



August 19, 2011

Steven Gold, General Counsel  
ActBlue  
14 Arrow Street  
Cambridge, MA 02138

*Via postal mail*

RE: Advisory opinion regarding classification of ActBlue's online fundraising system.

Dear Mr. Gold:

I am writing in response to your request for an advisory opinion dated January 21, 2011 regarding the application of Colorado campaign finance law to ActBlue. A copy of your request is attached to this opinion. Please note that this opinion is advisory only, and is limited to the facts provided in your request. Additional facts or circumstances may change the analysis.

***Questions Presented***

1. Would ActBlue's proposed activity constitute political activity requiring ActBlue to register as a political committee in Colorado?
2. If so, is it permissible for ActBlue to collect and forward to recipient committees contributions made through its website? How would ActBlue be required to report such contributions, and what contribution limits would apply.

***Answer***

Under the major purpose test articulated by the Colorado Court of Appeals, ActBlue is not required to register and report as a political committee in Colorado, assuming that ActBlue's activity fundraising for Colorado candidates is not the group's major purpose. ActBlue may collect and forward to recipient committees contributions made through its website without filing any report of such contributions and without regard to contribution limits. Recipient committees are responsible for reporting such contributions and complying with applicable contribution limits.

***Discussion***

A political committee is clearly defined in Colorado law as:

[A]ny person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates.<sup>1</sup>

The Colorado Court of Appeals added a major purpose test to this definition in *Alliance for Colorado's Families v. Gilbert*. In that case, the Court held that a group is not a political committee unless its major purpose is to influence the nomination or election of candidates.<sup>2</sup> Colorado law defines a candidate as someone seeking nomination or election to state or local public office;<sup>3</sup> therefore, unless a group's major purpose is to support or oppose candidates running for state or local office in Colorado, the group is not considered a political committee.

Based on the facts provided in your request, ActBlue currently operates in Colorado as a fundraising service provider. ActBlue enters into a service agreement with the recipient committee and agrees to collect funds on behalf of the committee for a reasonable service fee. Individuals contribute to the campaign of their choice through ActBlue's website using their credit card. The contributions are transferred directly into an account maintained and controlled by the committee. ActBlue has no discretion in determining the recipient committee and no control over the funds. Further, ActBlue receives payment for the service such that ActBlue's costs are covered.

ActBlue's new proposal to aggregate contributions in its own account differs from the current business model in Colorado. Rather than requiring a service agreement to transfer contributions directly into an account maintained and controlled by the committee, ActBlue would hold the funds in its own account and make weekly distributions to the designated committees. Therefore, ActBlue is accepting contributions that are intended to support Colorado candidates,<sup>4</sup> consistent with the definition of a political committee. Thus, if ActBlue's major purpose was to support Colorado candidates, it would be a political committee under Colorado law.

However, it is the addition of the major purpose test that removes ActBlue from categorization as a political committee. In your request, you state that "ActBlue is a national organization operating with respect to federal elections as well as state elections in every state." This statement indicates that the group's activity in Colorado is only a small purpose and not a major one, whether under the current or the proposed framework of fundraising activity.

Public disclosure of contributions made to candidates using ActBlue's system will not be negatively affected in any way by this determination. Candidates receiving contributions will disclose all contributions received through ActBlue, and the identity of the original contributor—the person using the ActBlue system to donate money—will be public information available on campaign disclosure reports. In fact, if ActBlue were to register as a political committee, it

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<sup>1</sup> Colo. Const. Art. XXVIII § 2(12)(a).

<sup>2</sup> See *Alliance for Colorado Families v. Gilbert*, 172 P.3d 964, 970 (Colo. App. 2007).

<sup>3</sup> Colo. Const. Art. XXVIII § 2(2).

<sup>4</sup> A contribution includes "Any payment made to a third party for the benefit of any candidate committee." Colo. Const. Art. XXVIII § 2(5)(a)(II).

would become more difficult for the public to find information about contributors to candidates. If ActBlue were a political committee, candidate committees would disclose ActBlue as the "person" contributing money, not the actual person making the contribution in the first place. To discover the true, original contributor to a particular candidate, the public would have to take the additional step of researching ActBlue's contributors. Thus, the major purpose requirement serves the public good in this instance.

### *Conclusion*

It is our opinion that ActBlue's proposed activity resembles that of a political committee, but as long as Colorado fundraising is not its major purpose, then registration and reporting as a political committee is not required. ActBlue may collect and forward to recipient committees contributions made through its website without filing any report of such contributions and without regard to contribution limits. Recipient committees are responsible for reporting such contributions and complying with applicable contribution limits. Again, I would note that this opinion is based entirely on the facts provided in your request, and any additional or differing facts could change the analysis.

I hope that you find this response helpful. If you have further questions, please contact our office.

Respectfully,



Judd Choate  
Director of Elections  
Colorado Department of State

January 21, 2011

**VIA CERTIFIED MAIL**Paris Nelson  
Elections Division  
Colorado Secretary of State's Office  
1700 Broadway  
Denver, CO 80290**RECEIVED**

JAN 24 2011

ELECTIONS  
SECRETARY OF STATE**MAILED**

Dear Ms. Nelson,

I am writing to formally request an advisory opinion from the office of the Attorney General regarding a question of campaign finance law. As you have informed me in earlier conversations, this request is properly submitted to your office, and the Attorney General's office will issue an opinion if it deems an opinion necessary to clarify a point of law. I believe an opinion is necessary to answer the questions presented below and would appreciate having this request considered by the Attorney General's office.

