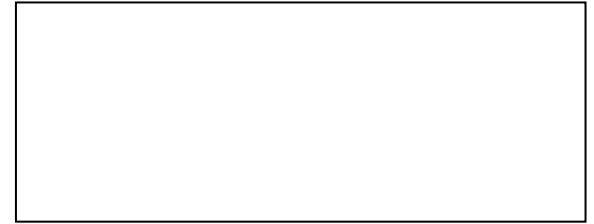




FEDERAL ELECTION COMMISSION
Washington, DC 20463



September 7, 2022

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Acting Associate General Counsel

Amy L. Rothstein *NFS for ALR*
Assistant General Counsel

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Attorney

Subject: Draft AO 2022-19 (Maggie for NH) Draft A Tally Vote

Attached is a proposed draft of the subject advisory opinion. We plan to circulate the draft advisory opinion for Commission approval on a 24-hour tally-vote on September 9, 2022. Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 09:00am (Eastern Time) on September 9, 2022. For more information about how to submit comments, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2022-19

2

3 Jacquelyn Lopez, Esq.

4 Varoon Modak, Esq.

5 Elias Law Group

6 10 G Street NE, Suite 600

7 Washington, DC 20002

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9

DRAFT A

10 Dear Ms. Lopez and Mr. Modak:

11 We are responding to the advisory opinion request that you submitted on behalf of
12 Maggie for NH, asking whether short code text messages containing links to “split-it”
13 fundraising pages are subject to joint fundraising rules under the Federal Election Campaign Act,
14 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations. The Commission concludes
15 that the proposed text messages under the facts presented here would not be subject to the joint
16 fundraising rules of the Act and Commission regulations.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on August
19 9, 2022, and your emails received on August 23 and 31, 2022 (“AOR”).

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

1 Maggie for NH proposes to use its text messaging program to text links to its “split-it”
2 fundraising pages on ActBlue.com to its supporters. ActBlue’s “split-it” pages allow users to
3 make contributions to multiple federal political committees simultaneously.¹ Any political
4 committee that has an existing ActBlue account can create a split-it page listing any other
5 political committee that also has an existing ActBlue account, and users of the split-it page may
6 make simultaneous contributions to some or all of the listed political committees, at the users’
7 discretion. Split-it pages allow a user to enter the total amount the user wishes to contribute and
8 will automatically calculate the amount to be allocated to each recipient committee. Users can
9 change the amounts allocated to each listed political committee and can decide not to contribute
10 any amount to a listed committee. There is no additional cost to create or use a split-it page, and
11 no new account or entity is created as a result of setting up a split-it page. Funds contributed
12 through a split-it page are transmitted directly from the contributor to each recipient committee
13 according to the terms of the committee’s existing contractual relationship with ActBlue.²

14 Maggie for NH will create and administer split-it pages that list Maggie for NH and other
15 federal political committees as potential recipients of split contributions. Other recipient
16 committees could include federal candidate committees, party committees, or nonconnected
17 political committees; separate segregated funds and non-federal entities will not be included.
18 Maggie for NH asserts that it will solicit only funds that comply with the source prohibitions and
19 amount limitations of the Act and Commission regulations. Maggie for NH further asserts that it

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

² 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.

1 will create and administer split-it pages and solicit contributions through them, including in text
2 messages to its supporters, without the involvement of or coordination with other recipient
3 committees. Finally, Maggie for NH alone will decide which political committees to list on the
4 split-it pages.³

5 ***Question Presented***

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

9 ***Legal Analysis***

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

12 Commission regulations specify the requirements that apply when a political committee
13 engages in joint fundraising, pursuant to 11 C.F.R. § 102.17. Among other requirements, the
14 participants in a joint fundraising effort must establish a separate political committee or select a
15 participating committee to serve as their joint fundraising representative. The participants must
16 also enter into a written agreement that identifies the joint fundraising representative and states a
17 formula for the allocation of fundraising proceeds.⁴ The fundraising representative collects
18 contributions, screens and reports all contributions received, pays fundraising costs from gross

³ 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.

⁴ 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).

1 proceeds and from funds advanced by participants, and disburses net proceeds according to the
2 allocation formula agreed by the participants.⁵ Any solicitation for contributions to the joint
3 fundraising effort must include a joint fundraising notice that advises contributors about the
4 participants in the joint fundraising activity, the allocation formula to be used, and other relevant
5 information.⁶

6 The Commission has previously concluded that the mere use of an ActBlue split-it page,
7 by itself, “does not indicate that the recipient political committees have agreed to fundraise
8 jointly or have collectively arranged for the disposition of any contributions raised.”⁷ Indeed, in
9 the instant advisory opinion request, Maggie for NH specifically states that it will create and
10 maintain split-it pages “without the involvement of, or coordination with, the other committees
11 listed on the pages,” and that “Maggie for NH alone” will decide which political committees to
12 list on the split-it pages.⁸ Under these circumstances, where the other recipient committees have
13 no involvement in the creation, modification, or administration of the split-it pages, the
14 Commission concludes that Maggie for NH’s use of ActBlue’s split-it functionality would not be
15 joint fundraising under 11 C.F.R. § 102.17.⁹ Likewise, the text messages that Maggie for NH
16 proposes to create and send to its supporters independently of other political committees, which
17 would include links to the split-it pages that Maggie for NH creates and administers

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

⁶ *Id.* § 102.17(c)(2).

⁷ Advisory Opinion 2014-13 (ActBlue) at 5.

⁸ AOR009.

⁹ *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.

1 independently of other political committees, would not indicate that Maggie for NH and the
2 other political committees listed on the split-it pages have agreed to fundraise jointly. Under
3 these facts, the Commission concludes that the proposed text messages containing links to the
4 split-it pages would not constitute joint fundraising and thus are not subject to the joint
5 fundraising regulations.

6 This response constitutes an advisory opinion concerning the application of the Act and
7 Commission regulations to the specific transaction or activity set forth in your request.¹⁰ The
8 Commission emphasizes that, if there is a change in any of the facts or assumptions presented,
9 and such facts or assumptions are material to a conclusion presented in this advisory opinion,
10 then the requestor may not rely on that conclusion as support for its proposed activity. Any
11 person involved in any specific transaction or activity which is indistinguishable in all its
12 material aspects from the transaction or activity with respect to which this advisory opinion is
13 rendered may rely on this advisory opinion.¹¹ Please note that the analysis or conclusions in this
14 advisory opinion may be affected by subsequent developments in the law including, but not
15 limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited
16 herein are available on the Commission's website.

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On behalf of the Commission,

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Allen J. Dickerson
Chairman

¹⁰ See 52 U.S.C. § 30108.

¹¹ See *id.* § 30108(c)(1)(B).