



OFFICE OF
GENERAL COUNSEL

2024 OCT 22 PM 1:23

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2024

Office of the Attorney General
of the State of Texas
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548

Via overnight mail

Federal Election Commission
Lisa J. Stevenson, Acting General Counsel
Office of the General Counsel
1050 First Street, NE
Washington, DC 20463

Re: *Petition for the Issuance and/or Amendment of Rules Regarding Contributions from Untraceable Electronic Payment Methods*

Dear Ms. Stevenson,

Pursuant to 11 C.F.R. § 200.1 *et seq.*, Attorney General of Texas Ken Paxton hereby submits this Petition for Rulemaking.

The Commission has recently considered in rulemakings whether new regulations are necessary to govern prepaid cards used for political donations.¹ Prepaid cards are a favorite tool of fraudsters. And the Attorney General has been conducting a civil fraud investigation² that significantly overlaps with the Commission's rulemakings. Specifically, there has been substantial public reporting regarding potentially fraudulent transactions on political committee online platforms. Certain platforms appear to facilitate straw donor transactions, where a contributor disguises his identity by attributing his contribution to another, unaware person. The Attorney General's investigation of this phenomenon has unearthed material facts germane to the Commission's prior rulemaking and that underscore how new regulations governing electronic payment acceptance and related problems are critical to ensuring the integrity of campaign finance laws.

Specifically, the Attorney General has corroborated much of the public reporting regarding straw contributions on political committee online platforms. And he has found that sophisticated

¹ Advance Notice of Proposed Rulemaking, Technological Modernization, 78 Fed. Reg. 25,635, 25,637 (May 2, 2013).

² See, e.g., Tex. Bus. & Com. Code § 17.41 *et seq.* Because the conduct described herein both (A) appears to violate State law but also (B) is structured in a way to evade investigators, the Attorney General considers a rulemaking by the Commission to be necessary to aid the Attorney General's enforcement of State law, including the Texas Deceptive Trade Practices Act. *Id.*

actors appear to be making contributions in the name of another in ways that make it almost impossible to detect the real identity of the contributor.³ These actors are using [REDACTED]. And they are using [REDACTED].

Notably, however, one of the most prominent online contribution platforms—ActBlue—submitted comments to the Commission encouraging it *not* to adopt regulations for prepaid cards that would have hampered this potential fraud. In those comments, ActBlue made representations about important technological realities that, as explained below, are no longer accurate (if they ever were). Moreover, the Attorney General’s findings cast serious doubt on ActBlue’s representation that “prepaid cards likely present less of a risk” of unlawful contributions “than cash does.”⁴ It appears that the opposite is true—prepaid cards present a *far* greater risk.

Political committees have an obligation to report the identities of persons who give to them.⁵ To do that, they must reasonably rely on the accuracy of information their donors provide. But “it would make no sense for Congress to allow [political committees] to rely on the provision of information by others while at the same time giving others a virtual carte blanche to provide inaccurate information.”⁶ To eliminate political committees’ ability to rely on information which will frequently be inaccurate, Attorney General Paxton files this petition requesting that the Commission adopt two rules:

First: An amendment to 11 C.F.R. Section 104.14 clarifying that, to comply with its obligation to maintain records with sufficient detail to verify contributor identities, a political committee must implement procedures ensuring that identities provided by donors match the information that the issuer of the donor’s payment card has on file.

Second: An amendment to 11 C.F.R. Section 104.14 establishing that a political committee does not comply with its obligation to maintain adequate records to verify donor identities if the committee accepts certain types of prepaid cards.

BACKGROUND

Election law contains multiple rules designed to secure the integrity of the campaign finance system. Substantively, there are caps on how much a person may contribute.⁷ And foreign

³ The Attorney General is in possession of a substantial number of non-public documents obtained in his investigation. By law, these documents are confidential subject to certain exceptions. Tex. Bus. & Com. Code § 17.61(f). In order to preserve the confidentiality of these materials, the Attorney General has redacted certain excerpts of the Petition. The Attorney General invites the Commission to contact his office to discuss whether and on what conditions an unredacted version of this Petition can be shared.

