RE: Advisory Opinion Request of Ready for Ron  
Regarding Development and Provision of Supporter Lists

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30108, Ready for Ron (“R4R”) requests an advisory opinion concerning the permissibility of its intended operations under federal campaign finance law. R4R is a hybrid, non-connected, non-qualified,<sup>1</sup> unauthorized political committee organized under the Federal Election Campaign Act (“FECA”).

President Donald Trump, who became a candidate for re-election mere hours after his 2017 Inauguration,<sup>2</sup> is not among the 367 current candidates in the 2024 presidential election.<sup>3</sup> Consequently, R4R has organized as a “draft committee” that seeks to encourage Florida Governor Ron DeSantis, who is also not a candidate for President and has not expressed any intention to run for President, to declare his candidacy for the 2024 Republican nomination for President. To that end, the committee seeks to identify, measure, and assist in generating grassroots support a DeSantis candidacy. R4R knows Governor DeSantis is a tough fiscal conservative who is firmly committed to traditional American values and a comprehensive America-first agenda, including low taxes, staunch opposition to illegal immigration, and strong support for law enforcement.

### FACTUAL BACKGROUND

<sup>1</sup> R4R does not intend to seek, nor qualify for, multi-candidate PAC status. See 52 U.S.C. § 30116(a)(4).

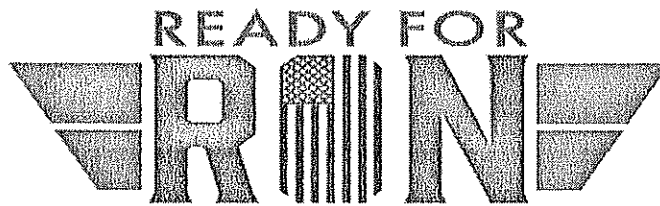
<sup>2</sup> Matea Gold, *President Trump Tells the FEC he Qualifies as a Candidate for 2020*, WASH. POST (Jan. 20, 2020), <https://www.washingtonpost.com/local/2017/live-updates/politics/live-coverage-of-trumps-inauguration/president-trump-tells-the-fec-he-qualifies-as-a-candidate-for-2020/>.

<sup>3</sup> Fed. Election Comm’n, *Candidates*, [https://www.fec.gov/data/candidates/?election\\_year=2024&office=P](https://www.fec.gov/data/candidates/?election_year=2024&office=P) (last referenced May 21, 2022).

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Miami, FL 33130

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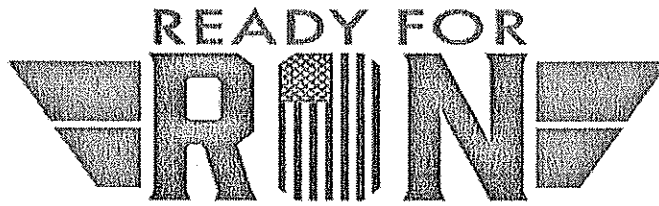
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R4R was formed for the purpose of drafting Ron DeSantis as a candidate for the Republican nomination for President in the 2024 election. To date, Governor DeSantis has neither declared his candidacy for the Republican presidential nomination nor begun testing the waters to make that determination. *See* 11 C.F.R. § 100.72(a) (describing activities that constitute “testing the waters”). To the best of R4R’s knowledge, Governor DeSantis has not made any public statement indicating any interest or intention to run for President. An essential consideration in a person’s decision to declare their candidacy for federal office is the extent of public support for that position they can anticipate. R4R seeks to generate nationwide awareness of Governor DeSantis, his philosophy, and his numerous accomplishments in order to cultivate widespread public support for him as the 2024 Republican presidential nomination. R4R accepts contributions to its “hard money” primary treasury account from American citizens, subject to FECA’s prohibited source restrictions and contribution limits (as adjusted for inflation), *see* 52 U.S.C. § 30116(a)(1)(C), (a)(2)(C); FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 86 Fed. Reg. 7867, 7868 (Feb. 2, 2021). It also solicits and accepts unlimited contributions from American citizens other than prohibited sources (such as federal contractors) to its separate, segregated independent expenditure-only account, or “Carey account,” *see Carey v. Fed. Election Comm’n*, 864 F. Supp. 2d 57 (D.D.C. 2002). R4R reasonably expects to receive contributions from individuals in excess of FECA’s \$5,000 limit by the end of June, *see* 52 U.S.C. § 30116(a)(1)(C), and will file a supplement to this advisory opinion request to confirm that this has occurred.

Nationally renowned political strategist Ed Rollins, who served as Special Assistant to three Presidents, is publicizing the launch of R4R through interviews with national news programs. R4R’s website, <http://www.ReadyforRon.com>, will provide users with an opportunity to electronically submit their name, phone number, e-mail address, and zip code (collectively, “Signatory Information”) to be added to a petition to be submitted to Governor DeSantis to encourage him to declare his candidacy for President in the 2024 election (hereafter, “the Petition”). The text of the Petition will be available on the website for people to read before submitting their Signatory Information. The page on which people enter their Signatory Information will contain a message stating, in relevant part, “I am Ready for Ron! Let Ron know I’m behind him and want to join his team!” A notice at the bottom of the screen will inform users that, by virtually signing the petition and providing their information, they are requesting to have R4R provide it to Governor DeSantis.

R4R will rent access to distribution lists from commercial vendors to send e-mails and text messages to potential DeSantis supporters, encouraging them to visit the website and add their name to the Petition. In addition, R4R has already developed two television and online advertisements and plans to develop more. It will disseminate these advertisements through

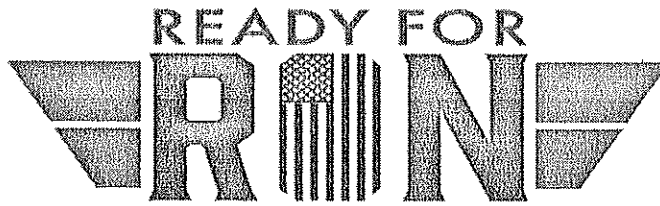


television, its website, paid placements on third parties' websites, social media, and other distribution mechanisms. These advertisements will discuss Governor DeSantis' merits as a potential presidential candidate and encourage viewers to visit R4R's website. One of the advertisements expressly exhorts viewers, "Call [PHONE NUMBER] and Press 1. Draft Ron DeSantis in 2024." A voiceover states in relevant part, "Please call [PHONE NUMBER] and Press 1 to sign our pledge of support to draft Ron DeSantis to run in 2024." When a person calls to add their name and Signatory Information to the Petition, a recorded message will state, "Thank you for calling to sign our pledge to Draft Ron DeSantis to run in 2024. Please press 1 NOW to add your name so we can let DeSantis know you're READY FOR RON. Again, press 1 now." This message notifies users that, by virtually signing the petition and providing their information, they are requesting to have R4R provide it to Governor DeSantis.

