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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6997

DATE COMPLAINT FILED: January 8, 2016

DATE OF NOTIFICATION: January 15, 2016

LAST RESPONSE RECEIVED: N/A

DATE ACTIVATED: September 29, 2016

ELECTION CYCLE: 2016

EXPIRATION OF STATUTE OF LIMITATIONS:

Earliest – December 28, 2020

Latest - Ongoing

COMPLAINANT:

Martin Sherman

RESPONDENTS:

Americans Socially United and
Cary L. Peterson in his official capacity as
treasurer

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30102(c)(3), (e)(4)

52 U.S.C. § 30104(a), (b)

52 U.S.C. § 30120

52 U.S.C. § 30124(b)(1)

11 C.F.R. § 100.12

11 C.F.R. § 102.14

11 C.F.R. § 104.3(a)(4)

11 C.F.R. § 110.11

11 C.F.R. § 110.16

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter concerns allegations that an unauthorized political committee — Americans Socially United and Cary Peterson in his official capacity as treasurer (“ASU” or the “Committee”) — solicited and collected online contributions by fraudulently misrepresenting

1 that it was acting on behalf of Presidential candidate Bernie Sanders and his authorized
2 committee, Bernie 2016, Inc. ("Bernie 2016"). The Complainant, who unsuccessfully attempted
3 to obtain a refund from ASU, alleges that ASU misled contributors by soliciting contributions
4 through a website, www.voteberniesanders2016.com, and failed to collect identifying
5 information for contributions as required by the Federal Election Campaign Act of 1971, as
6 amended (the "Act"). The Complainant provided a copy of the website's donation page as it
7 appeared at the time that he made his \$50 contribution.¹ ASU did not submit a response to the
8 Complaint.

9 As set forth below, ASU appears to have solicited and accepted contributions through
10 various websites that fraudulently misrepresented that ASU was acting for or on behalf of
11 Sanders. Additionally, ASU may have failed to collect contributor occupation and employer
12 information at the time contributions were made and properly disclosed such information in its
13 reports filed with the Commission.² Therefore, we recommend that the Commission find reason
14 to believe that ASU violated 52 U.S.C. §§ 30102(c)(3), 30104(b)(3)(A), and 30124(b)(1), and
15 authorize an investigation to determine the full scope of the violations.

16 II. FACTUAL AND LEGAL ANALYSIS

17 A. Factual Background

18 ASU registered with the Commission on February 11, 2015, as an unauthorized

¹ Compl. at 2-4.

² ASU also used the name of a candidate in a special project without showing opposition to that candidate, in potential violation of 52 U.S.C. § 30102(e)(4) and 11 C.F.R. § 102.14(a), but for the reasons explained in this report, we do not make any recommendations as to that violation at this time.

committee.³ Cary L. Peterson is its treasurer.⁴ When ASU originally registered with the Commission, the committee called itself "Ready for Bernie Sanders 2016."⁵ The committee subsequently filed three Amended Statements of Organization with the Commission designating a number of different official committee names, including "Bet on Bernie Sanders 2016,"⁶ and "Bet on Bernie 2016."⁷ After the Reports Analysis Division ("RAD") directed them to remove

³ Statement of Org., Ready for Bernie Sanders 2016 (Feb. 11, 2015).

⁴ Peterson is currently listed as the treasurer for nine committees registered with the Commission, as follows: Alliance Against Disabled Inmate Abuse, American Friends for Micronesia, Congressional Committee on Cuban Affairs, Congressional Committee on Eurasian Affairs, Congressional Committee on Law Enforcement and Public Safety, Congressional Task Force on Human Trafficking, Every Vote Counts Restoring America Super PAC, and Independent National Alliance Committee.

Peterson was arrested in March 2016 and charged with securities fraud and two counts of false certification in previous business dealings in violation of 18 U.S.C. § 1350, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. *See* Crim. Compl. (Mar. 10, 2016) (D. N.J.); *CEO of Microcap Company Charged with Securities Fraud for Falsely claiming Millions in Revenue from Contractors with Nigeria and Other Foreign Countries*, Dept. of Justice Press Release (Mar. 14, 2016), <https://www.justice.gov/usao-nj/pr/ceo-microcap-company-charged-securities-fraud-falsely-claiming-millions-revenue-contracts>. He was released on bail from a New Jersey prison in early June 2016 and, on June 16, 2016, a Statement of Organization was filed with the Commission for "Democrats Socially United," a new super-PAC ostensibly supporting Hillary Clinton in which Peterson is listed as the committee's designated agent and listing the same mailing and e-mail addresses as Americans Socially United. *See* Statement of Org., <http://docquery.fec.gov/pdf/383/201606169018416383/201606169018416383.pdf>; Order Setting Conditions of Release (June 6, 2016), Case No. 16CR230(AET)-01 (D. N.J.); Emma Baccellieri, *After tricking James Bond and being arrested for fraud, Cary Peterson is back with a new PAC*, OPENSECRETS (June 29, 2016), <http://www.opensecrets.org/news/2016/06/after-tricking-james-bond-and-being-arrested-for-fraud-cary-peterson-is-back-with-a-new-pac/>.

