



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

By First Class Mail

Joe Centrich, Esq.
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MAY - 8 2018

RE: MURs 7011 and 7092
Socially Responsible Government
and Grace Rogers in her official capacity
as treasurer (f/k/a Feel B.E.R.N.)

Dear Mr. Centrich:

On February 19, June 29, and July 18, 2016, the Federal Election Commission (the "Commission") notified your clients, Socially Responsible Government and Grace Rogers in her official capacity as treasurer (f/k/a Feel B.E.R.N.), of two complaints and a supplement to a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy those complaints were forwarded to your clients on those dates.

Upon review of the allegations contained in the complaints, supplemental complaint, information supplied by you, and other available information, the Commission, on April 24, 2018, found that there is reason to believe that Socially Responsible Government and Grace Rogers in her official capacity as treasurer, violated 52 U.S.C. § 30124(b)(1), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 USC § 30109(a)(4).

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

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If your clients are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650 or apena-wallace@fec.gov.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosure

Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Socially Responsible Government MURs 7011/7092
(f/k/a Feel B.E.R.N.) and Grace Rogers
in her official capacity as treasurer

I. INTRODUCTION

These matters were generated by two complaints filed with the Federal Election Commission (the “Commission”) pursuant to 52 U.S.C. § 30109(a)(1). Complainants allege, among other things, that an unauthorized political committee, Socially Responsible Government and Grace Rogers in her official capacity as treasurer (“SRG” or the “Committee”), violated 52 U.S.C. § 30124(b) of the Federal Election Campaign Act of 1971, as amended (the “Act”) by fraudulently misrepresenting that it acted for, or on behalf of, federal candidate Bernie Sanders for the purpose of soliciting contributions through its website, www.feelbern.org. SRG denies the allegations. It contends that because SRG complied with the relevant registration, reporting, and disclaimer requirements under the Act, it took the proper measures to inform the public that SRG was an unauthorized committee.

SRG’s website misrepresented that SRG and FeelBern.org were part of Sanders’s official campaign, Bernie 2016, Inc. (“Bernie 2016”) by claiming it was the “Committee to Elect Bernie Sanders,” and asking visitors to donate to “support Bernie Sanders’ campaign.” The record also indicates that SRG’s misrepresentations were made with an intent to deceive. Therefore, the Commission finds reason to believe that Socially Responsible Government and Grace Rogers, in her official capacity as treasurer violated 52 U.S.C. § 30124(b).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Fraudulent Misrepresentation**

3 1. Legal Standard

4 The Act provides that no person shall fraudulently misrepresent themselves as speaking,
5 writing, or otherwise acting for, or on behalf of, any candidate or agent thereof for the purpose of
6 soliciting contributions or donations.¹ Further, the Act provides that no person shall willfully
7 and knowingly participate in or conspire to participate in any plan or scheme to engage in such
8 behavior.² Although the Act requires that the violator have the intent to deceive, it does not
9 require proof of the common law fraud elements of justifiable reliance and damages.³ “Even
10 absent an express misrepresentation, a representation is fraudulent if it was reasonably calculated
11 to deceive persons of ordinary prudence and comprehension.”⁴

1 52 U.S.C. § 30124(b)(1); *see also* 11 C.F.R. § 110.16(b)(1).

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

3 *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 Personal 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); Factual and Legal Analysis at 4, MUR 5472 (Jody Novacek).

4 *Novacek*, 739 F. Supp. 2d at 961.

1 2. There is Reason to Believe that SRG Fraudulently Misrepresented Itself as
 2 Acting for or on Behalf of Bernie Sanders for the Purpose of Soliciting
 3 Contributions

4
 5 a. *Factual Background*

6 SRG is an unauthorized political committee supporting Bernie Sanders, who was also a
 7 candidate for President in 2016. When SRG first registered with the Commission in December
 8 2015, it registered under the name “FEEL B.E.R.N.”⁵ After the Commission’s Reports Analysis
 9 Division (“RAD”) instructed the committee to change its name so that it did not include the
 10 name of a federal candidate,⁶ FEEL B.E.R.N. changed its name to SRG on March 7, 2016.⁷