⁴ ActBlue, Comment at 6 (June 3, 2013), REG 2013–01.

⁵ 11 C.F.R. § 104.3(a).

⁶ *United States v. Hsia*, 176 F.3d 517, 524 (D.C. Cir. 1999).

⁷ 32 U.S.C. § 30116.

nationals are barred from making contributions.⁸ The laws also contain process-oriented rules to ensure that these substantive rules cannot be circumvented. For one: “No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution.”⁹ Because of traceability concerns associated with cash, there is a \$100 aggregate cap for cash contributions to any campaign.¹⁰ And political committees must maintain records and file reports containing donor information.¹¹

Certain political committees’ online platforms have long been scrutinized for giving bad actors a medium to evade these rules and to make illegal campaign contributions.¹² In early 2023, this controversy exploded into public view in a new way. Video footage showed “people on fixed incomes who were stunned to learn that their names and addresses were used to donate thousands of dollars to ActBlue.”¹³ As Senator Rubio put it: “ActBlue, a major fundraiser for the Democratic Party, has purportedly engaged in thousands of dollars in campaign donations through small donors, including senior citizens, via illegal contributions, without those donors’ consent or awareness.”¹⁴ And, although ActBlue has drawn the bulk of public attention on this issue, the problem does not appear to be purely partisan—WinRed has been accused of very similar issues.¹⁵

The Commission has not adopted rules requiring security measures to detect and prevent contributions in the name of another. But that lack of rules is perplexing because the Commission’s *Advisory Opinions* have recognized that specific security measures can mitigate this problem. For example, in one Advisory Opinion the Commission approved a committee’s proposal to “use the services of an Internet credit card processing vendor which has the capability to compare the contributor information submitted to the Committee with the name, address and other billing information on file with the issuer of the contributing credit or debit card.”¹⁶ In that scenario, when a contribution was made to the committee, the “credit card data [was] sent directly to the credit card processing company,” which would “cross-check the contributor information submitted with its own information on the name, billing address, account number, and expiration date of the card” before “process[ing] the transaction.”¹⁷ This kind of process ostensibly ensures that the card holder

⁸ *Id.* § 30121.

⁹ *Id.* § 30122.

¹⁰ *Id.* § 30123; see also 120 Cong. Rec. H7832 (daily ed. Aug. 7, 1974) (“[C]ash offers too facile a medium for unethical and illegal activities” due to its “untraceability” and “easy transferability”).

¹¹ 52 U.S.C. § 30104.

¹² See, e.g., Hollie McKay, *Exclusive: Data shows that half of 2019 donations to ActBlue came from untraceable ‘unemployed’ donors*, Fox News (Sept. 12, 2020), <https://www.foxnews.com/politics/exclusive-data-shows-that-half-of-2019-donations-to-actblue-came-from-untraceable-unemployed-donors>.

¹³ Elizabeth Elkind, *Rubio demands probe into ActBlue after reports of ‘fraudulent’ fundraising off seniors* Fox News (Apr. 12, 2023), <https://www.foxnews.com/politics/rubio-demands-probe-actblue-reports-fraudulent-fundraising-off-seniors>.

¹⁴ Press Release, *Rubio Demands Answers from FEC on Potential ActBlue Fraudulent Donations* (Apr. 12, 2023), <https://www.rubio.senate.gov/rubio-demands-answers-from-fec-on-potential-actblue-fraudulent-donations/>.

¹⁵ See <https://www.youtube.com/watch?v=fb6uAclKbVs&pp=ygUTd2lucmVkiGphbWVzIG9rZWVmZQ%3D%3D>

¹⁶ Advisory Opinion 1999-09 at 2 (Bill Bradley for President).