The audio disclaimer at the end of the video advertisements states, "Paid for by Ready for Ron, which is responsible for the content of this message." A written disclaimer displayed at the bottom of the screen at the end of the advertisement reiterates, "PAID FOR BY READY FOR RON, NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE COMMITTEE." This written disclaimer will also appear in all of R4R's public communications, e-mails to more than 500 recipients, webpages, and electioneering communications, *see* 11 C.F.R. § 110.11(a)(1), (a)(4), except where impracticable, *see id.* § 110.11(f)(1)(ii).

R4R is currently developing plans to circulate additional advertising through radio, podcast, Skywriting, direct mail, billboards, blimps, and other media. All of these forms of advertising will urge readers to either call R4R's phone number or visit its website to provide their Signatory Information to be added to the Petition and R4R's list of Governor DeSantis supporters. A person will be added to the Petition and R4R's list of DeSantis supporters only if they provide their Signatory Information through the website or an R4R phone number designated for that purpose. R4R presently anticipates spending an average of \$25,000-50,000 each week on advertisements, and intends to do so through 2024. It will draw these funds from both its hard-money and *Carey* accounts.

Neither R4R nor its agents are coordinating with Governor Ron DeSantis, his gubernatorial campaign, or any federal or state political committees authorized by Governor DeSantis. Putting aside the fact Governor DeSantis is not presently a federal candidate for purposes of federal coordination restrictions, to the extent R4R may find itself using any common vendors with him, R4R will require firewalls as a "prophylaxis-upon-prophylaxis" measure, *McCutcheon v. FEC*, 572 U.S. 185, 221 (2014), to prevent coordination, *see* 11 C.F.R. § 109.21(h). And to the best of its knowledge, R4R does not and will not employ any former employees or independent contractors of the DeSantis gubernatorial campaign. *See* 11 C.F.R. § 109.21(d)(5).



R4R intends to submit its Petition along with its list of signatories and their Signatory Information to confirm their authenticity to Governor DeSantis to demonstrate the breadth of public support for him and attempt to persuade him to become, and subsequently to remain, a candidate for the Republican nomination for President in the 2024 election. Depending on how quickly R4R is able to amass signatories, as well as Governor DeSantis' independent decisions and actions over which R4R lacks any knowledge, insight, or control, R4R will submit the Petition and relevant updates either: (i) before Governor DeSantis begins "testing the waters," *see* 11 C.F.R. § 100.72(a); (ii) while Governor DeSantis is testing the waters but before he declares his candidacy, and/or (iii) after Governor DeSantis heeds the call of R4R and likely millions of Petition signers and declares his candidacy. One of R4R's primary considerations in determining the timing of providing its Petition to Governor DeSantis is whether it may become illegal for R4R to do so at later points in time.

After submitting the Petition to Governor DeSantis, R4R wishes to continue encouraging him to become, and subsequently remain, a candidate by submitting regular updates to him reiterating support for his candidacy, accompanied by the names and Signatory Information of people who have joined the petition since it was last updated.

R4R reasonably anticipates having more than 58,000 signatories for its Petition by the end of June. It will file a supplement to this Advisory Opinion Request confirming it has reached this threshold. Based on its spending and communications strategy, R4R projects it will likely amass well over a million virtual signatures for its petition, along with accompanying Signatory Information, by the end of 2022. A reasonable sample market value of contact information in political distribution lists is presently approximately 5 cents each. This value may be higher for lists in which the information was compiled more recently, as well as lists containing contact information for people likely to hold particular political or candidate preferences. A recently compiled list of names and contact information for 58,000 Ron DeSantis supporters would, therefore, reasonably be expected to have an estimated market value of at least \$2,900.

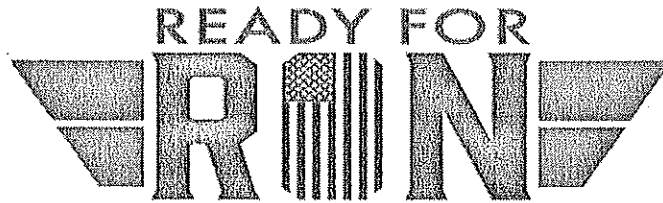
#### QUESTIONS PRESENTED

1. May R4R provide its Petition, along with the accompanying list of over 58,000 signatories and their Signatory Information, to Governor Ron DeSantis to attempt to persuade him to become a candidate for the Republican nomination for President in 2024?
2. Assuming the answer to #1 is "yes," must R4R do so, if at all, before Governor DeSantis:

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- a. starts testing the waters to become a candidate for the office of President, or
- b. becomes a candidate for the office of President?

### ANALYSIS

#### **R4R May Provide Its Petition with the Names and Signatory Information of the Signatories to Governor DeSantis at Any Time, Regardless of the Number of Signatories or Governor DeSantis' Decision to Test the Waters or Become a Candidate.**

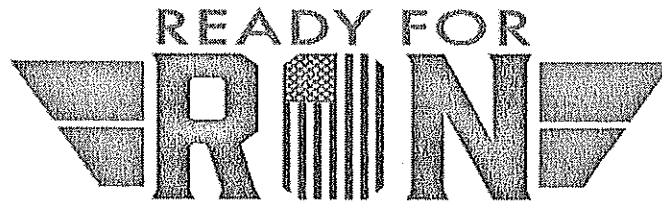
The Commission should issue an Advisory Opinion concluding that R4R, as a Draft Committee, may provide a Petition containing the names and Signatory Information of American citizens coming together to draft a candidate to the individual they seek to draft – namely, Governor Ron DeSantis. R4R may do so regardless of whether Governor DeSantis either begins testing the waters to become a candidate in the 2024 presidential election or declares his candidacy for the Presidency, without imposing any obligation on Governor DeSantis to either return the information concerning the petition's signatories or compensate R4R for it. Likewise, R4R may supplement the list of signatories and Signatory Information periodically, regardless of the total number of names on the list or whether Governor DeSantis has begun testing the waters or declared his candidacy.

#### **A. R4R May Provide Its Petition, Along with the Names and Signatory Information of its Signatories, to Governor DeSantis Before He Begins Testing the Waters**

FECA establishes limits on the amount a political committee such as R4R may contribute to a "candidate" for federal office or his "authorized political committee[]." See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).<sup>4</sup> As adjusted for inflation, that limit is \$2,900 per election. 86 Fed. Reg. at 7869. To qualify as a "candidate" under FECA, a person must "seek[] nomination for election, or election, to Federal office," which may be demonstrated by, among other actions, the fact the person has raised or spent more than \$5,000 to support their election; filed an FEC Form 1 or Form 2 with the Commission; or publicly held themselves out as a candidate. 52 U.S.C. § 30116(2); 11 C.F.R. § 100.3(a).

