



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

September 12, 2012

Barry A. Bostrom, Esq.
General Counsel
ActRight Fund
2029 K Street NW, Suite 300
Washington, DC 20006

Re: Advisory Opinion 13-01

Dear Mr. Bostrom:

This is in response to the ActRight Fund's request for an advisory opinion dated June 7, 2012. The ActRight Fund informed the Campaign Spending Commission ("Commission") that the ActRight Fund is registered with the Internal Revenue Service and files IRS Form 8872 to report political contributions and expenditures. The ActRight Fund plans to register as a Hawaii noncandidate committee called ActRight Hawaii. ActRight Hawaii will accept contributions on its website that are earmarked to specific candidates for state and local elective offices. ActRight Hawaii will distribute these earmarked contributions to the candidates along with the identification of the true source of the earmarked funds. In its request for an advisory opinion, the ActRight Fund also provided a summary of certain provisions of Hawaii's campaign finance law applicable to contribution limits, noncandidate committee registration and reporting requirements, and disclaimers for political advertisement.

The ActRight Fund seeks an advisory opinion on five questions. The Commission's responses to those questions are noted below.

1. Does Hawaii law permit ActRight Fund to establish and register a noncandidate committee (ActRight Hawaii) to act as a conduit, accepting contributions from individuals earmarked for Hawaii candidates?

Yes, Hawaii law permits the ActRight Fund to register ActRight Hawaii as a noncandidate committee that accepts and distributes earmarked contributions for

Hawaii candidates. This question was addressed by the Commission in Advisory Opinion 11-01.

2. May ActRight Hawaii, acting as a conduit, transfer these earmarked contributions to each such designated candidate, subject only to individual contribution limits per candidate per election period, along with a list identifying the contributors as the original sources of the funds?

Yes, the earmarked contributions to candidates will be subject to the candidate limits in §11-357, Hawaii Revised Statutes (“HRS”). In addition to disclosing the name and address of the contributor of the earmarked funds, ActRight Hawaii must also disclose the occupation and employer of the contributor as required by §11-335(b)(1), HRS, for contributions aggregating more than \$100 during an election period.

3. ActRight Hawaii will report the individual contributors as required by Hawaii law, and pursuant to HRS 11-351(c); HAR 3-160-38(b)(1), and A.O. 11-01, candidates will report the original source of the funds. Do the candidates also have to report ActRight Hawaii as the conduit?

No, the candidates do not have to report ActRight Hawaii as the conduit of earmarked funds received by the candidates.

4. If the individual contribution limits apply to contributions through ActRight Hawaii as a conduit, is ActRight exempt from the noncandidate committee contribution limits (for contributions to candidates) for those earmarked contributions?

Although the limit on contribution to noncandidate committees contained in §11-358, HRS (\$1,000 per election), does not apply to contributions earmarked to candidates, the contribution limit will apply to contributions made to ActRight Hawaii that are not earmarked to candidates. Of course, the earmarked contributions to candidates will be subject to the candidate limits in §11-357, HRS.

5. Are there any errors in the above summary of Hawaii campaign finance law?

For the most part, the ActRight Fund’s summary of Hawaii campaign finance law is accurate. The Commission, however, takes issue with two statements in the summary. Summary item 1 states in part that ActRight Hawaii may accept “unlimited earmarked contributions for specific Hawaiian candidates.” Earmarked contributions cannot exceed the limits on contribution to candidates provided in §11-357, HRS. Also, summary item 4 states in part that “[ActRight

Hawaii] must file an Organizational Report within 10 days of receiving contributions or making expenditures more than \$1,000 in a two-year election cycle.” The Commission assumes that the ActRight Fund acknowledges, just as it did in summary item 2, that Hawaii campaign finance law, and more specifically for this summary item, §11-321(g), HRS, refers to an election **period**, rather than an election **cycle**.

The Commission provides this Advisory Opinion as a means of stating its current interpretation of the Hawaii campaign finance law in §11-301, *et seq.*, HRS, and the Commission’s rules in chapter 3-160, Hawaii Administrative Rules. The Commission may adopt, revise, or revoke this Advisory Opinion if provisions of the campaign finance law or administrative rules are amended or repealed.

CAMPAIGN SPENDING COMMISSION

A handwritten signature in black ink, appearing to read "Michael E. Weaver", is written over a horizontal line.