Peterson gave an interview in September 2016 during which he briefly references both the criminal case and ASU. *See* David De Livera Interview of Cary Peterson, NEW WORLD ORDER POLITICS YOUTUBE CHANNEL (Sept. 19, 2016), https://www.youtube.com/channel/UCFR7wNQ0WExy9vQ_yI-ktYA. As of the date of this report, the criminal case remains pending in discovery and pre-trial motions; the most recent docket entry in PACER, dated December 22, 2016, shows that the Court appointed a new criminal defense attorney for Peterson.

⁵ Statement of Org., Ready for Bernie Sanders 2016 (Feb. 11, 2015).

⁶ Amend. Statement of Org., Bet on Bernie Sanders 2016 (Apr. 30, 2015). In this Statement, ASU indicated that the Committee planned to establish a separate non-contribution account pursuant to *Carey v. FEC*, 791 F. Supp.2d 121 (D.D.C. 2011). However, ASU did not report making any independent expenditures, so whether ASU actually established such an account is unclear.

⁷ Amend. Statement of Org., Bet on Bernie 2016 (Apr. 30 2015).

Sanders' name from the committee's name,⁸ the committee filed a fourth Amended Statement of Organization changing its name to "Americans Socially United."⁹

Since registering with the Commission, ASU has filed only one disclosure report, the 2015 Mid-Year Report,¹⁰ and has failed to file its 2015 Year-End Report and 2016 April, July, and October Quarterly Reports.¹¹ Peterson submitted a response to RAD's Requests for Additional Information ("RFAIs") on October 15, 2016, stating that ASU was in the process of amending its 2015 Mid-Year Report due to "financial updates," citing "technical issues with [the] filing software," referencing "changes, events, and activities that may have caused delays" in the report filings,¹² and blaming the past due reports on stolen records that were "compromised by a third party in March 2016."¹³ In the response, Peterson asserts that ASU has not been active since March 31, 2016.

ASU's 2015 Mid-Year Report disclosed \$90,690.32 in receipts and \$143,258.83 in disbursements. Most of the reported disbursements were for travel expenses, and there appeared

⁸ RFAI, Bet on Bernie 2016 (May 19, 2015).

⁹ Amend. Statement of Org., Americans Socially United (June 18, 2015).

¹⁰ 2015 Mid-Year Report, ASU (Sept. 16, 2015).

¹¹ In fact, a review of the Commission's website reveals that ASU's treasurer has failed to file reports for any of the other committees he registered with the Commission.

¹² See RFAI for Failure to File, ASU (Mar. 15, 2016, May 3, 2016, and Aug. 2, 2016). To date, the Commission has assessed \$14,300 in civil penalties against ASU under the Administrative Fines Program for the failure to file its 2015 Year-End Report (\$7,150 penalty) and its 2016 April Quarterly Report (\$7,150 penalty). Additional penalties are possible, however, in light of ASU's other unfiled reports. The Commission found reason to believe that ASU failed to file its 2016 July Quarterly Report. ASU may owe \$11,106 for that violation based on an estimated level of activity. A final determination recommendation has not yet been submitted.

In response to RAD's reason to believe ("RTB") letters sent on March 31, 2016 and June 17, 2016, Peterson contacted RAD on July 20, 2016, and explained that he was attempting to reclaim records seized by the FBI to update the reports. Peterson has yet to file any amendments to the 2015 Mid-Year Report.

¹³ See Misc. Report to FEC, ASU (Oct. 15, 2016). The "third party" that Peterson references appears to be the FBI.

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1 to be no direct transfers to the Sanders campaign or payments for services that may have
 2 benefited Sanders.¹⁴ As such, it is unclear whether ASU spent any money in support of
 3 Sanders's candidacy.