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<sup>4</sup> Since R4R is not a multicandidate PAC, it falls within FECA's definition of "person" for purposes of contribution limits. See 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

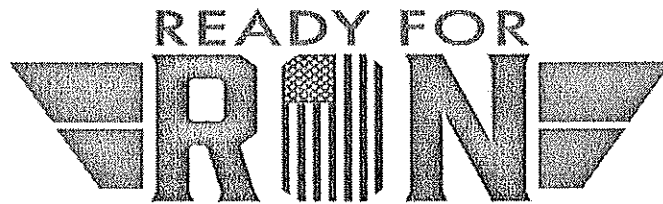


Governor DeSantis is not presently a candidate for President or any other federal office in the 2024 elections or any other election. He has not declared his candidacy for any federal office. According to the FEC's online database, *see* <https://www.fec.gov/data/candidates/?q=desantis>. He has neither created nor authorized any federal candidate committees for the purpose of raising funds in connection with any future elections. There is no reason to believe he has raised or spent any funds, much less \$5,000, in connection with the 2024 presidential election. Accordingly, Governor DeSantis does not presently qualify as a "candidate" for purposes of federal campaign finance law, and FECA's contribution limits do not apply to financial or in-kind transfers to him, 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). The FECA therefore does not limit R4R's prerogative to provide the Petition, along with the names of its signatories and their Signatory Information, to Governor DeSantis before he begins testing the waters, in order to encourage him to run for President and to demonstrate the breadth of public support for him. R4R may provide the Petition, accompanied by the names and Signatory Information, regardless of how many signatories have signed it (by providing their information through the website or by phone).

B. *R4R May Provide Its Petition and Signatory Information—as well as Monthly Updates to the List of Signatories with their Signatory Information—to Governor DeSantis While He is “Testing the Waters”*

R4R does not need to rush to provide the Petition and Signatory Information to Governor DeSantis before he might engage in activities that constitute “testing the waters” under campaign finance law. Rather, R4R's right to provide the Petition and Signatory Information—as well as the right of the millions of Americans who sign the Petition to exercise their constitutionally protected rights of political speech and association by having the Petition delivered—and the legal implications of R4R doing so, remain unchanged regardless of whether Governor DeSantis chooses to test the waters.

FEC regulations allow a person to “test the waters” to decide whether they should run for federal office before officially declaring themselves to be a candidate or otherwise qualifying as a candidate. *See* 11 C.F.R. §§ 100.72, 100.131. Federal regulations specify an individual may pay for expenses associated with testing the waters only with “funds” that are otherwise “permissible under the [FECA]” *Id.* § 100.72(a). The Commission has opined that the term “funds” in this regulation should be understood as including in-kind goods and services, as well. *See In re Reubin Askew*, A.O. 1981-32, at \*5 (Oct. 2, 1981) (“The fact that the quoted regulation refers specifically to ‘funds received’ was not intended . . . to deny the applicability of the exemption to ‘in kind’ donations for testing the water activity.”); *cf.* 11 C.F.R. § 100.52(d)(1) (specifying the term “anything of value” in the definition of “contribution” includes “all in-kind contributions”).

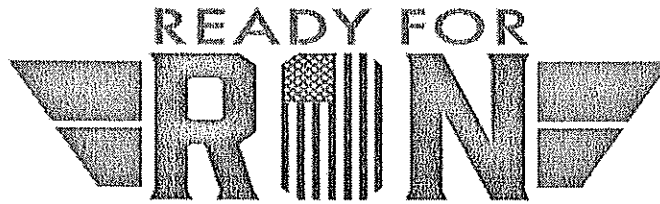


Money and in-kind goods and services provided to a person who is testing the waters is not considered a “contribution” at the time it is provided, at least for reporting purposes. *See* 11 C.F.R. § 100.72(a); *see, e.g.*, In re *Alan Cranston*, A.O. 1982-3, at 2 (“Funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not contributions. . . . Activities which are conducted within the exemption do not result in the occurrence of a contribution or expenditure . . .”). Nevertheless, based on the 1985 amendments to the testing-the-waters regulations, *see* FEC, *Payments Received for Testing the Waters Activities; Transmittal to Congress*, 50 Fed. Reg. 9992, 9993-94 (Mar. 13, 1985); FEC, *Effective Date: “Testing the Waters” Regulations*, 50 Fed. Reg. 25,698, 25,698-99 (June 21, 1985), the Commission has opined FECA’s contribution limits apply to monetary and in-kind donations to individuals testing the waters at the time such donations are made, even before the recipient has decided whether to become a candidate, *see, e.g.*, In re *Washington State Federal Comm.*, A.O. 1998-18, at \*3 (Oct. 9, 1998) (“Commission regulations provide for adherence to the Act’s limits and prohibitions at the time of the activity, in anticipation of the eventual candidacy.”); In re *Republican Majority Fund*, A.O. 1985-40, at \*3 (Jan. 24, 1986) (concluding that contribution “limitation[s] will apply at the time [a political committee] makes any in-kind gifts to [a person’s] testing the waters fund”); In re *Congressman Vic Fazio*, A.O. 1985-38 (Jan. 17, 1986) (“Commission regulations provide that payments to (or on behalf of) individuals who are ‘testing the waters’ to decide upon the feasibility of a campaign for federal office are subject to the limits and prohibitions of the Act.”).<sup>5</sup> *But see* *Senate Majority PAC*, A.O. 2015-09, at \*4 (Nov. 13, 2015) (declining to address the issue in situations where a person ultimately declines to become a candidate without addressing earlier advisory opinions).

The term “contribution” includes “any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a). The Commission generally treats the provision of distribution lists and mailing lists to a political committee for less than their fair-market value as an in-kind contribution on the grounds they constitute something “of value.” *See* 11 C.F.R. § 100.52(d) (“Examples of such goods and services include . . . mailing lists.”); *see, e.g.*, In re *Congressman Ronald V. Dellums*, A.O. 1981-45, at \*1 (Nov. 16, 1981); *see also* In re *Congressman Mike Synar*, A.O. 1984-39, at \*1 (Sept. 14, 1984). R4R’s Petition is reasonably projected to have a total of over 58,000 signatories by the end of June 2022. If the Petition and Signatory Information were considered a mailing list or distribution list, at a fair-market value of \$0.05 per signature, it would be worth over \$2,900. R4R would have to provide the list to Governor DeSantis, if at all, before

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<sup>5</sup> Any such donations are also retroactively deemed contributions subject to FECA’s limits and prohibitions when the recipient decides to become a federal candidate. 11 C.F.R. § 100.72(a); *see, e.g.*, In re *Charles E. Curry*, A.O. 1983-9, at \*2 (May 3, 1983).