11 SRG operated a website at the URL⁸ www.feelbern.org, which is no longer available.⁹
 12 The title of SRG’s website — as displayed in the browser tab — was “Feelbern – Change We
 13 Need.” On the “About Us” page of the website, SRG described itself as “[f]irst and foremost, []
 14

5 Statement of Organization, FEEL B.E.R.N. (Dec. 28, 2015).

6 Request for Add’l. Info. at 1, Feel B.E.R.N. (Jan. 31, 2016) (“Feel B.E.R.N. RFAI”).

7 Statement of Organization (amended), SRG (Mar. 7, 2016).

8 “URL” stands for uniform resource locator, which is commonly referred to as a web address. The URL provides a means to access a specific web resource on a computer network, *e.g.*, a website on the Internet. In SRG’s web address, the segment “www.feelbern.org” is specifically referred to as the hostname, which is a label that can be used to identify the IP address of the website.

9 Screenshots from this site were attached to the Complaints filed for both MURs 7011 and 7092.

1 a group of big Bernie Sanders fans” whose “ultimate goal is to make a meaningful positive
2 impact on Bernie Sanders’ [sic] campaign for President.”¹⁰ This language on the feelbern.org
3 website was nearly identical to the language on another similarly designed website,
4 www.hc4president.org.¹¹

5 The website’s header and pages featured the following logo indicating SRG as the
6 “Committee to Elect Bernie Sanders”:



7
8 SRG’s website also featured content from Sanders’s official campaign, including a five-
9 minute video entitled “Progress,” embedded in the “About Us” page that displayed the official
10 Bernie 2016 logo, the Bernie 2016 website URL, and a disclaimer indicating that it was “Paid for
11 by Bernie 2016.”¹² When users clicked certain links from a drop-down menu on SRG’s
12 homepage, they were taken directly to pages of Bernie Sanders’ campaign website.

13 SRG solicited contributions throughout the various pages on its website to purportedly
14 support Sanders’s election. Two “Donate Now” buttons appeared on the homepage along with

¹⁰ MUR 7011 Compl., Attach. E (including “About Us” page from the feelbern.org site). SRG states that it will accomplish this goal by “rais[ing] awareness of Sanders’ [sic] stance on the issues,” through get-out-the-vote activities, and by “donat[ing] directly to other volunteer groups that support Bernie in battleground areas.” *Id.*

¹¹ *See id.*, Attach. B. The Complaint in MUR 7011 also discussed the website for another committee, HC4President (“HC4P”).

¹² The embedded video originally appeared on Sanders’s official YouTube Channel and features a disclaimer that it was “Paid for by Bernie 2016.” Bernie 2016, *Progress*, YOUTUBE (July 25, 2015), https://www.youtube.com/watch?v=qyee_sxJpXc.

1 the statement “Stand with Bernie and Donate to our Campaign.” The website informed viewers
2 that it would use contributions for “training volunteers to knock on doors, make phone calls and
3 spread the word about Bernie’s movement” and to pay for get-out-the-vote activities.¹³ In
4 addition, the website indicated that its fundraising would go to a “three pronged media blitz” that
5 would consist of: (1) online media advertising because “it is absolutely essential that the Bernie
6 Sanders campaign reach” young people; (2) tv and radio advertising “to target battleground
7 states where Bernie Sanders has limited exposure”; and (3) word-of mouth, such as grassroots
8 voter drives, where “funds raised [would] be used to pay for informational pamphlets, buttons,
9 bumper stickers, t-shirts, and other campaign swag.”¹⁴ Further, the e-mail that the contributor
10 discussed in the Complaint filed for MUR 7011 received in response to her contribution to HC4P
11 was signed by “Team Bern” and stated that the contribution would go to the “campaign to elect
12 Bernie Sanders.”¹⁵

13 Before changing its name to SRG, the website contained the following disclaimer at the

¹³ MUR 7092 Compl., App. B.

¹⁴ *Id.* at App. E.

¹⁵ MUR 7011 Compl., Attach. D.