4 Among the reported disbursements were nine returned checks totaling \$2,550 for
 5 "incorrect payee name." In Miscellaneous texts submitted with the 2015 Mid-Year Report, ASU
 6 states that "Donor check returned for [sic] item made pay to order of incorrect payee name (e.g.;
 7 'Bernie Sanders for President', 'Bernie 2016', 'Bernie Sanders'). NOTE: Donor was provided
 8 details how to make a donation to Bernie 2016, Inc. Campaign Fund."¹⁵

9 The Complainant alleges that he made a contribution through one of ASU's websites,
 10 <http://voteberniesanders2016.com>, which has since been renamed <http://voteforbernie.net>, under
 11 the mistaken belief that he was visiting an "an official candidate website."¹⁶ The home page of
 12 this site features ASU's logo, which is displayed below.

¹⁴ ASU disclosed some payments for the purpose of "Media Services," but the payees do not appear to be involved in media services or the advertising industry. For instance, EMW Services, one of the vendors ASU paid for "media services," appears to be an IT services company. *See* 2015 Mid-Year Report at 28-30.

¹⁵ *See* 2015 Mid-Year Report.

¹⁶ *See* Compl. at 1. The original website cited in the complaint, www.voteberniesanders2016.com, is no longer active. ASU appears to have changed the URL to <http://voteforbernie.net/>. It appears that ASU maintained a number of other websites in support of Bernie Sanders, including betonbernie.com and pledgesanders2016.com, but some of these sites are no longer active. ASU also maintains various social media accounts using Sanders' name, along with pictures of and quotes from Bernie Sanders. *See* ReadyforSanders 2016, FACEBOOK, <https://www.facebook.com/readyforsanders2016>; @betonbernie, TWITTER, <https://twitter.com/betonbernie>; Ready for Bernie Sanders 2016, YOUTUBE CHANNEL, <https://www.youtube.com/channel/UCnOahuRdMHMxH4wVMxOKYg/feed>; *see also* Committee's Google+ and Pinterest pages available at <https://plus.google.com/+Pledgesanders2016> and <https://www.pinterest.com/enamdb/ready-for-bernie-sanders-2016/>.



In addition, the homepage of <http://voteforbernie.net> displays alternating photographs of Sanders with text overlays reading “BET ON BERNIE! Over 30 years experience as a member of U.S. Congress and active politician” and “MAKE A CONTRIBUTION PLEDGE Make your contribution to Americans Socially United today!” Visitors to the website could make contributions to ASU by clicking on the “Bet on Bernie” tab¹⁷ and the “Donate” tab,¹⁸ and were directed to contact ASU via e-mail at info@voteforbernie.net. Further, the website contains links to Sanders’s official Senate and campaign websites alongside links to ASU’s various online and social media sites.¹⁹ At the time that the Complainant viewed the <http://voteberniesadners2016.com> site, it included the following disclaimer:

BETONBERNIE.COM, PLEDGESANDERS2016.COM, SOCIALLYUNITED.ORG, Americans Socially United is a political action committee registered with U.S. Federal Election Commission - No. C00572537 - All rights reserved. This website was paid for by Americans Socially United (fka Ready for Bernie Sanders 2016 PAC) and is not authorized by any political candidate or party.

¹⁷ Clicking on that tab now leads visitors to a message that the site is no longer accepting contribution pledges but is still accepting direct contributions online or by phone. *See* <http://voteforbernie.net/bet-on-bernie/>.

¹⁸ At the time of the Complaint, the payment site stated “BetonBernie.com – Make a Donation Online Now Supporting Americans Socially United.” Compl. at 3. The payment page was later changed to solicit contributions for “Democrats Socially United for Hillary Clinton – President 2016.” Attach. 2. Now, the payment page states “Vote Donald Trump for Truth Next Month!” Attach. 3. *See also* <https://simplecheckout.authorize.net/payment/CatalogPayment.aspx>.

¹⁹ *See* <http://voteforbernie.net/related-links/>.

In June 2015, Sanders's authorized committee, Bernie 2016, Inc. issued a cease and desist letter to ASU.²⁰ In pertinent part, the letter states that the ASU's websites and social media pages were creating "harmful confusion for supporters" of the Sanders campaign "because they appear to be official pages" for the Sanders campaign and were "therefore intercepting donations which are likely intended for the official campaign."²¹ The letter also asserted that ASU infringed the Sanders campaign's intellectual property rights in connection with the phrase, "Bernie 2016" and the official campaign's logo,²² shown below.



B. Legal Analysis

1. Fraudulent Misrepresentation

The Act prohibits persons from fraudulently misrepresenting themselves as speaking, writing, or otherwise acting for or on behalf of any candidate or agent thereof for the purpose of

²⁰ Letter from Brad C. Deutsch, Counsel to Bernie 2016, Inc., to Cary L. Peterson (June 12, 2015), *available at* <https://assets.documentcloud.org/documents/2401591/cease-and-desist-letter-to-mr-cary-l-peterson.pdf>.