By: MICHAEL E. WEAVER
Its Chair

Barry A. Bostrom
Joseph A. Vanderhulst
Zachary S. Kester

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June 7, 2012

Michael E. Weaver, Chair
Campaign Spending Commission
Leiopapa A Kamehameha Building
235 S. Beretania Street, Room 300
Honolulu, HI 96813-2419

Re: Hawaii compliance questions

Dear Mr. Weaver:

Please be advised that I represent ActRight Fund and the ActRight.com website, the online clearinghouse for conservative action. Our goal is to permit donors to contribute to state and federal candidates nationwide through our website. We will be selecting Hawaii state candidates to support in 2012 and would like to provide information about the candidate(s) and invite donors to contribute to the candidate(s) of their choice through our website. Since campaign finance laws were not written to accommodate such fundraising websites, we thought it prudent to ask some questions regarding compliance with Hawaii law and to request an advisory opinion pursuant to Hawaii Rev. Stat. § 11-315. What follows is a brief description of how ActRight.com works, what we understand Hawaii campaign finance law to require, and then a list of five questions to make sure our understanding is correct.

How does ActRight.com work?

ActRight.com combines a I.R.C. § 527 organization (ActRight Fund),¹ to host the website and a registered Federal PAC (ActRight) for soliciting contributions to Federal candidates. The website also has a 501(c)(4) non-profit corporation (ActRight Action), and a 501(c)(3) non-profit (ActRight Educational Trust Fund) enabling users to choose what educational and issue advocacy organizations they want to support. Separate bank accounts are used for each entity and contributions to candidates are processed separately from donations to other causes. ActRight Fund plans to register a noncandidate committee called ActRight Hawaii. It will solicit and accept contributions from website donors and transfer these funds to the specific candidates that website users designate when they click on a "donate" button for a particular Hawaii state candidate. Every contribution for a candidate will be distributed along with identification of the true source of the funds to the candidate's campaign.

¹The ActRight Fund is not a registered PAC under Federal law or any state law. It is an unincorporated fund registered with the IRS and files IRS Form 8872 reports of contributions and expenditures.

What does Hawaii law require?

In Hawaii, ActRight Fund may establish a “noncandidate committee” (ActRight Hawaii) for the purpose of soliciting contributions and making contributions to state candidates. It must register with the Hawaii Campaign Spending Commission within 10 days of receiving contributions or making expenditures greater than \$1,000. HRS 11-321(g). This means that “ActRight Hawaii” may register as a noncandidate committee in Hawaii in order to receive contributions, make contributions to state candidates, and file reports as a committee. Registration, reporting forms, and other information are available from the Hawaii Campaign Spending Commission at <http://hawaii.gov/campaign>; by fax at 808-586-0288; or by phone at 808-586-0285.

The following is a summary of the registration, disclaimer, and reporting requirements for ActRight Hawaii:

1. *Contributions to ActRight Hawaii:* ActRight Hawaii may accept contributions up to \$1,000 per election² from Hawaii residents who are individuals, businesses, and corporations, plus unlimited earmarked contributions for specific Hawaiian candidates. HRS 11-358.
2. *Contributions to candidates:* ActRight Hawaii may make contributions up to \$2,000 per two-year election cycle (called “election period”) to candidates for State Representative and County Council (Hawaii, Maui, Kauai); \$4,000 per four-year election cycle to candidates for State Senate and City Council (Honolulu); and \$6,000 per four-year election cycle to candidates for Governor, Lt. Governor, and Office of Hawaiian Affairs.³ HRS 11-357.

However, reports of earmarked contributions from individuals to specific Hawaii candidates through ActRight.com must disclose the true source of the funds. HRS 11-351(c); HAR 3-160-38(b)(1). A contribution in the “name of a person other than the owner of the money” is prohibited and “shall escheat to the Hawaii election campaign fund.” HRS 11-352.

²A person may contribute up to \$1,000 to ActRight Hawaii between November 3, 2010, through August 11, 2012; and another \$1,000 between August 12, 2012, and November 6, 2012.

³Non-resident persons may contribute to Hawaii candidates if the contribution is no more than \$1,000 and the candidate committee has not accepted contributions from non-residents that exceed the aggregate limit of 30% of its total contributions. Otherwise, the contribution must be refunded. HRS 11-362; 11-364.

According to Advisory Opinion 11-01, (1) ActBlue may accept and disburse earmarked contributions; (2) the earmarked contributions only count toward the contributors' contributions limits, not ActBlue's contribution limits; and (3) ActBlue must disclose the original source of the earmarked contribution to the ultimate recipient of the contribution (candidate), and the fact that the contribution was earmarked. Thus, ActRight Hawaii should be able to do likewise. A.O. 11-01.