¹⁷ *Id.* at 5.

is the same person as the one identified as the contributor. And the Commission has approved similar processes in other Advisory Opinions.¹⁸

The Commission apparently has not adopted *rules* in this arena because it wants to maintain “flexibility to ensure that the regulated community is able to take advantage of rapidly evolving technological innovations.”¹⁹ That is an admirable goal, but it should not come at the expense of the campaign finance system’s integrity. And the Attorney General’s investigation (summarized at a high level below) shows that the integrity of that system is in great peril.

THE ATTORNEY GENERAL’S CIVIL INVESTIGATION

Last year, in the wake of the allegations discussed above, the Attorney General opened a State law investigation into multiple online contribution platforms.²⁰ One focus of the investigation is the high volume contributions being made in the names of persons who deny that they made those contributions. These contributions are being made in such high volume that, even without investigation, it strains credulity to believe they were legitimately made by the person whose name was provided as being the contributor.

As background, a sophisticated actor making straw contributions online needs to take multiple steps to shield his true identity. For one, he needs to use a payment method that is not traceable. If he uses a traditional credit card, a government investigator can presumably obtain from the issuing bank the actor’s personal information, and therefore deduce that he made a straw contribution. For example, if Alice makes a contribution in the name of Bob, but uses her personal credit card to do it, her issuing bank can reveal that it was Alice—not Bob—who was truly responsible for the donation. Second, the bad actor needs to avoid leaving digital fingerprints. Government investigators can generally use IP addresses associated with Internet activity to trace who was responsible for the activity. So the bad actor needs to use an Internet connection that obscures his identity.

Attorney General Paxton’s investigation has revealed that sophisticated actors appear to be taking overt steps to avoid traceability with straw contributions. Specifically:

First, as a threshold matter, Attorney General Paxton has independently corroborated that the public allegations about straw contributions appear true. Namely, many persons’ names have been used to make hundreds of unique contributions totaling many thousands of dollars per year. In many instances, contributions are made in these peoples’ names literally multiple times per day, almost every single day of the year. Moreover, contributions are being made in specific peoples’ names from [REDACTED]. Sometimes, contributions are being made in the name of [REDACTED]. The Attorney General has

¹⁸ See Advisory Opinion 2007-30 (Chris Dodd for President).

¹⁹ *Id.* at 3.

²⁰ See, e.g., Press Release, Attorney General Ken Paxton’s Ongoing Investigation Into ActBlue Yields Cooperation On Donor Credit Card Identification (Aug. 8, 2024), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxtons-ongoing-investigation-actblue-yields-cooperation-donor-credit-card>

obtained preliminary [REDACTED]
[REDACTED].

Second, sophisticated actors are taking overt measures to ensure they leave no digital fingerprint. For example, many contributions are made from [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The Attorney General's civil investigators do not commonly see this kind of criminal-style evasiveness, and do not have the technical expertise to comprehensively review the tremendous scope of transactions at issue. The findings here are, accordingly, preliminary and based on a review of only a sample of material. But even that sample is highly concerning. One foreign [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Another [REDACTED]
[REDACTED]
[REDACTED]

Third, sophisticated actors appear to be using [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The Attorney General's investigation has found even just on a preliminary review of transactions that [REDACTED]
[REDACTED].

ACTBLUE'S PRIOR COMMENTS

The Commission has previously expressed interest in regulating prepaid cards and has sought

21 [REDACTED]
[REDACTED]
22 [REDACTED]
23 [REDACTED]
[REDACTED]
24 [REDACTED]
[REDACTED]
25 [REDACTED]
[REDACTED]
26 [REDACTED]
27 [REDACTED]
[REDACTED]

“comments on whether prepaid” cards “are functionally the same as cash.”²⁸ But it received only “one comment on this proposal”—from ActBlue.²⁹ The Commission also sought input on two of ActBlue’s statements.³⁰ As explained below, ActBlue’s two statements are inaccurate and misleading.