²¹ *Id.*

²² In the letter, counsel for the campaign instructs ASU to take all of its Sanders related websites and social media platforms offline, change its name or terminate, and cease and desist from using the Bernie marks, Sanders' content, and the candidate's name. *Id.* In ASU's response to RFAs, Peterson notes the cease and desist letters, and states that "the matter was cured," and ASU has not received further contact from Bernie 2016, Inc. *See* Misc. Report to FEC, Americans Socially United (Oct. 15, 2016).

1 soliciting contributions or donations.²³ Further, no person shall willfully and knowingly
 2 participate in or conspire to participate in any plan or scheme to engage in such behavior.²⁴
 3 Although the Act requires that the violator have the intent to deceive, it does not require proof of
 4 the common law fraud elements of justifiable reliance and damages.²⁵ Even absent express
 5 misrepresentation, a representation is considered fraudulent "if it was reasonably calculated to
 6 deceive persons of ordinary prudence and comprehension."²⁶

7 To determine whether a person has engaged in fraudulent misrepresentation, the
 8 Commission has previously considered such factors as: (1) whether the respondent political
 9 committee was registered and reporting to the Commission, if required;²⁷ (2) the presence of

²³ 52 U.S.C. § 30124(b)(1); *see also* 11 C.F.R. § 110.16(b)(1). The Commission has previously identified various types of conduct that may support finding reason to believe that a respondent violated these provisions. *See, e.g.,* Factual & Legal Analysis ("F&LA") at 5-6, MUR 6531 (Obama-Biden 2012) (operating under the name "Obama-Biden 2012" and placing the candidate's official logo on respondent's website and on merchandise advertised on its website); F&LA at 2-4, MUR 5495 (johnfkerly-2004.com) (use of a false disclaimer and fake email address, and statements "designed to confuse recipients" that the respondent acted with the authority of a candidate); F&LA at 5, MUR 5472 (Republican Victory Committee) (statements using the word "Republican" that implied contributions would directly support the Republican Party). *See also*, F&LA at 5-6, MUR 6893 (Winning the Senate) (open matter) (finding an e-mail solicitation that displayed the names of candidates as the senders was designed to mislead recipients).

²⁴ 52 U.S.C. § 30124(b)(2); *see also* 11 C.F.R. § 110.16(b)(2).

²⁵ *See FEC v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Tex. 2010) (finding that defendants knowingly and willfully violated 2 U.S.C. § 441h(b) (now 52 U.S.C. § 30124(b))); Disclaimers, Fraudulent Solicitation, Civil Penalties, and Person Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002) (explanation and justification) (citing *Neder v. United States*, 527 U.S. 1, 24-25 (1999)) (distinguishing fraud in federal campaign finance abuses from common law tort action on the basis of Congress intending to penalize schemes as well as actions taken to defraud and the damaging effect of misrepresentation); F&LA at 4, MUR 5472 (Jody Novacek).

²⁶ *Novacek*, 739 F. Supp. 2d at 961; *see also United States v. Thomas*, 377 F.3d 232, 242 (2d Cir. 2004) (citing, *inter alia*, *Silverman v. United States*, 213 F.2d 405 (5th Cir. 1954) (holding that, if the mails are used in a scheme devised with the intent to defraud, the fact that there is no misrepresentation of a single existing fact makes no difference in the fraudulent nature of the scheme); F&LA at 9, MUR 5951 (Californians for Change).

²⁷ F&LA at 10, MUR 6633 (Republican Majority Campaign) (Mar. 7, 2014) ("[w]eighing against a finding of reason to believe that the Respondent violated [52 U.S.C. § 30124(b)] is the fact that [the Respondent] is registered with the Commission and complies with its reporting requirements"); *see also* First Gen. Counsel's Report at 12, MUR 5472 (Republican Victory 2004 Committee) ("failure to file reports with the Commission indicating on what, if anything money raised has been spent may be probative of the Committee's intent to misrepresent itself to the public.").

adequate disclaimers;²⁸ (3) inclusion of statements implying that the respondents acted with the authority of the represented candidate;²⁹ (4) inclusion of statements implying that contributions to the respondent would go directly to the represented candidate;³⁰ (5) mimicry of the candidate's website³¹ or use of the candidate's official logo;³² (6) whether any individuals were in fact misled by the website;³³ (7) and whether the respondent used a name that was misleading.³⁴

Based on the factual record described above, ASU appears to have misrepresented that it was acting on behalf of Sanders's official campaign for the purpose of soliciting contributions. *First*, ASU solicited contributions through various websites with names such as *voteforbernie.net*, *betonbernie.com*, and *pledgesanders2016.com*, designed to create the

²⁸ F&LA at 10, MUR 6641 (CAPE PAC) (Mar. 7, 2014) ([t]he Commission has previously held that the presence of an adequate disclaimer identifying the person or entity that paid for and authorized a communication can defeat an inference that a respondent maintained the requisite intent to deceive for purposes of a section [30124] violation.”).