3. *State law disclaimer required:* On ActRight.com, or any other advertisement, ActRight Hawaii must have the following disclaimer: "Published by ActRight Hawaii, [address], [with, or without] the approval and authority of the candidate." HRS 11-391.

4. *State registration required:* In Hawaii, ActRight Fund may establish a noncandidate committee for the purpose of soliciting contributions and making contributions to state candidates. It must file an Organizational Report within 10 days of receiving contributions or making expenditures more than \$1,000 in a two-year election cycle.⁴ HRS 11-321(g). The registration process begins by completing the "Electronic Filing Form-Noncandidate Committee" and mailing it to the Commission office at 235 South Beretania Street, Room 300, Honolulu, HI 96813. The form is available at www.hawaii.gov/campaign. The Chairperson and Treasurer must sign the form. The Commission will then email the username and password to the committee, which must login and file the Organizational Report electronically. Amendments to the Organizational Report must be filed within 10 days of any change. HRS 11-323(b). The depository must be in a bank duly authorized to do business in Hawaii. HRS 11-351.

5. *Reports required:* Contribution and expenditure reports by ActRight Hawaii must be filed with the Hawaii Campaign Spending Commission by 11:59 p.m. of the following due dates⁵:

a. Preliminary Reports: due 10 days before an election, for the period ending 5 days before the due date;

b. Final Primary Report: due 20 days after the primary, for the period ending on primary election day;

⁴If registration is filed within 30 days of an election, it must be filed within 2 days of reaching the threshold.

⁵When any reporting deadline falls on a Saturday, Sunday, or holiday, the reporting deadline shall be the next day that is not a Saturday, Sunday, or holiday. HRS 11-343.

c. Final General Report: due 30 days after a general election, for the period ending on the general election day;

d. Supplemental Reports: January 31, 2013, for activity through December 31, 2012; and July 31st, 11:59 p.m., Hawaii Standard Time, for activity from January 1 - June 30, 2013.⁶ HRS 11-336.

6. *Contribution reports*: For each contribution, ActRight Hawaii must disclose the donor's full name, address, date of receipt and deposit, and contribution amount. And for contributions in excess of \$100 in the aggregate during election cycle, it must also disclose the donor's occupation and employer. HRS 11-335.

7. *Late contribution report*: Each contribution that exceeds \$500 made from 4 to 14 calendar days before the election shall be reported to the Commission within 3 days of receipt, and on the next regular Disclosure Report. HRS 11-338.

8. *Expenditure report*: ActRight Hawaii must disclose the full name, address, date, purpose, and amount expended during the reporting period for all expenditures during the reporting period. HRS 11-335.

9. *Independent expenditures*: The ActRight.com web page supporting Hawaii candidates is an independent expenditure. In Hawaii, independent expenditures by committees are reported the same as other expenditures. HRS 11-335.

10. *Electronic filing* is required. HRS 11-331(d).

11. *Records*: A copy of all reports filed and supporting documentation should be retained for five years. HRS 11-324(g).

12. *Termination*: ActRight Hawaii must continue filing reports until it disburses its fund balance and all creditors have been paid. A "Request for Termination of Registration" must be filed and termination occurs upon approval by the Commission. HRS 11-326.

⁶If aggregate contributions and aggregate expenditures for the election period total \$1,000 or less, only a final election period report is due. Supplemental reports, however, must be filed until the committee's termination. HRS 11-339.

Mr. Michael E. Weaver
Hawaii Campaign Spending Commission
June 7, 2012
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Questions

Please answer the following five questions:

1. Does Hawaii law permit ActRight Fund to establish and register a noncandidate committee (ActRight Hawaii) to act as a conduit, accepting contributions from individuals earmarked for Hawaii candidates?
2. May ActRight Hawaii, acting as a conduit, transfer these earmarked contributions to each such designated candidate, subject only to individual contribution limits per candidate per election period, along with a list identifying the individual contributors as the original sources of the funds?
3. ActRight Hawaii will report the individual contributors as required by Hawaii law, and pursuant to HRS 11-351(c); HAR 3-160-38(b)(1), and A.O. 11-01, candidates will report the original source of the funds. Do the candidates also have to report ActRight Hawaii as the conduit?
4. If the individual contribution limits apply to contributions through ActRight Hawaii as a conduit, is ActRight exempt from the noncandidate committee contribution limits (for contributions to candidates) for those earmarked contributions?
5. Are there any errors in the above summary of Hawaii campaign finance law?

Please contact me if I need to clarify the information or questions provided above. Thank you.

Sincerely,



Barry A. Bostrom
General Counsel
ActRight Fund