



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 14, 2022

ADVISORY OPINION 2022-19

Jacquelyn Lopez, Esq.  
Varoon Modak, Esq.  
Elias Law Group  
10 G Street NE, Suite 600  
Washington, DC 20002

Dear Ms. Lopez and Mr. Modak:

We are responding to the advisory opinion request that you submitted on behalf of Maggie for NH, asking whether short code text messages containing links to “split-it” fundraising pages are subject to joint fundraising rules under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations. The Commission concludes that the proposed text messages under the facts presented here would not be subject to the joint fundraising rules of the Act and Commission regulations.

***Background***

The facts presented in this advisory opinion are based on your letter received on August 9, 2022, and your emails received on August 23 and 31, 2022 (“AOR”).

Maggie for NH is the principal campaign committee of Maggie Hassan, U.S. Senator from New Hampshire and candidate for re-election in 2022. Maggie for NH maintains a short-code texting program to send text messages to its supporters on topics relevant to the campaign and to solicit contributions. Maggie for NH sends text messages only to individuals who have affirmatively opted in to receive them, either by texting a keyword to the committee’s short code number, or by providing their cell phone numbers to the committee through a form or webpage. Maggie for NH pays a fee to a vendor to send each message to the individuals who have opted to receive the messages; the cost varies by vendor but is typically a few cents per text message.

Maggie for NH proposes to use its text messaging program to text links to its “split-it” fundraising pages on ActBlue.com to its supporters. ActBlue’s “split-it” pages allow users to make contributions to multiple federal political committees simultaneously.<sup>1</sup> Any political

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<sup>1</sup> For an example of a split-it page, see <https://secure.actblue.com/donate/defendthesenate-hassan> (last visited

committee that has an existing ActBlue account can create a split-it page listing any other political committee that also has an existing ActBlue account, and users of the split-it page may make simultaneous contributions to some or all of the listed political committees, at the users' discretion. Split-it pages allow a user to enter the total amount the user wishes to contribute and will automatically calculate the amount to be allocated to each recipient committee. Users can change the amounts allocated to each listed political committee and can decide not to contribute any amount to a listed committee. There is no additional cost to create or use a split-it page, and no new account or entity is created as a result of setting up a split-it page. Funds contributed through a split-it page are transmitted directly from the contributor to each recipient committee according to the terms of the committee's existing contractual relationship with ActBlue.<sup>2</sup>

Maggie for NH will create and administer split-it pages that list Maggie for NH and other federal political committees as potential recipients of split contributions. Other recipient committees could include federal candidate committees, party committees, or nonconnected political committees; separate segregated funds and non-federal entities will not be included. Maggie for NH asserts that it will solicit only funds that comply with the source prohibitions and amount limitations of the Act and Commission regulations. Maggie for NH further asserts that it will create and administer split-it pages and solicit contributions through them, including in text messages to its supporters, without the involvement of or coordination with other recipient committees. Finally, Maggie for NH alone will decide which political committees to list on the split-it pages.<sup>3</sup>

### ***Question Presented***

*Are short-code text messages containing links to split-it fundraising pages, which allow contributions to multiple federal political committees, subject to the joint fundraising rules under the Act and Commission regulations?*

### ***Legal Analysis***

No, short-code text messages containing links to split-it fundraising pages are not subject to the joint fundraising rules under the facts presented here.

Commission regulations specify the requirements that apply when a political committee engages in joint fundraising, pursuant to 11 C.F.R. § 102.17. Among other requirements, the participants in a joint fundraising effort must establish a separate political committee or select a participating committee to serve as their joint fundraising representative. The participants must also enter into a written agreement that identifies the joint fundraising representative and states a

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Sept. 1, 2022). The Commission notes that ActBlue is not a party to the instant advisory opinion request, and the Commission is not opining on any of ActBlue's activities. The Commission previously considered the applicability of the Act and Commission regulations to ActBlue's split-it pages in Advisory Opinion 2014-13 (ActBlue).

<sup>2</sup> A political committee that receives contributions through a split-it page is responsible for paying any processing fees that it would ordinarily owe under the terms of its existing contractual relationship with ActBlue.

<sup>3</sup> Maggie for NH states that it might separately engage in joint fundraising activities with other political committees, but any such activities would be conducted separately from the activity discussed here.

formula for the allocation of fundraising proceeds.<sup>4</sup> The fundraising representative collects contributions, screens and reports all contributions received, pays fundraising costs from gross proceeds and from funds advanced by participants, and disburses net proceeds according to the allocation formula agreed by the participants.<sup>5</sup> Any solicitation for contributions to the joint fundraising effort must include a joint fundraising notice that advises contributors about the participants in the joint fundraising activity, the allocation formula to be used, and other relevant information.<sup>6</sup>

The Commission has previously concluded that the mere use of an ActBlue split-it page, by itself, “does not indicate that the recipient political committees have agreed to fundraise jointly or have collectively arranged for the disposition of any contributions raised.”<sup>7</sup> Indeed, in the instant advisory opinion request, Maggie for NH specifically states that it will create and maintain split-it pages “without the involvement of, or coordination with, the other committees listed on the pages,” and that “Maggie for NH alone” will decide which political committees to list on the split-it pages.<sup>8</sup> Under these circumstances, where the other recipient committees have no involvement in the creation, modification, or administration of the split-it pages, the Commission concludes that Maggie for NH’s use of ActBlue’s split-it functionality would not be joint fundraising under 11 C.F.R. § 102.17.<sup>9</sup> Likewise, the text messages that Maggie for NH proposes to create and send to its supporters independently of other political committees, which would include links to the split-it pages that Maggie for NH creates and administers independently of other political committees, would not indicate that Maggie for NH and the other political committees listed on the split-it pages have agreed to fundraise jointly. Under these facts, the Commission concludes that the proposed text messages containing links to the split-it pages would not constitute joint fundraising and thus are not subject to the joint fundraising regulations.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request.<sup>10</sup> The

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<sup>4</sup> 11 C.F.R. § 102.17(c)(1). Each joint fundraising solicitation must include a joint fundraising notice that includes the names of all committees participating in the joint fundraising activity; the allocation formula used for distributing joint fundraising proceeds; a statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and a statement informing contributors that the allocation formula may change if a contributor makes a contribution exceeding the amount limitations under the Act and Commission regulations. *Id.* § 102.17(c)(2)(i)(A)-(D).

<sup>5</sup> *Id.* §§ 102.17(b)(1)-(2), (c)(4)(i), (c)(4)(8)(A), (c)(6).

<sup>6</sup> *Id.* § 102.17(c)(2).

<sup>7</sup> Advisory Opinion 2014-13 (ActBlue) at 5.

<sup>8</sup> AOR009.

<sup>9</sup> *See* Advisory Opinion 2014-13 (ActBlue) at 5. The Commission notes that, as in Advisory Opinion 2014-13 (ActBlue), the instant request does not ask, and this advisory opinion does not address, whether joint fundraising would occur if a recipient committee were to learn about the fundraising page after its creation and then actively use it to solicit contributions.

<sup>10</sup> *See* 52 U.S.C. § 30108.

Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion.<sup>11</sup> Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen J. Dickerson", with a stylized flourish at the end.

Allen J. Dickerson  
Chairman

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<sup>11</sup> See *id.* § 30108(c)(1)(B).