²⁹ General Counsel's Brief at 14-16, MUR 5951 (Californians for Obama) (Mar. 31, 2011) (recommending probable cause to believe Californians for Obama violated [section 30124] by, *inter alia*, approving a telemarketing solicitation script that stated “We are Senator Obama's California organization to help put the face-of-change in the White House” and where an officer went by the title “State Chairman,” thereby giving “the impression that the organization was the official representative of the national Obama campaign in the State of California.”); Certification, MUR 5951; *see also* First Gen. Counsel's Report at 3, MURs 5543, 5495, 5505 (*johnfkerry-2004.com*) (recommending reason to believe a respondent engaged in express misrepresentation through a website that stated it was “paid for and authorized by John Kerry for President, Inc. 2004”).

³⁰ *Compare, e.g.*, General Counsel's Brief, MUR 5472 at 8 (recommending probable cause in part on the basis of the statement “Contributions or gifts to the *Republican Party* are not deductible as charitable contributions”) (emphasis in original) with F&LA at 10, MUR 6641 (finding no reason to believe statements such as “Help CAPE PAC re-elect Allen West to Congress” led to fraudulent misrepresentation).

³¹ First Gen. Counsel's Report at 3, MURs 5443, 5495, 5505 (recommending reason to believe respondents violated the Act by copying several pages from the candidate's legitimate website).

³² F&LA MUR 6531 (Obama-Biden 2012) (finding reason to believe a respondent violated the Act in part by placing the Obama for America logo on its website and merchandise).

³³ General Counsel's Brief at 14-16, MUR 5951 (recommending probable cause to believe Californians for Obama violated [section 30124] by, in part on the basis that multiple members of the public were in fact misled and contributed money to the respondents under the belief it would be contributed to then-Senator Barack Obama).

³⁴ *Id.*

1 impression that funds contributed would support Sanders's campaign.³⁵ As referenced in Bernie
 2 2016's cease-and-desist letter, ASU's website, <http://voteforbernie.net>, resembles an official
 3 campaign website and is capable of misleading persons of ordinary comprehension into believing
 4 that they were visiting a Sanders-sponsored site. The logo on ASU's site includes a picture of
 5 Sanders with the statement, "Ready for Bernie Sanders 2016," which is similar to the official
 6 campaign's logo and copyrighted term, "Sanders 2016." The site solicits contributions with a
 7 link that states "Bet on Bernie," and it includes a biographical section of the candidate similar to
 8 one found on an official campaign website. ASU's site does not indicate in any prominent
 9 manner that ASU is a separate group, not associated with the Sanders's campaign. Instead, the
 10 only way a viewer can learn that ASU is not an authorized committee is by scrolling down each
 11 web page to a small disclaimer at the very bottom.

12 In fact, the disclaimers on ASU's websites do not cure the fraudulent nature of ASU's
 13 activities.³⁶ Because ASU's disclaimers included the names of websites and/or committees that
 14 incorporated Sanders's name, such as "BETONBERNIE.COM,"
 15 "PLEDGESANDERS2016.COM," and "Ready for Bernie Sanders 2016 PAC," the disclaimers
 16 could have confused website visitors into believing that ASU was associated with or authorized
 17 by the official campaign. Thus, the effectiveness of those disclaimers was diluted by the text of
 18 the disclaimer itself, as well as the rest of ASU's website, which otherwise suggested that ASU
 19 was authorized by Sanders.

³⁵ *Supra* at n. 16.

³⁶ See F&LA at 7, MUR 6893 (Winning the Senate) (open matter) (finding that the effectiveness of a disclaimer in the body of a solicitation e-mail was negated where other features of the communication was "written in a voice designed to perpetuate the belief that [the candidates] personally supported its message"); F&LA at 4 n.2, MUR 5472 (Jody Novacek); Statement of Reasons of Vice Chair Weintraub and Commissioners McDonald, Thomas, and Toner at 2, MUR 5089 (Matta Tuchman for Congress) (finding reason to believe as to fraudulent misrepresentation allegation where disclaimer was obscure).

