



FLORIDA DEPARTMENT OF STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 8, 2012

Mr. Talmage Cooley
Democracy Ventures, Inc.
500 7th Avenue, 17th Floor
New York, New York 10018

RE: DE 12-12
Campaign Financing – Contributions made
via Internet; political committees; and
contributions through a conduit -- §§
106.011(1) and 106.08(5), Florida Statutes

Dear Mr. Cooley:

This letter responds to your request for an advisory opinion regarding actions proposed to be taken by Democracy Ventures, Inc. (d.b.a. Democracy.com), a nonpartisan, for-profit corporation. Democracy.com plans to create a website to serve as an online directory of federal and state candidates. Your counsel, on your behalf, seeks guidance regarding Democracy.com's compliance with chapter 106, Florida Statutes (2012). Because Democracy.com has questions about compliance with Florida's election laws with respect to its proposed actions, the Division of Elections has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2012).

Your counsel states that Democracy.com will initially create a basic webpage profile for each Florida state-level candidate. Democracy.com plans to offer each of these candidates the opportunity to purchase the candidate's profile webpage at fair market value and other web-based services for a monthly subscription fee. A purchased webpage will have Democracy.com's URL but with the candidate's name also within the URL. Candidates will be given "almost" complete control over the content and appearance of the webpage. Also, a candidate who purchases the webpage will be able to solicit and receive contributions by credit or debit card on the candidate's webpage. Each donor's contribution to an intended recipient will be limited by the applicable contribution limits in Florida and Democracy.com will charge the recipient candidate a per contribution processing fee and a per transaction fee. Democracy.com's merchant account provider will then deposit the contributions for all such candidates into a single Democracy.com merchant account. All contributions deposited into the



merchant account will be controlled by agreements between Democracy.com and the recipient candidates that will require all contributions, minus applicable fees, to be forwarded by electronic transfer or written instrument to the recipient candidates within a few business days. Also, Democracy.com will provide all required information to the recipient candidate for the candidate's proper reporting of each contribution as required by Florida law.

Based upon the factual situation presented, your counsel asks the following questions:

1. May Florida state-level candidates solicit and receive contributions through their purchased Democracy.com webpage?
2. If Florida state-level candidates may solicit and receive contributions through their purchased Democracy.com webpage, will Democracy.com's processing of contributions result in Democracy.com impermissibly making a contribution in the name of another in violation of § 106.08(5), Florida Statutes (2012), or require Democracy.com to register as a political committee?
3. If Democracy.com may permissibly process contributions for Florida state-level candidates, what amount should be reported by the recipient candidate as the contribution amount?
4. If Democracy.com may permissibly process contributions for Florida state-level candidates, what date should the recipient candidate report as the date of receipt?

The answers to the first two questions are intertwined. The short answers are "yes" to Question 1 and to "no" to Question 2, but the answers are accurate only in the context of the specific factual situation presented where the candidate actually purchases a Democracy.com webpage at fair market value and, as the webpage owner, the candidate has full control over the textual content of the webpage and Democracy.com serves as the online payment service organization for the candidate.

In *Division of Elections Opinion 08-07* (June 12, 2008), we stated, "[C]ampaigns may use an online payment service organization, like PayPal, on the campaign's website to receive its own campaign contributions. The PayPal scenario is to be contrasted with that in *Division of Elections Opinion 08-03* (March 24, 2008) in which we opined that it would be improper for a third-party, without first registering as a political committee, to offer online patrons the opportunity to make campaign contributions on the third-party's website for the purpose of the third-party, after deducting its transaction fee, to transfer the contributions to applicable candidates ..." (Emphasis in original). In the letter requesting this opinion, Democracy.com maintains that the candidate's purchase of the webpage on Democracy.com's website at a fair market value makes the candidate the owner of the webpage and that any fundraising solicitation will be by the candidate, not by Democracy.com. Also, Democracy.com asserts that it merely will be serving as an online payment service organization similar to PayPal and that the distinction between a candidate's website and a third-party's website made in *Division of Elections Opinion 08-07* (June 12, 2008) is purely a technical one because "a website must be hosted by a third-party domain-hosting service such as GoDaddy.com." Thus, a website is

typically never actually the candidate's website, but belongs to a domain-hosting service provider.

Based upon the scenario presented in the request for an advisory opinion, we agree that Democracy.com is a vendor of two distinct services for the candidate: a third-party Internet webpage provider and an online payment processing provider. These facts distinguish Democracy.com's activities from those discussed in *Division of Elections Opinion 08-03* (March 24, 2008), wherein a political action committee, not a business, was acting independently of the candidate and soliciting contributions on its own website and webpages with the promise to pass along those contributions, minus applicable fees, to the candidate.