1 bottom of each page:

2 Paid for by Feel the Bern Committee (www.feelbern.org) and not
3 authorized by any candidate or candidate's committee –
4 feelbern.org© 2015 All Rights Reserved.¹⁶

5 In a supplement, the Complainant in MUR 7092 submitted a copy of a cease-and-desist
6 letter that Bernie 2016 sent to the FEELBERN.ORG.¹⁷ The letter stated that SRG's website
7 "without authorization, uses close variations of the official trademarks and logos of Bernie 2016,
8 embeds content copied from the Bernie 2016 official website . . . and mimics look-and-feel
9 aspects from the Bernie 2016 website." The letter states that the website "creates supporter
10 confusion" and was intercepting donations that were intended for the official campaign.¹⁸
11 Attached to the letter are numerous pages from SRG's site, including an e-mail subscription page
12 that uses the official Bernie 2016 campaign logo.¹⁹

¹⁶ MUR 7011 Compl. at Attach. E; MUR 7092 Suppl. Compl. (July 15, 2016). Once SRG changed its name from Feel B.E.R.N. to SRG, it also changed the disclaimer to read the following:

Paid for by the Socially Responsible Government (formerly the Feel the Bern Committee) (www.feelbern.org) and not authorized by any candidate or candidate's committee. – feelbern.org© 2015 All Rights Reserved. This private political organization is not to be confused with Bernie Sander's [sic] Official campaign. FEELBERN.ORG, www.feelbern.org.

It is unclear when SRG changed its disclaimer and how long it contained the last line concerning Sanders's official campaign.

¹⁷ MUR 7092 Suppl. Compl.

¹⁸ MUR 7092 Compl.

¹⁹ MUR 7092 Suppl. Compl.

1 *b. Legal Analysis*

2 Based on the information in the record, SRG appears to have fraudulently misrepresented
3 that it was acting for, or on behalf of, Sanders’s official campaign for the purpose of soliciting
4 contributions.

5 SRG identifies itself as the “Committee to Elect Bernie Sanders”.²⁰ In addition, donation
6 banners on the home page ask visitors to “Stand with Bernie and Donate to *our* Campaign,”
7 creating the impression that SRG is acting on behalf of the Sanders campaign and that
8 contributions to SRG would directly benefit Sanders.²¹

9 SRG argues that it did not violate the Act because it properly registered with the
10 Commission as an unauthorized political committee and has filed all required disclosure reports
11 to date. The mere presence of disclaimers is not dispositive here, where the official Bernie
12 Sanders campaign logo “Bernie 2016” appears on a page soliciting subscribers and SRG
13 identifies itself as the “Committee to Elect Bernie Sanders” below its logo. A donation banner
14 ask visitors to “Stand with Bernie and Donate to *our* Campaign,” and the home page displays the
15 message “Donate today to support Bernie Sanders’ campaign,” indicating that the SRG website
16 spoke on behalf of the Sanders campaign and that contributions to SRG would directly benefit
17 Sanders. Finally, the complaint attached a contribution thank you letter from www.feelbern.org,
18 signed by “Team Bern,” and stated that the contribution would go to the “campaign to elect

²⁰ *Supra* at 4.

²¹ Its use of the collective “our Campaign” is very similar to references to “our Party” found to be fraudulent in MUR 5472 (Republican Victory 2004 Committee). Certification, MUR 5472 (Oct. 21, 2008); *see* Gen. Counsel’s Brief at 8, 18, MUR 5472 (June 19, 2007) (“I’m grateful *our Party* can count on your help to support Republicans across the country win elections” and “The Republican Party can count on my support to help candidates at the state and local level. I’m proud to help *our Party* prepare for the November elections.”) (emphasis in original).

1 Bernie Sanders.”²² Thus, despite the presence of a disclaimer, there is a sufficient basis to find
2 that SRG misrepresented itself as acting on behalf of Bernie Sanders with an intent to deceive.

3 Because SRG’s website fraudulently misrepresents SRG as acting on behalf of Sanders,
4 the Commission finds reason to believe that SRG violated 52 U.S.C. § 30124(b)(1).

²² MUR 7011 Compl., Attach. D.