1 *Second*, ASU's website caused actual confusion among numerous website visitors.
 2 Although reliance is a not a necessary element, it is persuasive in establishing that fraudulent
 3 misrepresentation occurred.³⁷ Here, the Complainant, as well as other individuals, were
 4 apparently misled into contributing to ASU under the belief that they were contributing to
 5 Sanders's campaign.³⁸ ASU's refunds and entries noted on its 2015 Mid-Year Report
 6 demonstrate that numerous contributors made the same mistake. Bernie 2016's June 2015 cease-
 7 and-desist letter further underscored ASU's deceptive practices by stating that ASU's various
 8 websites and social media sites had misled contributors into making contributions to ASU
 9 intended for the official campaign.³⁹

10 *Third*, ASU's repeated failures to file required disclosure reports with the Commission,
 11 particularly before the FBI's seizure of the committee's records, is "probative of the
 12 Committee's intent to misrepresent itself to the public."⁴⁰ In the one disclosure report filed with

³⁷ See 67 Fed. Reg. at 76,969. The Commission has found such information persuasive. See, e.g., F&LA at 4-5, MUR 6531 (Obama-Biden 2012); see also, General Counsel's Brief at 18, MUR 5472 (considering information that "every individual with whom [OGC] spoke . . . believed that the [Respondent Republican Victory Committee] was representing and/or working on behalf of the Republican Party or the RNC" and that "many contributors wrote checks payable to the Republican Party").

³⁸ Compl. at 1. See also, General Counsel's Brief at 14-16, MUR 5951 (Mar. 31, 2011) (recommending probable cause to believe Californians for Obama violated [section 30124] by, in part on the basis that multiple members of the public were in fact misled and contributed money to the respondents under the belief it would be contributed to then-Senator Barack Obama).

³⁹ Letter from Brad C. Deutsch, Counsel to Bernie 2016, Inc., to Cary L. Peterson (June 12, 2015), available at <https://assets.documentcloud.org/documents/2401591/cease-and-desist-letter-to-mr-cary-l-peterson.pdf> (listing the following websites "ready4bernie.com," "betonbernie.com," "pledgesanders2016.com," and following social media sites "plus.google.com/+pledgesanders2016," "facebook.com/readyforsanders2016," and "facebook.com/groups/bet.on.bernie.sanders.2016").

⁴⁰ First Gen. Counsel's Report at 12, MUR 5472 (Republican Victory 2004 Committee) (June 26, 2005) ("failure to file reports with the Commission indicating on what, if anything the money raised has been spent may be probative of ASU's intent to misrepresent itself to the public."). See also Factual & Legal Analysis ("F&LA") at 10, MUR 6633 (Republican Majority Campaign) (Mar. 7, 2014) ("[w]eighing against a finding of reason to believe that the Respondent violated [52 U.S.C. § 30124(b)] is the fact that [the Respondent] is registered with the Commission and complies with its reporting requirements").

1 the Commission, ASU does not report making a single contribution to Bernie 2016⁴¹ or any other
 2 political committee, and we have identified only one \$2,900 in-kind contribution from Jewish-
 3 Latinos for Bernie Bundle for “media relations” that appears to have supported Sanders’s
 4 candidacy.⁴² With respect to the remaining \$140,358.83 in disbursements that ASU claims to
 5 have made, it is unclear if ASU used any of those funds to assist Sanders’s campaign. The lack
 6 of such disbursements is further support of ASU’s fraudulent intent.⁴³

7 Because the factual record appears to establish that ASU fraudulently misrepresented
 8 itself as acting on behalf of Sanders for the purpose of soliciting contributions, we recommend
 9 the Commission find reason to believe that ASU violated 52 U.S.C. § 30124(b)(2).⁴⁴

⁴¹ ASU’s Amended Statement of Organization, filed on April 30, 2015, indicates that the Committee planned to establish a separate non-contribution account pursuant to *Carey v. FEC*, 791 F. Supp.2d 121 (D.D.C. 2011). Thus, However, ASU did not report making any independent expenditures, so whether ASU actually established such an account is unclear.

⁴² See 2015 Mid-Year Report at 24.

⁴³ See *Novacek*, 739 F.Supp.2d at 965 (finding defendant’s actions constituted fraudulent misrepresentation where none of the funds she collected were ever contributed to any political candidate or committee, among other factors); F&LA at 4, MUR 5495 (finding reason to believe that respondents fraudulently misrepresented themselves where no funds received allegedly benefited the candidate).