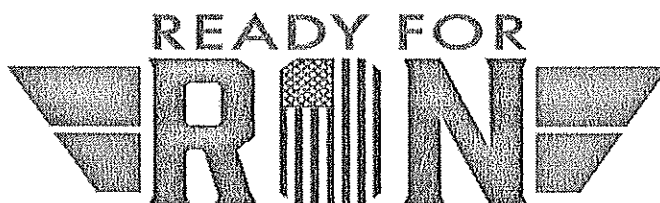
he decided to engage in activities constituting testing the waters in order to avoid violating campaign contribution limits, which are applicable based on the Commission's interpretation of 11 C.F.R. §§ 100.72. Such an outcome would be incompatible with the constitutionally protected rights of free speech and association of American citizens a draft effort embodies.

There are four reasons why R4R should be permitted to provide the signed Petition, including its virtual signatures and the Signatory Information for the people who signed it, to Governor DeSantis even if he has begun engaging in testing the waters activities. *First*, 11 C.F.R. § 100.72 is invalid to the extent it purports to regulate donations to someone who is not a candidate at the time those donations are made. *Second*, the Petition—including the list of signatories and their Identifying Information—should not be treated as a mailing list or distribution list for purposes of § 100.72 or contribution limits more broadly. *Third*, applying contribution limits to the Petition and accompanying list of signatories would violate the First Amendment rights to freedom of political speech and association of R4R and of each Signatory. *Fourth*, in any event, R4R should not be regarded as the source of any donation or contribution, because it is merely acting as a conduit to pass along the names and Signatory Information of the Petition's signatories at each individual signatory's request.

1. 11 C.F.R. § 100.72's Application of Contribution Limits to Non-Candidates Who are Merely Testing the Waters is Contrary to Law

FECA limits the amount of a "contribution" a person may provide to a "candidate." 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1); *see* 86 Fed. Reg. at 7869. The statute goes on to define the term "candidate" as a person who is seeking nomination or election to federal office and has exceeded \$5,000 in "contributions" or "expenditures." 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a). FEC regulations expressly recognize a person who is merely testing the waters is not a "candidate," and payments to any such person do not qualify as "contributions." 11 C.F.R. § 100.72 ("Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions."). And an exploratory committee established to facilitate a person's efforts to test the waters is not automatically deemed a federal "political committee." *See In re Schroeder Fund for the Future*, A.O. 1990-07, at 3-4 (June 18, 1990). The FEC therefore lacks any valid statutory basis for attempting to limit the amount a person may give to someone who is testing the waters and has not yet become a candidate. *E.g., Washington State Federal Comm.*, A.O. 1998-18, at \*3 *Republican Majority Fund*, A.O. 1985-40, at \*3; *In re Congressman Vic Fazio*, A.O. 1985-38 (Jan. 17, 1986). Because § 30116(a)(1)(A) is expressly limited to contributions to "candidates," the FEC's attempt to apply that limitation to contributions to certain non-candidates is not entitled to deference. *See Chevron, U.S.A., Inc. v. Nat'l Resources Def. Council*, 467 U.S. 837, 843 (1984) (holding if Congress has "directly addressed the precise





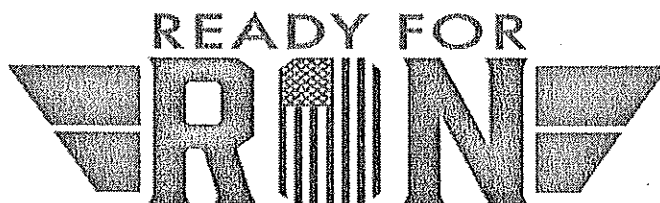
question at issue,” the agency and court must “give effect to the unambiguously expressed intent of Congress”). Accordingly, R4R may provide its Petition, with the virtual signatures and Signatory Information, to Governor DeSantis regardless of whether he engages in activities the FEC deems to be “testing the waters.”

2. The Petition containing the Signatory Information Should Not Be Deemed a “Contribution” Because It is a Political Communication

Assuming FECA’s contribution limits apply to contributions to individuals who are testing the waters, R4R’s submission of its Petition containing the names and contact information of its signatories to Governor DeSantis should not be deemed a “contribution” for purposes of federal campaign finance law. FECA defines “contribution” as “any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30116(8)(A)(i); 11 C.F.R. § 100.52(a). The Petition with the signatures and Signatory Information does not meet this definition because it is not a “gift.”

The term “gift” as used in the FECA should be given its “ordinary, contemporary, common meaning.” *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 207 (1997) (internal quotation marks and citation omitted); *see also Park ‘n Fly, Inc. v. Dollar Park & Fly Inc.*, 469 U.S. 189, 194 (1985) (recognizing “[s]tatutory construction” must start with “the ordinary meaning” of the statutory language). A signed petition urging a person to become or remain a candidate is not a “gift” within the colloquial meaning of the term, even if the petition is signed (as its customary) and the signatories’ contact information has been included to both help confirm the signatures’ authenticity and facilitate a response if desired. *See In re McDonald for Congress*, A.O. 1976-86, at \*1 (Oct. 6, 1976) (determining whether an act constitutes a “gift” primarily based on the industry’s customary practice); *cf. Watson v. United States*, 552 U.S. 74, 79 (2007) (“The Government may say that a person ‘uses’ a firearm simply by receiving it in a barter transaction, but no one else would.”).

Moreover, the term “gift” must be interpreted in the statutory context in which it appears. The definition of “contribution” encompasses any “gift, subscription, loan, advance, or deposit.” 52 U.S.C. § 30101(8)(A)(i); *accord* 11 C.F.R. § 100.52(a). The *noscitur a sociis* canon of statutory construction “dictates ‘words grouped in a list should be given related meaning.’” *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 36 (1990) (quoting *Massachusetts v. Morash*, 490 U.S. 107, 114-15 (1989)); *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) (explaining the canon means that a term in a legal provision “is known by the company it keeps”). The maxim, “while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress.” *Jarecki*, 367 U.S. at 307.