ActBlue is a national organization operating with respect to federal elections as well as state elections in every state (and a handful of local elections). ActBlue created and maintains the website at [www.actblue.com](http://www.actblue.com) for the purpose of promoting and enabling increased political giving among Democratic supporters. The website provides tools for making credit card contributions to Democratic candidates and political committees of the contributor's choice and for promoting increased giving to those candidates and committees. Contributions are made using the website and the funds are delivered to the recipient committee by one of a variety of means, depending on the laws of the relevant jurisdiction. The cost of performing this service is subtracted from the funds before they are delivered to the recipient.

In Colorado, ActBlue currently facilitates contributions only to those committees which have signed a service contract with ActBlue. The service contract stipulates that ActBlue will process contributions to the committee in exchange for a service fee which is comparable to other such service providers and covers all of ActBlue's processing costs. The funds contributed to Colorado committees through the website are never in ActBlue's possession or under ActBlue's control; once the contributor's credit card is charged, the funds are transferred by the credit card processor directly into a merchant account owned and controlled by the recipient committee. In other jurisdictions where the law does not prohibit it, ActBlue collects the funds contributed to recipient committees in its own bank account, aggregates the funds by recipient, and sends the funds (minus fees to cover ActBlue's costs) to the recipient committees in the form of weekly checks. In these states, ActBlue accepts contributions to any Democratic committee and does not enter into agreements with any recipients. ActBlue does not, in any jurisdiction, make contributions to other committees from its own funds, or make any expenditures in support of or in opposition to any candidates.

ActBlue would like to begin operating in Colorado the way it does in these other states, collecting in its own bank account funds contributed to other committees through the website, aggregating them, and forwarding the funds weekly to the recipient committees via check. In light of this, ActBlue requests an advisory opinion answering the following questions:

- (1) Would ActBlue's proposed activity constitute political activity requiring ActBlue to register as a political committee in Colorado?
- (2) If so, is it permissible for ActBlue to collect and forward to recipient committees contributions made through its website? How would ActBlue be required to report such contributions, and what contribution limits would apply?

### **Discussion**

A political committee is defined in Colorado law as:

any person, other than a natural person . . . that [has] accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates.

Const. Art. XXVIII Sec. 2(12) (a). ActBlue, a person other than a natural person, intends to process greater than \$200 in contributions supporting one or more candidates. Contributors will choose Democratic candidates and committees whom they wish to support, and contributions will pass through ActBlue's bank account as a means of delivering those contributions to the chosen recipients.

Processing a contribution, however, does not constitute accepting or making a contribution. Neither term is defined in the Colorado Constitution or the Campaign Finance Rules. In common usage, accepting a contribution involves receiving a contribution which is intended to be kept and used by the recipient. In the case of contributors making contributions through ActBlue, none of these contributions are intended to be kept or used by ActBlue, but rather are explicitly intended to be received and kept by the ultimate recipient selected by the contributor on the website. Likewise, by forwarding these contributions, ActBlue is not making contributions of its own funds to the recipients, but merely forwarding the contributions made by others. Although a credit card processor sends funds to the recipient of a credit card contribution and receives funds from the contributor's bank, it is understood that the credit card processor neither makes nor receives the contribution; the same applies to ActBlue's proposed activity.

By processing contributions to other candidates and committees, ActBlue will not be accepting or making any contributions or expenditures, and therefore is not required to be registered as a political committee. But even if ActBlue is required to register as a political committee, the activity proposed in this request is permitted by Colorado law, at least with respect to certain committees.

The Colorado Constitution contemplates contributions made through an entity such as ActBlue. Article XXVIII defines a conduit as, "a person who transmits contributions from more than one person, directly to a candidate committee." Const. Art. XXVIII Sec. 2(4). No person may act as a conduit for contributions to a candidate committee. *See* Const. Art. XXVIII Sec. 3. And political committees are prohibited from making contributions to issue committees. *See* Rules Concerning Campaign and Political Finance 2.7. However, nothing in the Constitution or Rules prohibits a political committee from acting as a conduit for contributions to other political committees as well as to political party committees. Therefore, ActBlue may accept and forward conduit contributions made to political committees and political party committees through its website.

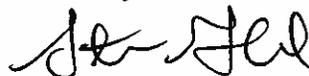
As a registered political committee accepting and forwarding conduit contributions, no special reporting obligations would be imposed on ActBlue. ActBlue would report all of the contributions received and all of the expenditures made in the same manner as any other contributions and expenditures reported by any other political committee. Furthermore, since the conduit contributions are made by others to the recipient committees through ActBlue, presumably the contribution limits found in Article XXVIII, Section 3 of the Constitution would not be applied to ActBlue, but rather would be applied as if the individual's contribution were made directly to the intended recipient.

### **Conclusion**

ActBlue's proposed activities would not require it to registers as a political committee. The proposed activity would not involve accepting or making contributions as defined in the Colorado Constitution. If, however, ActBlue was required to register as a political committee, it would still be permitted to accept and forward contributions to other political committees and to political party committees. Such contributions and expenditures would be reported the same as any other, and contribution limits would be applied to such contributions as if they were made directly by the individual contributor to the intended recipient.

I would appreciate receiving a formal opinion from the Attorney General's office stating its answers to the questions presented and its interpretation of the statutory provisions referenced in this request. Should any additional information be required to fulfill this request, please feel free to contact me at (617) 517-7636.

Sincerely,



Steven Gold  
General Counsel