⁴⁴ ASU also appears to use a candidate’s name in a special project, in possible violation of the Act and Commission regulations. 52 U.S.C. § 30102(e)(4); 11 C.F.R. § 102.14(a). An unauthorized committee may only include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate. 11 C.F.R. § 102.14(b)(3); see also Advisory Op. 1995-9 (NewtWatch PAC) (“The operation of a World Wide Web site would be considered a project of the Committee”); Advisory Op. 2015-04 at 3-4 (Collective Actions PAC) (determining that a committee’s “online activities are ‘projects’ that fall within the scope of 11 C.F.R. § 102.14”). These restrictions on the use of a candidate’s name, however, have recently been the subject of litigation. In August 2016, the D.C. Circuit ruled that the Plaintiff committee was entitled to a preliminary injunction enjoining the application of 11 C.F.R. § 102.14(a) against its website and social media pages as a possible content-based ban on speech. *Pursuing America’s Greatness v. FEC*, No. 15-5264 (D.C. Cir. Aug. 2, 2016). In light of this ongoing litigation, we do not make any recommendations as to the Respondents’ possible violation of 11 C.F.R. § 102.14(a) at this time.

2. Recordkeeping and Reporting of Contributor Information⁴⁵

The Act requires committee treasurers to keep an account of the identification of any person who makes a contribution or contributions aggregating more than \$200 during a calendar year, together with the date and amount of any such contribution.⁴⁶ In the case of an individual, "identification" means a person's full name, mailing address, occupation and the name of his or her employer.⁴⁷ Committees must report such identifying information for each contributor whose contributions exceed \$200 within a calendar year.⁴⁸

The Complainant states that when he made a contribution, ASU failed to collect occupation information from him. The Complaint includes a copy of ASU's donation page, which requests payment and billing information, but not occupation or employer information.⁴⁹ This printout includes a proposed donation amount of \$500, over the \$200 threshold that triggers the requirement to collect occupation and employer information, but does not provide a place where a contributor could provide that information. Based on the information provided by the Complainant and our review of ASU's current website, <http://voteforbernie.net>, it appears that ASU does not collect full identification information as required by the Act. Further, ASU did not provide such identifying information for its contributions in the one disclosure report that it filed with the Commission.

⁴⁵ Although ASU failed to file a number of disclosure reports with the Commission, we are not making any recommendations concerning violations of 52 U.S.C. § 30104(a) because the Commission has already assessed fines for two of ASU's unfiled reports. *See supra* n. 12.

⁴⁶ 52 U.S.C. § 30102(c)(3).

⁴⁷ 11 C.F.R. § 100.12.

⁴⁸ 52 U.S.C. § 30104(b)(3)(A).

⁴⁹ Compl. at 3.

Therefore, we recommend that the Commission find reason to believe that ASU violated 52 U.S.C. §§ 30102(c)(3) and 30104(b)(3)(A).

III. INVESTIGATION

In order to ascertain the full scope of the violations, we propose to investigate the amount of contributions that ASU accepted and the number of refunds made following its 2015 Mid-Year Report.⁵⁰ We intend to review ASU's bank records and documents relating to communications with contributors. We also intend to examine ASU's disbursements to determine whether funds were used to support Bernie Sanders's candidacy. We will attempt to obtain information directly from the treasurer, but in light of his arrest on criminal charges in an unrelated matter and his claim that his records were taken by law enforcement authorities, we recommend that the Commission approve the use of compulsory process as necessary.

IV. RECOMMENDATIONS

1. Find reason to believe that Americans Socially United and Cary L. Peterson in his official capacity as treasurer violated 52 U.S.C. §§ 30102(c)(3), 30104(b)(3)(A), and 30124(b)(1).
2. Approve the attached Factual and Legal Analysis.
3. Authorize the use of compulsory process.

⁵⁰ Without more information, we cannot accurately determine the amount in violation. Specifically, ASU's treasurer has publicly admitted that ASU was active through March 2016, and that it accepted a highly publicized contribution from a famous actor, Daniel Craig. See Misc. Report to FEC, Americans Socially United (Oct. 15, 2016); *David De Livera Interview of Cary Peterson*, NEW WORLD ORDER POLITICS YOUTUBE CHANNEL (Sept. 19, 2016), https://www.youtube.com/channel/UCFR7wNQ0WExy9vQ_y1-ktYA. According to publicly available information, Craig's contribution alone may have been \$47,300 but it was never disclosed to the Commission. See Michael Beckel, *Super PAC that Seemingly Scammed James Bond actor Fined*, CENTER FOR PUBLIC INTEGRITY (Sept. 2, 2016), <https://www.publicintegrity.org/2016/09/02/20156/super-pac-seemingly-scammed-james-bond-actor-fined>.

MUR 6997 (Americans Socially United, *et al.*)
First General Counsel's Report
Page 15 of 15

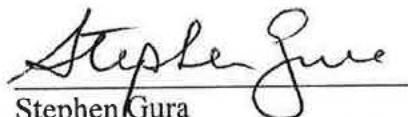
4. Approve the appropriate letters.