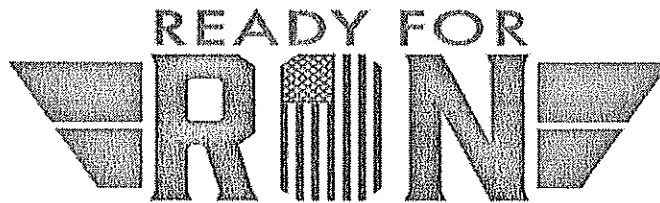


The Supreme Court frequently invokes *noscitur a sociis* to develop a more “precise” and accurate definition for a potentially broad term in a statutory list to make it correspond better with the other terms in the list. *United States v. Williams*, 553 U.S. 285, 294 (2008). In *Yates v. United States*, 135 S. Ct. 1074, 1085 (2015) (quoting 18 U.S.C. § 1519), for example, the term “tangible object” appeared in a statute “last in a list of terms that beg[an] ‘any record [or] document.’” Applying the *noscitur a sociis* canon, the Court concluded that “tangible object” refers solely to “objects used to record or preserve information.” See also *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995) (construing the term “communication” in a federal securities statute to include only “public communication[s],” because the other items listed in that provision “refer[] to documents of wide dissemination”); *Dole*, 494 U.S. at 36 (concluding the phrase “reporting and recordkeeping requirements” in a statutory definition referred only to “rules requiring information to be sent or made available to a federal agency,” based on the other categories included in that definition).

In this case, the term “contribution” is defined as including a “gift,” as well as any “subscription, loan, advance, or deposit.” 52 U.S.C. § 30101(8)(A)(i); accord 11 C.F.R. § 100.52(a). Read in that context, it becomes apparent the term “gift” does not include political petitions, including the identifying information of their signatories. See *McDonnell v. United States*, 136 S. Ct. 2355, 2368–69 (2016) (holding the term “any question” within the federal bribery statute’s definition of “official act” had to be construed narrowly in context).

The constitutional avoidance canon further confirms the term “gift” should be construed narrowly to exclude written political communications between supporters and a political candidate in order to avoid unnecessarily implicating serious First Amendment concerns. See *Nat’l Labor Rel. Bd. v. Catholic Bishop of Chicago*, 440 U.S. 490, 507 (1979) (“[I]n the absence of a clear expression of Congress’ intent to bring teachers in church-operated schools within the jurisdiction of the Board, we decline to construe the Act in a manner that could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses.”); see also *Rust v. Sullivan*, 500 U.S. 173, 191 (1991) (noting presumption “Congress did not intend” to authorize issuance of regulations that raise “grave and doubtful constitutional questions” (quoting *United States ex rel. Attorney Gen. v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909))).

To the extent any doubt or ambiguity remains, the rule of lenity counsels the term “gift” must be construed narrowly. The rule of lenity “requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them.” *DePierre v. United States*, 564 U.S. 70, 88 (2011) (quoting *United States v. Santos*, 553 U.S. 507, 514 (2008) (plurality op.)); see also *McNally v. United States*, 483 U.S. 350, 359-60 (2003) (“[W]hen there are two rational readings of a criminal



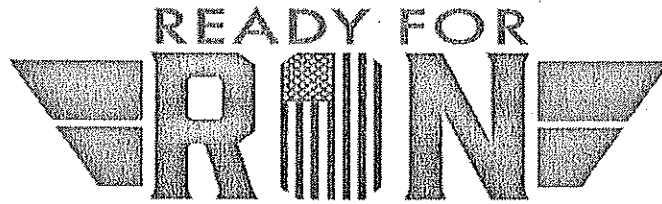
statute, one harsher than the other, we are to choose the harsher only when Congress has spoken in clear and definite language.”). The rule applies to FECA provisions that may be enforced either civilly or criminally. *Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004) (“Because we must interpret the statute consistently, whether we encounter its application in a criminal or noncriminal context, the rule of lenity applies.”); *see also United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 517-18 (1992) (plurality op.).

Since the term “gift” is, at the very least, ambiguous, the Commission should apply the rule of lenity and construe it narrowly, as excluding political communications and draft petitions to potential federal candidates. In *Cleveland v. United States*, 531 U.S. 12, 25 (2000), for example, the Court applied the rule to narrowly construe the closely related term “property” in the federal mail fraud statute, 18 U.S.C. § 1341. It explained, “[T]o the extent that the word ‘property’ is ambiguous as placed in § 1341, we have instructed that ‘ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.’” *Cleveland*, 531 U.S. at 25 (quoting *Rewis v. United States*, 401 U.S. 808, 812 (1971)). The Court concluded the term did not include licenses the defendant was attempting to procure from the state. *Id.* at 26-27 (“[A] Louisiana video poker license in the state’s hands is not ‘property’ under § 1341.”); *see also Yates*, 135 S. Ct. at 1088 (invoking rule of lenity in support of construing the term “tangible object” narrowly). Likewise, here, the rule of lenity counsels strongly in favor of excluding the Petition and accompanying Signatory Information from the scope of the term “gift.”

Thus, the Petition with its appended list of signatories and accompanying Signatory Information does not constitute an in-kind “contribution” for purposes of FECA, and therefore cannot run afoul of contribution limits.

3. Applying Contribution Limits to Prohibit R4R from Providing a Petition with Virtual Signatures and Signatory Information Would Unconstitutionally Burden the Fundamental First Amendment Rights to Political Speech and Association

Alternatively, and perhaps principally, the First Amendment precludes the Commission from applying FECA’s contribution limits to the Petition with its accompanying list of signatories and their Signatory Information. *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), established the modern constitutional framework for federal campaign finance law. The Court held independent expenditures constitute pure political speech. *Id.* at 16 (“[T]his Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a



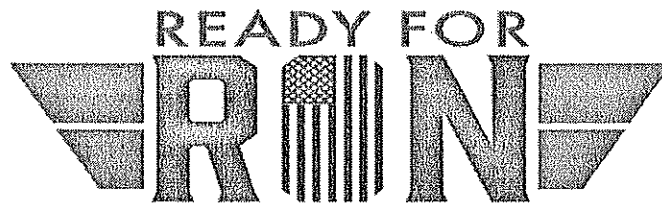
nonspeech element or to reduce the exacting scrutiny required by the First Amendment.”)<sup>6</sup> Consequently, independent expenditures are subject to maximal First Amendment protection and any restrictions on them are subject to strict scrutiny. *Id.* at 39. The Court has accordingly invalidated most prohibitions or limitations on independent expenditures on the grounds they fail strict scrutiny. *See, e.g., id.* at 39 (invalidating limits on independent expenditures by individuals); *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 614 (1996) (invalidating “a provision that limits a political party’s independent expenditure”); *FEC v. Nat’l Conservative Political Action Comm.*, 470 U.S. 480, 496 (1985) (“[T]he PACs’ [independent] expenditures are entitled to full First Amendment protection.”) (hereafter, “NCPAC”); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 263 (1986) (same for certain non-profit corporations); *Citizens United v. FEC*, 558 U.S. 310, 365 (2010) (same for all domestic corporations); *see also Cruz v. FEC*, No. 21-12, at 22 (U.S. May 16, 2022) (invalidating restriction on candidates’ use of campaign funds to repay their personal loans to their campaigns). *But see Blumen v. FEC*, 800 F. Supp. 2d 281, 292 (2011) (three-judge panel), *aff’d*, 565 U.S. 1104 (2012) (mem.) (upholding prohibition on independent expenditures by most foreign nationals).

