

FEC Clears Partisan Commercial Fundraising Platform

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In June, the Federal Election Commission (FEC) dismissed a complaint against Crowdpac, Inc., a for-profit online fundraising platform devoted almost exclusively to raising funds for Democratic candidates and liberal causes. The Commission voted unanimously to find no reason to believe that Crowdpac was a political committee or that it made corporate contributions or expenditures in behalf of the campaigns for which its platform raised funds. The Crowdpac matter is noteworthy because it marks the first unanimous vote by the Commission concluding that online platforms that raise funds for one political party are commercial services and not political committees. The Crowdpac matter also is noteworthy because Crowdpac was funded in significant part by voluntary donations in addition to nominal transaction fees paid by platform users.

The background of the matter is significant. In 2014, Crowdpac requested an advisory opinion seeking clearance to operate as a nonpartisan fundraising platform that would cover its overhead and make a profit through the transaction fees it charged the contributors who used its algorithmic matching service. It promised to match platform users with any candidate, Republican, Democrat, or other, who shared their values and policy positions and to facilitate their financial support to those candidates. Based on those representations, the Commission unanimously issued an advisory opinion concluding that Crowdpac's fundraising service did not constitute a contribution or expenditure in behalf of candidates and Crowdpac was not a political committee. It was a bona fide commercial service exempt from FEC contribution restrictions and reporting requirements.

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Since 2014, Crowdpac's business model changed. It removed virtually all Republicans from its website and began raising contributions almost exclusively for Democratic candidates and liberal causes. Crowdpac claimed that "commercial interests drove its decision to suspend Republican candidates from its site." Crowdpac also sponsored the controversial fundraising campaign that targeted Maine Senator Susan Collins over her vote to confirm Supreme Court Justice Brett Kavanaugh, a campaign that purports to have raised nearly \$4.5 million for Senator Collins' eventual Democratic opponent. Additionally, Crowdpac started accepting voluntary donations as an integral part of its revenue model. The combination of partisan fundraising services funded by donations made Crowdpac look like a political action committee to two Republican candidates whose opponents received contributions through Crowdpac, so they filed complaints with the FEC.

Historically, the Commission has approved nonpartisan online fundraising services by analogy to more traditional nonpartisan contribution delivery services, such as UPS or Federal Express, which deliver contributions to candidates as a commercial service to the contributors who pay their delivery fees without regard to the partisanship of the contributors or recipient campaigns. The Commission concluded that so long as the contributors were paying a fee for a nonpartisan commercial delivery or fundraising service, the service was provided to the contributor rather than the recipient campaign.

But the Commission was divided over the issue of partisan selectivity in the provision of fundraising services. For example, in Advisory Opinion 2015-3, for-profit company MyChange.com planned to offer a service to contributors that allowed them to round up their credit card purchases to the nearest dollar and contribute the rounded-up funds to a list of candidates selected by MyChange because MyChange judged the candidates to share its "users' ideology and values." Although the Commission generally approved MyChange's proposal, the advisory opinion included a lengthy explanation (footnote 3) about the Commission's sharp disagreement over the legal significance of MyChange's selectivity in choosing the candidates on its limited list of eligible recipients. Three Democratic commissioners believed MyChange's selection of the recipients based upon "ideology and values" rendered MyChange's platform a service to the recipient committees (rather than the contributors), while three Republican commissioners believed MyChange was free to offer a service to contributors who desired MyChange's professional assistance in identifying candidates who shared their values.

Subsequently, in Advisory Opinion 2017-06, the Commission approved, by a 4 to 1 vote, an opinion clearing the way for a for-profit company to identify for its customers the most competitive Democratic candidates whose election could change control of Congress to the Democratic Party and to facilitate their contributions to those campaigns. The opinion contained a footnote giving lip service to the lingering disagreement over the legal implications of the company's partisan selectivity, but the four-vote majority represented movement in favor of commercial fundraising services with a partisan bias.

The Crowdpac vote in June 2019 marks the first unanimous vote of commissioners endorsing avowedly partisan online fundraising services, and this matter had the added dimension of a commercial service funded in significant part by user donations. This precedent will be important to all future fundraising services offered to contributors.

Incidentally, a week after the FEC matter closed, Crowdpac announced it was closing operations. Its website now directs interested contributors to Act Blue's website, an exclusively pro-Democratic fundraising platform that is registered as a political committee with the FEC.