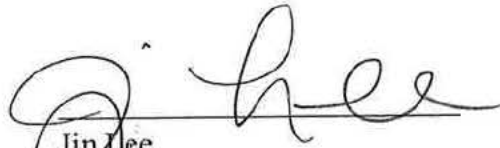
Lisa J. Stevenson
Acting General Counsel

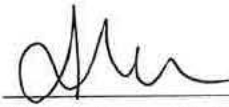
Kathleen M. Guith
Associate General Counsel

1.23.17
Date

BY:


Stephen Gura
Deputy Associate General Counsel for
Enforcement


Jin Lee
Acting Assistant General Counsel


Ana J. Peña-Wallace
Attorney

Attachments:

(2) - (3) Website Screen Shots

MAKE A DONATION ONLINE NOW SUPPORTING DEMOCRATS SOCIALLY UNITED
FOR HILLARY CLINTON - PRESIDENT 2016

Order Information

* Required Fields

Item	Description	Amount
DSU-DONATION	Make A Donation	<input type="text"/>
Please specify the donation amount below. NOTE: Donors contributing more than \$2000 will receive Donor Support Package: t-shirt, yard sign, bumper sticker, & window hanger.		

Total: --

Security Code



Please enter the security code above.

Attachment 2
Page 1 of 1

VOTE DONALD TRUMP FOR TRUTH NEXT MONTH!



Order Information

* Required Fields

Item	Description	Amount
DONATION- DEMOCRATSUNITED	Political Contribution	<input type="text"/>

Total: --

Security Code



Please enter the security code above.

Please see Privacy Policy and Terms & Conditions on this website for details about your rights to make a political contribution upon submitting this online donation.

[Continue](#)

Attachment 3
Page 1 of 1

From: INFO
To: [Ana Pena-Wallace](#)
Subject: FW: MUR 6997 - Americans Socially United - Treasury Case No: 1700787743A - ATTN: Attorney Pena-Wallace@FEC
Date: Thursday, June 01, 2017 10:30:25 AM
Attachments: [Americans Socially United RPFA - Letter to FEC .pdf](#)
[image001.png](#)
Importance: High

This came into the info email account addressed to you.

From: Peterson, Cary [mailto:clpeterson@rpflegal.com]
Sent: Wednesday, May 31, 2017 7:54 PM
To: INFO <info@fec.gov>
Cc: correspondence@conserve-arm.com; pca@pioneer-credit.com; aliu@rpflegal.com
Subject: Re: MUR 6997 - Americans Socially United - Treasury Case No: 1700787743A - ATTN: Attorney Pena-Wallace@FEC
Importance: High

ATTN: Ms. Pena-Wallace

Please see the attached letter which has been copied by email ["CC"] to the associated parties of the subject matter related to Reference ID: MUR 6997 and Americans Socially United.

Regards,

--

Cary L. Peterson, LL.D.
Co-Managing Director



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May 31, 2017

 ATTN: Attorney Ana J. Pena-Wallace
 Federal Elections Commission

Re: MUR 6997 - Americans Socially United - Treasury Case No: 1700787743A

Dear Ms. Pena-Wallace,

I send this letter in response to your letter to Americans Socially United ("PAC") on May 5, 2017.

As the former Treasurer and Chief Advisor to PAC I've been forwarded various letters from collection agencies, US Department of Treasury, and your office regarding a balance due for delinquent filing penalty fees.

Last year communication started with your office's committee advisory, online filing support, compliance/legal departments resolve outstanding matters of PAC while it was active between February 2015 and March 2016.

I was advised to file a FEC Form 99 explaining the reasons why the organization was unable to file pursuant to deadlines and the current status of PAC, in addition to the discontinuation of my involvement with PAC as Treasurer and Chief Advisor.

My request is for the necessary requirement to make closure on this issue regarding PAC and update the records with associated parties that are being copied on this letter.

There were numerous attempts to make online filings following correspondence with your IT Support Department (Ms. Green) and it was unsuccessful due to technical errors that were not in accordance with your web software format. Due to the urgency of this issue regarding PAC my firm has enrolled in 2017 FEC Webinar for Candidate Committees on June 7, 2017 in efforts to learn how to use the software, and meanwhile kindly request if it is possible to submit the required filings for PAC manually and submit documents via certified mail.

Your assistance and response to cure this outstanding matter are very much appreciated.

Respectfully,

Cary L. Peterson, LL.D.

 CC: US Department of the Treasury Bureau of the Fiscal Service;
 Pioneer Credit Recovery, Inc.;
 Continental Service Group, Inc.