The Court has further held that contribution limits impose substantial restrictions on the First Amendment right of political association, *Buckley*, 424 U.S. at 22, and lesser restrictions on political speech, *id.* at 20-21. The Court recognized that, in general, contribution limits “entail[] only a marginal restriction upon the contributor’s ability to engage in free communication.” *Id.* at 21. Contributions generally involve a limited degree of speech because they “serve[] as a general expression of support for the candidate and his views” without “communicat[ing] the underlying basis for the support.” *Id.* The Court further opined, “The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing.” *Id.* Accordingly, “[a] limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication.” *Id.* Limits on contributions are therefore generally subject only to intermediate or “exacting” scrutiny, and often upheld. *Id.* at 25. *But see McCutcheon v. FEC*, 572 U.S. 185, 227 (2014) (invalidating aggregate contribution limits).

To the extent the Petition, including the names and contact information of its signatories, qualifies as a “contribution,” it is materially distinguishable from most other contributions—including in-kind contributions—contemplated by *Buckley*. The text of the Petition, including the identification and contact information of the individuals who signed it, constitutes pure, direct

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<sup>6</sup> The Court further explained, “A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.” *Buckley*, 424 U.S. at 19.



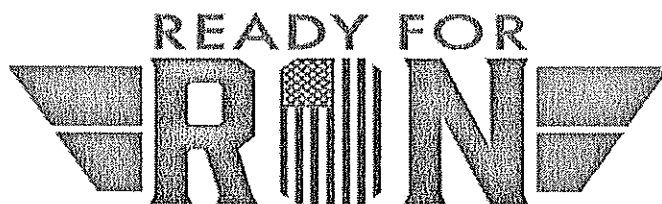
political speech and association. Unlike a typical contribution, the Petition is not merely a “general expression of support” or “symbolic act.” *Id.* at 20-21. Rather, it expressly “communicat[es] the underlying basis for the support,” and proudly displays the identities and contact information for those who have chosen to join it. *Id.* In this way, it is not only core political speech, but a dramatic act of political association for the common goal of engaging with Governor DeSantis and encouraging him to become, and subsequently remain, a presidential candidate. Signatories’ contact information is part of the substantive information they wish to convey to Governor DeSantis. Including the information also bolsters the extent of their political association by confirming their identities and inviting engagement from him. As applied in these particular circumstances, contribution limits would trigger strict scrutiny, rather than the typical intermediate or exacting scrutiny.

Like most limits on independent expenditures, contribution limits as applied to the Petition and Signatory Information would fail strict scrutiny. Even accepting the Government has a compelling interest in combatting actual and apparent quid pro quo corruption, *see Citizens United v. FEC*, 558 U.S. 310, 345 (2010), it can achieve that goal through more narrowly tailored means than either prohibiting R4R from providing the virtually signed Petition with Signatory Information or restricting the number of signatories who may associate with each other to encourage Governor DeSantis’ candidacy through the Petition (thereby avoiding triggering the contribution limit). The FEC cannot inhibit political communication between candidates—including current officeholders—and their supporters or potential constituents in this manner.

4. Each Individual Signatory, Rather than R4R Itself, Should Be Deemed the Contributor of Their Own Signatory Information to Governor DeSantis

Finally, even if the Commission erroneously concludes that contribution limits validly apply to the submission of the Petition with Signatory Information to Governor DeSantis while he is testing the waters, the transaction should not be regarded as a contribution by R4R to Governor DeSantis. Rather, the provision of information concerning each individual signatory should be regarded as a *de minimis* in-kind contribution (with an approximate value of no more than \$0.05) from that particular signatory, through R4R as a conduit, to Governor DeSantis. FECA provides, “[A]ll contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8).

Here, the “thing of value” constituting the potential contribution is the name, zip code, e-mail address, and phone number of each signatory. When a signatory provides that information to

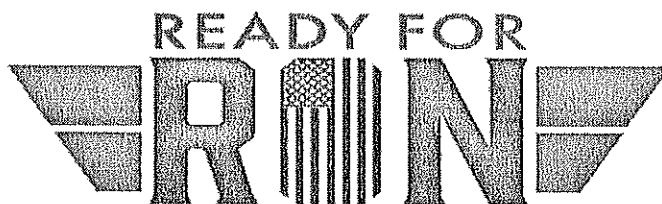


R4R, however, there is either a message on the webpage or an audio recording over the phone stating that, by virtually signing the petition and providing their information, the signatory is requesting to have R4R provide that information to Governor DeSantis. Thus, the true contributor is the individual providing the information; R4R is appending it to the Petition and passing it along to Governor DeSantis at the individual's direction and on the individual's behalf. Given the *de minimis* value of each signatory's information, it should neither be regarded as counting against the signatory's individual contribution limit nor subject to itemized reporting by R4R in the manner more substantial conduit contributions would typically be reported. *See* 11 C.F.R. § 110.6(c)(1).

When an individual provides their contact information directly to a candidate through a web portal or otherwise, their submission is not regarded as a "contribution" which counts against that individual's contribution limit to that candidate, even though the information may have some minimal commercial value. *Cf. In re Hon. Cecil Hefel*, A.O. 1977-51, at \* (Nov. 16, 1977) (holding that a Member of Congress' "receipt of macadamia nuts from corporations, trade associations, [or] individuals" does not constitute a "contribution," in part because they "appear to be of minimal value"). The transaction should not be deemed a contribution simply because those individuals direct a third-party intermediary such as R4R to send the information to the candidate on their behalf. And requiring R4R to individually report each such entry to the FEC would result in the listing of potentially millions of individual transactions with a nominal value of approximately \$0.05 each that would be an unreasonable application of FECA and impose an unconstitutionally substantial and unwarranted burden. The FEC has recognized *de minimis* exceptions to other requirements, *see, e.g.*, 11 C.F.R. §§ 100.24(c)(7), 113.1(g)(1)(i)(C), 114.4(c)(6), 9008.9(c), and should likewise exempt a political committee such as R4R from having to report a separate contribution concerning the information of each Petition signatory it passes along on their behalf to a candidate.

