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FIRST GENERAL COUNSEL'S REPORT

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DATE COMPLAINT FILED: June 8, 2016

DATE OF NOTIFICATION: June 14, 2016

LAST RESPONSE RECEIVED: July 25, 2016

DATE ACTIVATED: September 20, 2016

EXPIRATION OF SOL: June 8, 2021

ELECTION CYCLE: 2016

COMPLAINANT:

Wendy Reed

RESPONDENT:

Crowdpac, Inc.

**RELEVANT STATUTE AND
REGULATION:**

52 U.S.C. § 30108(c)(1)(A), (2)

52 U.S.C. § 30120

52 U.S.C. § 30124(b)

11 C.F.R. § 112.5(a)(1), (b)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

In 2014, Crowdpac, Inc. ("Crowdpac") launched a web-based contribution platform that allows users to make contributions to political candidates through its website which features a dedicated page to each federal candidate registered with the Commission. Complainant, a 2016 congressional candidate, alleges that Crowdpac fraudulently solicited contributions on her behalf by using her image on its website without her authorization, and by failing to include a disclaimer stating who is making the solicitation. It appears that the activity at issue falls directly within the scope of a proposed platform that the Commission explicitly allowed in response to Crowdpac's request for an advisory opinion in 2014. Because the Complaint does not establish that Crowdpac acted outside the terms of that advisory opinion (Advisory Opinion

2014-07), we recommend that the Commission find there is no reason to believe Crowdpac violated 52 U.S.C. §§ 30124(b) and 30120.

II. FACTUAL BACKGROUND

Crowdpac is a for-profit corporation incorporated in Delaware and based in California. Crowdpac describes itself as an independent and non-partisan “platform for political participation” whose mission is to “give politics back to people - to make it easier for citizens to learn about politicians, run for office, and to find and support political candidates that match their priorities and beliefs.”¹ To further its mission, Crowdpac includes on its website an individual page dedicated to each candidate who registers an authorized committee with the Commission.² These pages include publicly available information about the candidate, such as office sought, biographical details, and a photo, as well as information about the candidate’s political positions.³ Each candidate page also contains a “donate” button allowing users to make contributions to the candidate.⁴ When a contribution is made through the Crowdpac site, its processing partner, Democracy Engine, sends the contribution directly to the campaign and includes the donor information needed for disclosure purposes.⁵

In 2014, prior to launching its web-based platform, Crowdpac requested an advisory opinion from the Commission to “seek[] confirmation that it can implement each component of its business plan as described in this request in compliance with the requirements of the Act and

¹ <https://www.crowdpac.com/about>.

² Advisory Opinion 2014-07 (Crowdpac) at 2.

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.* See Advisory Opinion 2011-06 (Democracy Engine, *et al.*), in which the Commission approved for-profit, limited liability company Democracy Engine’s web-based payment services for individual subscribers to make contributions to federal political committees.

1 Commission regulations.”⁶ The request specifically described the individual candidate
2 webpages, including the donate button and contributions mechanism, and the disclaimers that it
3 intended to include. On August 14, 2014, the Commission responded by issuing Advisory
4 Opinion 2014-07 which concluded, *inter alia*, that Crowdpac’s proposal would not result in
5 impermissible contributions to candidate committees. Crowdpac launched its platform following
6 the issuance of Advisory Opinion 2014-07.

7 During the 2016 election, the Crowdpac website included an individual page regarding
8 Complainant Wendy Reed, a candidate for Congress in California’s 23rd Congressional District.
9 As with all of the candidate webpages, the Reed page contained a picture of the candidate,
10 information about her and her candidacy, and a “Donate to Wendy” button allowing users to
11 make contributions directly to her campaign. According to Crowdpac, no users of its web
12 platform used the link on the Reed candidate page to make a contribution to her campaign.⁷
13 Crowdpac states that Reed requested that Crowdpac disable contributions to her and that it
14 honored her request.⁸

15 III. LEGAL ANALYSIS

16 Reed alleges that Crowdpac violated the Federal Election Campaign Act of 1971, as
17 amended, (“the Act”) by using her image to “solicit donations in [her] name without [her]
18 authorization or permission and without the legally required disclosures of who is making the
19 solicitation” when it created a page dedicated to her candidacy on its website.⁹ Crowdpac

⁶ Advisory Opinion Request 2014-07 (June 9, 2014) at 12.

⁷ Crowdpac Resp. (July 19, 2014) at 3.

