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May 31, 2016

BY HAND DELIVERY

Mr. Dan Petalas
 Acting General Counsel
 Federal Election Commission
 999 E Street, N.W.
 Washington, DC 20463

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Re: MUR 7035 - Response of Bernie 2016 and Susan Jackson in her capacity as Treasurer

Dear Mr. Petalas:

This response is submitted on behalf of the above-referenced respondents in response to the April 11, 2016, letter from the Commission notifying Bernie 2016 (the "Campaign") and Ms. Jackson (collectively, "Respondents") of a complaint ("Complaint") filed by William L. O'Brien ("Complainant"), designated by the Commission as MUR 7035.

Relying entirely on a single Project Veritas¹ video that the Complainant accessed via YouTube,² the Complaint alleges that when Australian citizens volunteered for the Campaign, the Campaign received and accepted a prohibited foreign contribution.

As demonstrated below, the Campaign did not receive or accept any such foreign contribution because all of these individuals were volunteers subject to explicit exemptions for uncompensated volunteer personal services found both in the Federal Election Campaign Act of 1971 (the "Act") and in the

¹ Project Veritas, which Time Magazine has characterized as a "conservative group," appears to have a penchant for infiltrating candidate campaigns posing as volunteers. See <http://time.com/4010778/hillary-clinton-sting-project-veritas/>. See also <https://www.youtube.com/channel/UCFE8w-v6Gg4j3ze3oX-urEw>.

² <https://www.youtube.com/watch?v=p7kPlWAzvU4>.

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Commission's regulations. Accordingly, for the reasons set forth below, and pursuant to 52 U.S.C. § 30109, this matter should be dismissed.

I. Travel to the United States was not a Contribution to the Campaign.

The Australian citizens (the "Australians") who served as uncompensated volunteers with the Campaign once they arrived in the United States,³ came to the United States as part of a program sponsored and organized by Australian Labor International ("ALI"). The Australians were not campaign volunteers prior to their arrival in the United States and the Campaign did not authorize or request that any of the Australians come to the United States, nor did the Campaign authorize or request that anyone pay for their travel expenses.

In *Buckley v. Valeo*, the Supreme Court specifically concluded that "only travel that is 'authorized or requested' by [a] candidate"⁴ or "at the direction of the candidate or his staff"⁵ can be considered a contribution if paid for by someone other than the Campaign.⁶ And as the Supreme Court noted, "administrative chaos would be produced if each volunteer and candidate had to keep track of amounts spent on unsolicited travel in order to comply with the Act's contribution and expenditure ceilings and the reporting and disclosure provisions."⁷

Accordingly, because the Campaign did not authorize or request that any of the Australians come to the United States, any payment by a third party for such travel was not a contribution to the Campaign.

II. Uncompensated Volunteer Services Are Not Contributions Under the Act

Although foreign nationals are prohibited from making contributions in Federal elections,⁸ the Act and Commission regulations explicitly provide that the term "contribution" does not include "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or

³ The Australians served as volunteers for the Campaign in Iowa, New Hampshire and Nevada.

⁴ *Buckley v. Valeo*, 424 U.S. 1, n.43 (1976).

⁵ *Id.* at 37.

⁶ See Statement of Reasons of Vice-Chair Petersen and Commissioners Hunter and McGahn, *MUR 5937 (Romney)* (concluding that a "campaign must make a specific request to travel as an agent of the candidate or committee") available at <http://eqs.fec.gov/eqsdocsMUR/29044230007.pdf>; Statement of Reasons of Commissioners Bauerly and Weintraub, *MUR 5937 (Romney)* ("travel undertaken independently of a campaign is not subject to the limits of the Act") available at <http://eqs.fec.gov/eqsdocsMUR/29044230558.pdf>. See also, General Counsel Report #3, *MUR 5020 (Harrah's Entertainment, Inc.)* ("the cost [] incurred in purchasing his own plane ticket to attend the fundraiser does not constitute an in-kind contribution on behalf of the candidate or to the Committee") available at <http://eqs.fec.gov/eqsdocsMUR/000021DB8.pdf>.

⁷ *Buckley, supra*, 424 U.S. 1 at n.43.

⁸ See 52 U.S.C. 30121; see also 11 CFR 110.20(b). A "contribution" is defined as: (1) "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office," or (2) "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 52 U.S.C. 30101(8)(A)(i) and (ii); see also 11 CFR 100.52 and 100.54.



political committee.”⁹ Moreover, the Commission has confirmed in numerous Advisory Opinions and enforcement matters that the exemption for uncompensated volunteer personal services extends to foreign nationals.¹⁰

As discussed above, travel by the Australians to United States was neither authorized nor requested by the Campaign. However, once the Australians arrived in the United States and once they volunteered to work for the Campaign, they were not compensated by the Campaign and, to the best of the Campaign’s knowledge, they did not receive compensation from any outside party other than a stipend from ALI to cover meals and incidental living expenses.¹¹

III. Payment of a Stipend Is Not a Contribution

Just as the Commission has confirmed on multiple occasions that the exemption for uncompensated volunteer personal services extends to foreign nationals, the Commission has also confirmed that subsistence stipends unrelated to “the provision of personal services to federal campaigns” does not constitute a contribution, especially where the recipient of a stipend has a long-standing previous relationship with the entity providing the stipend.¹²

IV. Conclusion

For the reasons discussed above, no contribution to the Campaign resulted from the Australians providing uncompensated volunteer services to the Campaign consistent with sections 30101(8)(B)(i) of the Act and 100.74 of the Commission’s rules.¹³

⁹ 2 U.S.C. 30101 (8)(B)(i); 11 CFR 100.74.

¹⁰ See Advisory Opinions 2014-20 (*Make Your Laws PAC, Inc.*), 2007-22 (*Huryysz*), 2004-26 (*Weller*) and 1987-25 (*Otaola*) (all concluding that foreign nationals may volunteer uncompensated personal services without making a contribution because the value of uncompensated volunteer service is specifically exempt from the definition of contribution); Factual and Legal Analysis, *MURs 5987, 5995 & 6015 (Hillary Clinton for President)*, available at <http://eqs.fec.gov/eqsdocsMUR/29044230266.pdf>. See also *FEC Campaign Guide for Congressional Candidates and Committees* (2014), pp. 39-40 (“an individual who is a foreign national may participate in campaign activities as an uncompensated volunteer”). The Campaign notes that none of the Australians participated in any way whatsoever in the Campaign’s decision-making process. See 11 CFR 110.20(i).

¹¹ To the best of the Campaign’s knowledge, all of the Australian volunteers were housed either in accommodations provided by other Campaign volunteers or at Campaign expense in Campaign staff housing alongside other Campaign volunteers and staffers.

¹² See Advisory Opinion 2015-14 (*Hillary for America*), p. 3.

¹³ 2 U.S.C. 30101 (8)(B)(i); 11 CFR 100.74. As discussed above, although the Campaign was aware that the Australians were foreign nationals, it was the Campaign’s understanding at all times while the Australians were working for the Campaign that they were doing so as uncompensated volunteers. Although the Campaign does not have any information to contradict this understanding, in the unlikely event the Commission may determine otherwise, at most the Campaign inadvertently and unknowingly received an in-kind contribution and there would still be no reason to believe the Campaign violated any Commission rules because the Campaign would not have knowingly accepted or received the contribution. See 11 CFR 114.2(d) (restriction is limited to “knowingly accepting or receiving any contribution prohibited by this section”).



Accordingly, the Complaint should be dismissed.

Respectfully Submitted,

Brad Deutsch
Counsel to Bernie 2016

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