First, the Commission sought feedback on ActBlue’s statement that “[n]o online contribution is ever made without the contributor providing identifying information.”³¹ ActBlue ostensibly said this in an effort to downplay the likelihood that prepaid cards are being “used to evade campaign finance regulations.”³² Although ActBlue’s statement is technically accurate, it is a complete non-sequitur and misleading in context. That is because, on ActBlue’s platform, a contributor must merely provide *someone’s* identifying information to make a contribution—not necessarily *his own*. It is similar to cash, where a hypothetical contributor could hand \$100 to a committee in-person, and then provide a false identification to associate with the cash. Unless the committee asks that contributor for some proof of identity, it is blind as to whether the identifying information he provided is his own.

Indeed, prepaid cards are actually significantly worse than in-person cash contributions. With in-person cash contributions, the donor physically exposes himself to recognition if he claims a false identity. With prepaid cards, the contributor does not need to present himself in person and is more easily able to shield his identity. And the Attorney General’s investigation underscores that contributors are going out of their way to shield their identities.

Second, the Commission sought feedback on ActBlue’s statement that a “committee to whom the card number is presented online for payment is unlikely to know that it is a prepaid card.” ActBlue’s assertion is false as a matter of present-day technology.³³ Payment processors have the technological ability to distinguish between prepaid cards and other types of payment methods. Indeed, the Attorney General’s office has direct experience with that capability as part of its investigations. Because ActBlue’s payment processor can distinguish between prepaid cards and other payments, necessarily ActBlue can do so as well (*i.e.*, by contracting with the payment processor to make these distinctions).

REQUEST FOR RULEMAKING

Federal election law makes clear that political committees must report the **true** identities of their contributors.³⁴ They cannot submit “information contrary to facts known” about the

²⁸ Advance Notice of Proposed Rulemaking, Technological Modernization, 78 Fed. Reg. 25,635, 25,638 (May 2, 2013).

²⁹ Request for Additional Comment, Technological Modernization, 87 Fed. Reg. 54,915, 54,916 (Sept. 8, 2022).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ The Attorney General recognizes that ActBlue made this statement years ago, and does not take a position on the technological realities of that time.

³⁴ *See, e.g.*, 11 C.F.R. § 104.3(a)(4); *Hsia*, 176 F.3d at 524 (“As the committees here did not report the true sources,

contribution.³⁵ And they cannot “report that a signer is the actual source of funds if [they are] aware that the signer is not the source.”³⁶ Moreover, as a matter of basic logic, a committee cannot maintain willful blindness as to the true identity of a contributor when it has reason to know that straw contributions are being made. “[I]t would make no sense for Congress to allow” that willful blindness.³⁷

The Commission’s rules provide that political committees must maintain records that “provide in sufficient detail the necessary information and data from which [its] filed reports and statements may be **verified**, explained, clarified, and checked for accuracy and completeness.”³⁸ As relevant here, a political committee must maintain records sufficient to verify the identity of contributors. As explained above, however, sophisticated actors appear to be using various means that render their identities untraceable, and that make a mockery of the purpose of the Commission’s recordkeeping and reporting requirements. To fix this problem, the Attorney General proposes the following two amendments to 11 C.F.R. Section 104.14:

104.14(b)(5): Records for contributions made by credit, debit, prepaid, or gift card must include documentation confirming that a cross-check occurred between the contributor’s self-reported identifying information with the card issuing institution’s own information on the name and billing address of the cardholder.

104.14(e): Contributions cannot be accepted from prepaid or gift cards unless the information from those prepaid or gift cards can be cross-checked with the card issuing institution to confirm the name and billing address required under paragraph (b)(5) of this rule.

Respectfully submitted.



Ken Paxton
Attorney General of Texas

their statements would appear to be false.”).

³⁵ *Hsia*, 176 F.3d at 524.

³⁶ *United States v. Kanchanalak*, 192 F.3d 1037, 1044 (D.C. Cir. 1999).

³⁷ *Hsia*, 176 F.3d at 524.

³⁸ 11 C.F.R. § 104.14(b).