⁸ *Id.*

⁹ Compl. at 1; see 52 U.S.C. §§ 30124(b), 30120. Reed also notes, without alleging any specific violation of the Act, that the webpage referenced an election in San Diego, which is outside of her congressional district. *Id.*

1 responds that it has "explicit permission from the Federal Election Commission" in the form of
2 Advisory Opinion 2014-07, to engage in the behavior about which Reed complains, and that the
3 Act and Commission regulations requiring disclaimers do not apply in its situation.¹⁰ Though
4 Reed acknowledges the advisory opinion, she asserts that "individuals involved in Crowdpac's
5 management" violated the terms of the advisory opinion when Crowdpac's founder was involved
6 in creating and disseminating a mailer in a local election in Montana in 2014 that was criticized
7 for misleading voters by including Montana's state seal.¹¹ Reed requests a formal investigation
8 to determine whether contributions received by Crowdpac are being distributed to the designated
9 candidates.¹²

10 The Act states that an advisory opinion "rendered by the Commission . . . may be relied
11 upon by . . . any person involved in the specific transaction or activity with respect to which such
12 advisory opinion is rendered."¹³ The Act further states that any person who relies on and acts in
13 good faith in accordance with the advisory opinion "shall not, as a result of any such act, be
14 subject to any sanction provided by the [the Act]."¹⁴

15 In Advisory Opinion 2014-07, the Commission informed Crowdpac that it "may provide
16 its services of matching users with candidates and utilizing the Democracy Engine platform to
17 process and forward users' contributions to candidates," specifically concluding that the proposal

Crowdpac responds that Reed's congressional district was clearly stated under her name on the page and explains that the reference to San Diego on the webpage was merely a banner ad running at the top of the pages for all California candidates at that time. Resp. at 2.

¹⁰ Resp. at 2.

¹¹ Compl. at 2.

¹² *Id.*

¹³ 52 U.S.C. § 30108(c)(1)(A), 11 C.F.R. § 112.5(a)(1).

¹⁴ 52 U.S.C. § 30108(c)(2), 11 C.F.R. § 112.5(b).

1 would not result in impermissible contributions to federal candidate committees.”¹⁵ Reed’s
2 complaint seems to implicitly allege that Crowdpac’s contribution platform results in the
3 fraudulent solicitation of funds, and violates the Act’s disclaimer requirements.¹⁶ The basis of
4 Reed’s complaint, however, concerns the specific activity approved by the Commission in
5 Advisory Opinion 2014-07. Reed’s allegations focus primarily on the presence of her candidate
6 page (including her image) on Crowdpac’s web platform and the processing of contributions,
7 which is the proposal specifically approved in the advisory opinion. Further, the advisory
8 opinion did not require Crowdpac to include disclaimers on its candidate pages.¹⁷ And though
9 Reed alleges that Crowdpac deviated from the approved plan, it appears that the allegation is
10 based on activity that was not conducted by Crowdpac.¹⁸ Based on the information available to
11 the Commission, it does not appear that the activity complained of deviates from the specific
12 transaction or activity with respect to which Advisory Opinion 2014-07 was rendered by the
13 Commission.¹⁹

14 Reed also provides no specific information that the contributions processed through the
15 Crowdpac website are not being provided to the designated recipient candidates. Crowdpac

¹⁵ Advisory Opinion 2014-07 at 5.

¹⁶ See 52 U.S.C. §§ 30120 and 30124(b).

¹⁷ See 52 U.S.C. § 30120 (requiring disclaimer on certain public communications and electioneering communications); 11 C.F.R. § 100.26 (excluding internet communications from the definition of public communication, except when placed for a fee on another person’s website.); 100.29 (defining electioneering communications as broadcast, cable, or satellite communications).

¹⁸ The complaint references a news article about an official-looking voter guide mailer sent by researchers at Stanford University and Dartmouth College to voters in multiple states as part of a research study on voter turnout. Compl. at 2, citing http://www.mercurynews.com/education/ci_26824200/stanford-dartmouth-sidestep-legal-action-against-researchers-election. The guides included official looking seals and ranked nonpartisan candidates on a political spectrum based on donations to their campaigns. *Id.* Although one of Crowdpac’s co-founders, Adam Bonica, was a Stanford professor who was part of the research project, both Stanford and Crowdpac confirmed through statements contained in the news article, that the research project was separate from the work of Crowdpac. *Id.*

¹⁹ See 52 U.S.C. § 30108(c)(1)(A), 11 C.F.R. § 112.5(a)(1).

specifically notes that Reed received no contributions through Crowdpac because no Crowdpac users made contributions to Reed through her candidate page prior to Crowdpac disabling the contribution function on Reed's page. Therefore, the available information provides no basis to commence the investigation requested by Reed.

Accordingly, we recommend that the Commission find no reason to believe that Crowdpac violated 52 U.S.C. §§ 30124(b) and 30120.

IV. RECOMMENDATIONS

1. Find no reason to believe that Crowdpac violated 52 U.S.C. §§ 30124(b) and 30120.
2. Approve the attached Factual and Legal Analysis.
3. Approve the appropriate letters.
4. Close the file.

Lisa J. Stevenson
Acting General Counsel

12-19-16
Date

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