C. *R4R May Provide Its Petition and Signatory Information—as well as Monthly Updates to the List of Signatories with their Signatory Information—to Governor DeSantis Even if He Becomes a Candidate*

Similarly, R4R does not need to rush to provide the Petition and Signatory Information to Governor DeSantis before he becomes a "candidate" under campaign finance law. Again, R4R's right to provide the Petition and Signatory Information, and the legal implications of it doing so, remain unchanged regardless of whether Governor DeSantis is a candidate. Most of the arguments set forth in the previous Section apply with equal force here. Of course, should Governor DeSantis heed the call of R4R and millions of Americans who sign the Petition by becoming a candidate, he is no longer "testing the waters" and the regulations governing such activities no longer apply.



*See* 11 C.F.R. § 100.72(a). Nevertheless, for the reasons set forth above, R4R’s submission of the Petition—including the list of signatories and their Identifying Information—to Governor DeSantis should not be treated as a “contribution” for purposes of 52 U.S.C. § 30116. *See supra* Section B.2. Alternatively, applying contribution limits to the Petition and accompanying list of signatories with their Signatory Information would violate the First Amendment. *See supra* Section B.3. And in any event, R4R is merely acting as a conduit, passing along each individual signatory’s name and Signatory Information, at that person’s request and on their behalf, to Governor DeSantis. At most, R4R is not making a large in-kind contribution of its own, but rather facilitating a series of miniscule in-kind contributions of negligible value by hundreds of thousands—and likely millions—of DeSantis supporters.

#### CONCLUSION

For these reasons, the Commission should issue an Advisory Opinion concluding R4R may submit to Governor DeSantis a Petition calling on him to become, and subsequently remain, a candidate for the Republican nomination for President and containing the virtual signatures (i.e., names), zip codes, phone numbers, and e-mail addresses of the people who have chosen to sign it. R4R may do so regardless of how many people choose to sign the Petition, and specifically despite the fact the Petition contains the names and Signatory Information for more than 58,000 individuals. To the extent information contained with the Petition is deemed a conduit contribution by the signatories to Governor DeSantis, R4R should not be required to itemize and report each individual signatory’s negligible contribution.

Above all, the Commission should not seek to impede the constitutionally protected rights of political speech and association of American citizens who come together to call forth the leaders they choose, and to associate with those leaders when they listen and run.

Respectfully submitted,



Lilian Rodriguez-Baz, esq.  
**Chief Legal Counsel, Ready for Ron**  
66 W Flagler Street STE 900  
Miami, FL 33130  
e: [Lilian@ReadyforRon.com](mailto:Lilian@ReadyforRon.com)  
m: (561) 291-9897

READY FOR  
**FRONT**

66 West Flagler Street STE 900  
Miami, FL 33130

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AOR016



**From:** [Heather Filemyr](#)  
**To:** [Lilian Rodriguez-Baz](#)  
**Cc:** [lilian@readyforron.com](mailto:lilian@readyforron.com); [Amy Rothstein](#)  
**Subject:** RE: Request on behalf of Ready for Ron  
**Date:** Tuesday, June 28, 2022 8:34:00 AM

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Ms. Rodriguez-Baz:

Yes, we will redact your personal email address before posting. Please let us know if you have any further questions.

Sincerely,

Heather Filemyr  
Attorney  
Federal Election Commission

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**From:** Lilian Rodriguez-Baz <[REDACTED]>  
**Sent:** Monday, June 27, 2022 7:25 PM  
**To:** Heather Filemyr <[REDACTED]>  
**Cc:** [lilian@readyforron.com](mailto:lilian@readyforron.com); Amy Rothstein <[REDACTED]>  
**Subject:** Re: Request on behalf of Ready for Ron

Heather and Amy:

Thank you both very much. We have no objection to our June 17th email being posted along with this response. However, given that this is my personal email address, can that be redacted?

Lilian.

On Mon, Jun 27, 2022 at 4:53 PM Heather Filemyr <[REDACTED]> wrote:

Ms. Rodriguez-Baz:

Thank you for your June 17, 2022, email response, below. Your response and letter dated May 25, 2022, constitutes a complete advisory opinion request. Please expect to receive a signed letter from our office formally acknowledging our receipt of your complete request. The letter will provide additional information about the advisory opinion process, contact information, and the Commission's deadlines for responding to your request.

Please confirm via return email that you do not object to our posting your June 17 email on the Commission's website, along with your May 25 letter, as your advisory opinion request. This email, and your response to it, may also be considered part of your advisory opinion request and posted on the Commission's website.

Please contact me with any questions.

Sincerely,

Heather Filemyr  
Attorney  
Federal Election Commission

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**From:** Lilian Rodriguez-Baz <[REDACTED]>  
**Sent:** Friday, June 17, 2022 12:15 PM  
**To:** Heather Filemyr <[REDACTED]>  
**Cc:** [lilian@readyforron.com](mailto:lilian@readyforron.com); Amy Rothstein <[REDACTED]>; Terrell Stansbury <[REDACTED]>  
**Subject:** Re: Ready for Ron questions

Good afternoon everyone,

Below is the additional information/ points of clarification requested. Please let me know if there are follow-up questions or if anything else needs to be supplemented. I'm available to speak by phone as well. Thank you.

- The basis for the statement on p. 4 of your letter that “A reasonable sample market value of contact information in political distribution lists is presently approximately 5 cents each.” For example, is the value based on (or consistent with) the amount that Ready for Ron pays for contributor information on the distribution lists it rents to promote the petition?

*Ready for Ron purchased a distribution list of registered Republicans who contributed to Republican candidates—but not to President Trump or Save America PAC—to e-mail them invitations to sign the draft petition. The price per name, including contact information, was 5 cents each. The total purchase price of the list exceeded \$2,900.*

*In addition, Ready for Ron consulted with commercial data vendors experienced in political marketing to determine that the fair market purchase value for a person's name and contact information is approximately 5 cents. This price represents a reasonable estimate of the fair-market purchase value of a person's name and contact information, not the rental value. To the extent information concerning signatories on Ready for Ron's draft petition is even more valuable than 5 cents each, it would take even fewer names for the list's value to exceed FECA's limits on the amount a political committee may contribute to a candidate.*

*As Ready for Ron explained in its advisory opinion request, it does not wish to provide to Governor Ron DeSantis any of the distribution lists it purchased or rented. Rather, the only thing it wishes to provide to him is the signed petition, including the names and signatory information of its signatories, for verification purposes, to allow interaction and communication with the signatories, and to otherwise facilitate political association. Ready for Ron will not provide Ron DeSantis with information concerning any person who did not sign the petition to draft him by phone or via Ready for Ron's website. Moreover, Ready for Ron will not provide Ron DeSantis with any information concerning the Petition's signatories other than whatever information each signatory decides to submit through the website or via phone in the course of virtually signing the petition for the purpose of having that information provided to Governor DeSantis as part of the Petition.*

- Any ads that Ready for Ron has run to date to draft Governor DeSantis or to direct people to the petition.