The Division now recognizes the technical distinction between a website and a webpage should not be the sole controlling determination regarding whether a candidate may properly use an online payment processing provider without the provider having to register and report as a political committee. To the extent *Division of Elections Opinion 08-07* (June 12, 2008) implies otherwise, we now clarify the opinion by stating that the ownership and control of a candidate's webpage also must be considered. In its request for this opinion, Democracy.com initially stated that the candidate who purchases a webpage will be given "almost" complete control over the content and appearance of the webpage. Later, in its request, Democracy.com stated that a purchased webpage "will be owned and controlled by the candidate." The Division opines that it is important that the purchased webpage's textual content be under the full control of the candidate and this opinion is rendered with that understanding. Democracy.com may provide a template for the appearance of the candidate's webpage, but the actual textual content must be controlled by the candidate for it to be considered the candidate's webpage in the context of this opinion. Because it is the candidate's webpage and the webpage constitutes a paid expression on the Internet, the webpage also would require the candidate's political disclaimer if it expressly advocates the election or defeat of a candidate.¹

Under the facts presented, by being an online payment service organization only for candidates who purchase one of its webpages, Democracy.com would be akin to any other online payment service organization (e.g., PayPal) which candidates purchase as a service to process and transmit their campaign contributions.² Although the contributions will be held in a merchant account established by Democracy.com before being transmitted to the recipient candidate, we recognize this practice as a standard credit and debit card processing arrangement existing in the modern-day financial world. Also, because the contributions are not being solicited by Democracy.com, but by the candidate-recipient from his or her own purchased candidate webpage, the contribution is not in violation of section 106.08(5)(a), Florida Statutes (2012), which prohibits a person making a contribution through or in the name of another, directly or indirectly. Furthermore, because the candidate is the one actually soliciting the contribution

¹ See §§ 106.011(13), (17), and 106.143(1), Fla. Stat. (2012).

² See *Division of Elections Opinion 08-07* (June 12, 2008) and *Division of Elections Opinion 09-03* (June 2, 2009).

from the candidate's own webpage purchased at fair market value with Democracy.com serving only as its online payment service provider, the situation avoids Democracy.com having to register and report as a political committee.³

Your third question concerns compliance with reporting requirements by candidates. As discussed in *Division of Elections Opinion 08-07* (June 11, 2008), the candidate should individually report the original gross amount provided by each contributor as a contribution and additionally report any transactional and processing fees associated with the donation as an expenditure. The candidate may list the transactional and processing fees as a lump sum expenditure; that is, the candidate need not individually list Democracy.com's fees for each contribution on the campaign finance report, but the candidate must individually list the contributions.

Your final question also pertains to candidate reporting requirements, specifically whether a candidate should report the date an online contribution was made or the date the contribution was actually received by the campaign. As we stated in *Division of Elections Opinion 08-07* (June 11, 2008), "In the typical Pay Pal scenario where Pay Pal makes an electronic transfer of contribution funds to the campaign account, the campaign would report the contribution as having been made at the time of its deposit in the campaign account via the electronic transfer." We see no reason to treat Democracy.com, as an online payment service provider, any different; therefore, a candidate should report the contribution being made on the date that the campaign actually comes into possession of the contribution, which may not necessarily be on the same day that the contributor made the online donation.

SUMMARY

When a candidate purchases an Internet webpage at fair market value from a third-party vendor and, the candidate, as the webpage owner, has full control over the textual content of the webpage and the vendor also serves as the online payment service organization for the candidate, the vendor need not register as a political committee if the contributions to the candidates are received into the vendor's merchant account for distribution to the candidate. Because the contributions are solicited by the candidate from his or her own purchased candidate webpage, the contribution is not considered a prohibited contribution made through a conduit.

Candidates receiving Internet contributions should individually report the original gross amount provided by each contributor as a contribution and additionally report any transactional and processing fees associated with the donation as an expenditure. The candidate may list the

³ Cf. *Division of Elections Opinion 08-03* (Mar. 24, 2008) and *Division of Elections Opinion 10-11* (Oct. 8, 2010). (An organization which is not an online payment service provider-vendor would become a political committee under § 106.011(1), Fla. Stat., if it deposited contributions solicited on behalf of candidates on its website into its own bank account for subsequent distribution to the candidates.)

Mr. Talmage Cooley

October 8, 2012

Page 5 of 5

transactional and processing fees as a lump sum expenditure. Candidates are to report contributions made through the Internet as being received on the day the candidate's campaign actually comes into possession of the contribution from the online payment service provider.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Boynton", with a long horizontal flourish extending to the right.

John Boynton

Acting Director, Division of Elections

Deputy Secretary of State for Administrative Services,
Corporations and Elections

cc: Bryson Morgan, Esq.