



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

June 16, 2016

ActBlue  
c/o Melissa Flores  
366 Summer Street  
Somerville, Massachusetts 02144

RE: DE 16-07 Campaign Financing –  
Contributions Made via Internet; Campaign  
Financing – Contributions through a Conduit;  
Political Committees – §§ 106.011(16),  
106.03, Florida Statutes

To Whom It May Concern:

This letter responds to your attorney's request on your behalf for an advisory opinion, which asks whether ActBlue's current operations require it to register as a political committee under Florida law. Because ActBlue is an organization engaged in political activity proposing to take certain conduct with respect to the Florida Election Code, the Division is authorized to issue an opinion pursuant to section 106.23(2), Florida Statutes.

### FACTS

In your request, you indicate that ActBlue provides webpages and internet-based tools for candidates in exchange for the fair market value of those services. Through these webpages and tools, candidates are able to solicit contributions for their campaigns. You state that the candidates exercise "complete textual control" over their webpages on the ActBlue website and that ActBlue does not solicit any contributions on behalf of candidates. Instead, you assert that ActBlue "merely operates the website that provides the infrastructure for the solicitation and processing of these contributions, much like Paypal [sic] offers its users online tools for transmitting money." Finally, you emphasize that "ActBlue is not attempting to influence the outcome of an election . . . ."

### ANALYSIS

#### Division of Elections

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The sole issue here is whether ActBlue must register as a political committee in Florida. Under Florida law, an entity is a “political committee” if it is “[a] combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year . . . [a]ccepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party . . . .”<sup>1</sup> See § 106.011(16)(a), Fla. Stat. A “contribution,” in turn, is “[a] gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, *made for the purpose of influencing the results of an election* or making an electioneering communication.” § 106.011(5), Fla. Stat. (emphasis supplied).

In *Division of Elections Opinion* 12-12 (Oct. 8, 2012), the Division evaluated whether the proposed operations of Democracy.com, an internet webpage provider and online payment processing provider, would require it to register as a political committee. The Division concluded that Democracy.com did not have to register as a political committee under the facts provided: (1) each candidate purchased his or her webpage from the third-party vendor at fair market value, (2) each candidate had full control over the textual content of the webpage, (3) each candidate (and not Democracy.com) solicited contributions, and (4) Democracy.com was a “nonpartisan, for-profit corporation” as opposed to “a political action committee.” The Division reasoned that the specific facts presented made Democracy.com akin to PayPal or another online payment service provider that would not have to register as a political committee; and therefore, that Democracy.com did not have to register as a political committee. *See id.*

Here, your request asserts that ActBlue intends to operate in the same manner as Democracy.com as described in *Division of Elections Opinion* 12-12, and that as such, ActBlue is not a “political committee” under Florida law. Although you argue that ActBlue is similar to Democracy.com, one important difference between the situation in *Division of Elections Opinion* 12-12 and the situation here is that that in *Division of Elections Opinion* 12-12, Democracy.com was a nonpartisan, for-profit corporation; while by contrast ActBlue appears to be a federally registered political action committee and “an IRS tax-exempt 527 organization.”<sup>2</sup>

The fact that ActBlue appears to be registered as a “527” organization indicates that ActBlue may indeed be a political committee under Florida law because registration as a “527” organization indicates the organization may be trying to influence state elections, thus triggering the “contribution” and “political committee” definitions of section 106.011, Florida Statutes.

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<sup>1</sup> Of course, there are other entities that also are considered political committees. See § 106.011(16), Fla. Stat. (defining “political committee”).

<sup>2</sup> See *Div. of Elections Op.* 10-11 (“You state that ActBlue [is] an IRS tax-exempt 527 organization . . . .”); see also <https://forms.irs.gov/app/pod/basicSearch/search?execution=e1s8&pacid=23555> (indicating that ActBlue filed a Form 990 on December 18, 2015, representing that it is a 527 organization).

Federal law indicates<sup>3</sup> that to be registered as a “527” organization, the organization must be “organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both” for the function of “influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors . . . .” See 26 U.S.C. § 527(e). Further evidence that ActBlue may be trying to influence state elections is that ActBlue has previously represented that “We’re a PAC, not a business . . . [o]ur goal is to help you get as much money to Democrats as we can.” See *Div. of Elections Op.* 10-11. ActBlue’s website states that it has raised “one billion dollars . . . for Democrats, progressives, and nonprofits . . . .” Finally, funds that ActBlue claims to be exempt from taxation under section 527 also may implicate chapter 106 if these funds relate to influencing a Florida election.

If ActBlue is in fact attempting to influence the results of Florida elections, then its situation is different from the situation addressed in *Division of Elections Opinion* 12-12. Cf. *Div. of Elections Op.* 10-11. However, if ActBlue is truly not attempting to influence the results of any Florida election and is otherwise operating in a manner fully consistent with the facts of *Division of Elections Opinion* 12-12, then ActBlue does not have to register as a political committee.

#### SUMMARY

If the operations of a third-party internet webpage provider and an online payment processing provider are fully consistent with the facts addressed in *Division of Elections Opinion* 12-12—including that each candidate pays fair market for the webpage, each candidate has full control over his or her webpage, each candidate (and not the provider) is responsible for soliciting his or her own contributions, and the provider is not attempting to influence the results of any Florida election through its operations—then the provider does not have to register as a political committee.

Respectfully,



Maria I. Matthews, Esq.  
Director, Division of Elections

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<sup>3</sup> The Division does not interpret federal law. However, the federal citation is provided here because ActBlue should be aware of the implications of registration as a “527” organization.