*As of June 12, 2022, there have been approximately 86 airings of Ready for Ron's television advertisements. The advertisements have appeared on a variety of channels, including Fox News. Ready for Ron has also run digital advertisements that, to date, have garnered a total of 318,779 impressions. In addition, Ready for Ron's advertisements have been disseminated through social media, where posts containing its videos have reached more than one million people. Ready for Ron's public outreach efforts have been covered by numerous media sources, including Fox News, Politico, Associated Press, MarketWatch, and the Boston Herald.*

- The date that Ready for Ron began collecting signatures for the petition, and the number of signatures collected since that date.

*Ready for Ron began collecting signatures for the petition on Monday, May 23, 2022.*

- The statement on page 4 of your letter that Ready for Ron reasonably anticipates receiving 58,000 signatures for the petition. Specifically, if you are seeking an advisory opinion only on whether the petition and signatory contact information would be an excessive contribution to Governor DeSantis, you may want to wait until you reach that threshold before submitting an advisory opinion request to avoid the request being deemed hypothetical.

*Ready for Ron has already begun engaging in a course of conduct and spending substantial sums of money for the purpose of organizing as many American citizens as possible to sign its Petition and draft Ron DeSantis to run for President. Its current and ongoing activities will be largely undermined if the FEC determines that Ready for Ron cannot provide the complete Petition, including all signatories and signatory information, to DeSantis, or that Ready for Ron must do so (if at all) before a particular point in time -- for example, before DeSantis begins testing the waters or becomes a candidate, or before Ready for Ron adds a certain number of signatures with signatory information to the Petition.*

*In any event, Ready for Ron is on track to amass over 58,000 by the end of the month. It will send an update to the FEC to confirm it has reached that threshold to avoid potential disputes over ripeness or other ancillary issues.*

- Whether you would also like the Commission to address whether Ready for Ron can spend soft money in support of the petition for Governor DeSantis.

*Yes, Ready for Ron would appreciate a ruling expressly confirming it can spend contributions to its non-contribution ("Carey") account in support of encouraging*

*Americans to sign the petition to draft Governor DeSantis to run for President.*

- The estimated allocation, if any, between its contribution and non-contribution accounts that Ready for Ron expects to spend in support of the petition.

*Ready for Ron is unable to approximate the percentage of funding for its advertisements that will come from each account on an ongoing basis, as those figures will depend on the amount of contributions it receives to each account.*

- The purpose of the statement on page 2 of your letter that Ready for Ron reasonably expects to receive contributions from individuals in excess of \$5000 by the end of June, and the supplement that you have stated you intend to file with the Commission to confirm.

*Ready for Ron's advisory opinion request sought to apprise the FEC of all material facts and circumstances in order to maximize transparency and ensure the inclusion of any facts the Commission may deem material.*

- Finally, if you have a theory as to why Governor DeSantis's acceptance of Ready for Ron's petition and signatory information would not fall under the "testing the waters" regulation and you would like the Commission to consider that theory, we would encourage you to include it in your advisory opinion request. See 11 C.F.R. §100.72(a) ("Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions").

*Section B of the advisory opinion request sets forth Ready for Ron's analysis of the "testing the waters" regulation, 11 C.F.R. 100.72(a). Ready for Ron does not believe this regulation applies to its proposed conduct for the reasons set forth in Section B of its request.*

*Moreover, Ready for Ron is not attempting to invoke -- and does not believe its conduct falls under, or will fall under -- this regulation because the FEC has previously concluded that funds provided pursuant to this regulation are subject to contribution limits. The market value of the list of signatories (which contains "signatory 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.*

*Another reason Ready for Ron is not attempting to invoke -- and does not believe its conduct falls under, or will fall under -- this regulation is because does not wish to provide its petition and signatory information to Governor DeSantis "for the sole purpose of determining whether [he] should become a candidate," as 11 C.F.R. § 100.72(a) specifies. To the contrary, Ready for Ron wishes to facilitate political association between Governor DeSantis and supporters seeking to draft him to run for President without limitation. In particular, Ready for Ron does not wish Governor DeSantis to be prohibited from using the signatory information it provides either before he has begun testing the waters or after he*

*has ceased engaging in such activity (whether because he has qualified as a “candidate” under FECA or otherwise).*

On Thu, Jun 9, 2022 at 6:29 PM Heather Filemyr <[REDACTED]> wrote:

Dear Ms. Rodriguez-Baz:

Thank you for speaking today with me and my colleague, Amy Rothstein, regarding your May 25, 2022, letter to the Commission on behalf of Ready for Ron. As discussed, your letter is not yet a complete advisory opinion request. We would appreciate it if you could please provide information regarding:

1. The basis for the statement on p. 4 of your letter that “A reasonable sample market value of contact information in political distribution lists is presently approximately 5 cents each.” For example, is the value based on (or consistent with) the amount that Ready for Ron pays for contributor information on the distribution lists it rents to promote the petition?
2. Any ads that Ready for Ron has run to date to draft Governor DeSantis or to direct people to the petition.
3. The date that Ready for Ron began collecting signatures for the petition, and the number of signatures collected since that date.
4. The statement on page 4 of your letter that Ready for Ron reasonably anticipates receiving 58,000 signatures for the petition. Specifically, if you are seeking an advisory opinion only on whether the petition and signatory contact information would be an excessive contribution to Governor DeSantis, you may want to wait until you reach that threshold before submitting an advisory opinion request to avoid the request being deemed hypothetical.
5. Whether you would also like the Commission to address whether Ready for Ron can spend soft money in support of the petition for Governor DeSantis.
6. The estimated allocation, if any, between its contribution and non-contribution accounts that Ready for Ron expects to spend in support of the petition.
7. The purpose of the statement on page 2 of your letter that Ready for Ron reasonably expects to receive contributions from individuals in excess of \$5000 by the end of June, and the supplement that you have stated you intend to file with the Commission to confirm.
8. Finally, if you have a theory as to why Governor DeSantis’s acceptance of Ready for Ron’s petition and signatory information would not fall under the “testing the waters” regulation and you would like the Commission to consider that theory, we would encourage you to include it in your advisory opinion request. *See* 11 C.F.R. §100.72(a) (“Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions”).

Thank you very much for your cooperation. Please do not hesitate to let us know if you have any questions; we would be happy to discuss.

Sincerely,

Heather Filemyr

Attorney

Federal Election Commission