

SANDLER REIFF

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May 31, 2016

Jeff S. Jordan
Office of the General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20462

Re: MUR 7035

Dear Mr. Jordan,

This response is filed on behalf of our client, the Australian Labor Party ("ALP"), to the above-referenced Complaint. The Complaint alleges that the ALP has violated the Act by making prohibited foreign contributions to Bernie 2016 by providing travel and stipends to its Delegates who were embedded with Bernie 2016. The complaint, which appears to be based on a report by Project Veritas Action fund, depicts video footage of individuals who were sent by the ALP as "Delegates" to the United States to observe American elections and to learn best practices from both Sanders 2016, as well as America Votes Partner Organizations.¹ As explained below, the stipends and travel expenses ALP provided to Delegates were not contributions or expenditures under the Federal Election Campaign Act of 1971, as amended ("the Act") or Commission regulations, and ALP has not violated 52 U.S.C. § 30121(a). ALP respectfully requests that the Commission dismiss the Complaint and take no further action in the matter.

Factual Background

In 2016, ALP sent 14 individuals, referred to as "Delegates," to observe the U.S. primaries in New Hampshire, South Carolina, Iowa and Nevada. The Delegates were embedded with Bernie 2016 (the "Campaign") and America Votes, a 501(c)(4) organization, for a 4-5 week period. The delegates traveled to the U.S. as part of ALP's international program run by Australian Labor International ("ALI") under the Kurt Steel Campaign Exchange Program ("the Program"). The program is funded under the Australian Political Parties for Democracy Program ("APPDP").

¹ The video appears to show ALP delegates, who were embedded with Bernie 2016 staffers and volunteers stealing and replacing political yard signs. It should be noted that the ALP does not condone such activities and the travel stipends paid to those delegates were discontinued upon learning of their actions.

In addition to the United States, ALP has sent delegates to countries all over the world as part of its international program to engage with progressive, social democratic and Labor parties. These countries include; England, New Zealand, Ireland, Canada, Germany, Norway, Spain, Netherlands, France, Belgium, Italy, Malta, Israel, India and China. Exchange activities that have specifically involved embedding delegates with political parties for a 4-5 week period, similar to the ALP's recent engagement with Bernie 2016 and America Votes, include the USA, New Zealand, Israel and the United Kingdom. As the name implies, the Exchange Program's objectives are to strengthen bilateral links with political parties, progressive organizations and think tanks to further the dissemination of best practices and skills in progressive policy development. As explained below, the primary purpose of the Exchange Program is not to influence elections but learn from progressive and social democratic programs across the world. To be sure, sending a handful of individuals to a Presidential campaign in the United States will not have any discernable influence on the election.

ALP has also sent delegates to the United States in previous years. During the 2014 midterms, 8 delegates were hosted by the New Organizing Institute and in 2010, 5 Delegates were hosted by the Democratic Congressional Campaign Committee. In 2010, 2012 and 2014, delegates participated in a study of the October-November elections hosted by the State Department.

For the 2016 United States program, ALP contacted Bernie 2016, Hillary for America and America Votes to ask if they were willing to allow Delegates to be embedded with their programs. Both Bernie 2016 and America Votes agreed and assisted Delegates with finding supporter housing.

ALP selected its 14 delegates through an extensive application program. ALP advertised the opportunity through its email list and other avenues. Interested individuals were required to send a resume, cover letter and expression of interest letter and when selecting delegates, ALP considered campaign experience, candidate's perceived ability to use findings to advance future progressive campaigning in Australia, gender balance and equitable representation between state and territory branches.

Delegates were not compensated for their time in the U.S. nor did their relationship with ALP constitute an employment relationship. One of the delegates is directly employed by ALP, however, she took leave to participate in the Program.² All delegates were required to take leave from their employer as a condition of participating in the program. ALP paid for the Delegates' airfare and provided them with AU\$60 travel stipend. Accommodations were provided by volunteers on the respective campaigns.

² The ALP denies the statement made by Sandeep Sarath in the video that three of the four New Hampshire "volunteers" were "full-time employees" of the Australian Labor Party. See Complaint at p.2.

The delegates were required to submit detailed written reports about their learnings about their learnings and conclusions at the completion of their trips. A sample of these reports are attached as Exhibit A.³

Argument

1. The Program is not a contribution or expenditure to Bernie 2016.

The Act and Commission regulations prohibit a foreign national from making any contribution in connection with a federal election. 52 U.S.C. § 30121(a). A contribution includes “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)(ii); 11 C.F.R. § 100.54. However, stipends and travel expenses provided to individuals, even when personal services are provided, do not constitute compensation for personal services within the meaning of the Act, in certain circumstances. AO 2015-14 (Hillary for America II) at 4-5 (“...just because DePauw offered to compensate Ms. Houghtalen for her travel and subsistence expenses and the Committee received Ms. Houghtalen’s personal services does not mean that DePauw’s stipend would be compensation for the provision of these personal services to the Committee under the Act.”).

The Delegates were not performing services for a political committee. The Program’s purpose is to strengthen bilateral links with political parties, progressive organizations and think tanks and for ALP to learn best practices and skills in progressive policy development. Delegates were instructed to observe their America Votes and Bernie 2016 hosts, learn about innovations in voter contact, and develop relationships with progressive campaigners in the United States.

The purpose statements in the Delegate Reports provided in Attachment A demonstrate the purpose of the Program. Examples include:

- Purpose: Bernie Sanders policies are in line with the kind of democratic social policies that the ALP has implemented in Australia. This is an opportunity to see how a progressive Democratic candidate campaigns on similar issues in the USA.
- Purpose: The purpose of the Kurt Steel Exchange Program is to experience and observe the Bernie 2016 campaign in the Democratic Primary elections in New Hampshire, America. Whilst I aimed to gain a broad over view [sic] of the Bernie 2016 campaign, I specifically wanted to observe the campaigns [sic] field program.
- Purpose: Travel to New Hampshire, a key state, to observe the Bernie Sanders 2016 primary campaign. With over 6800 volunteers and more than 100 staff in state, this presented an outstanding opportunity to develop an understanding of how the campaign uses these resources to transfer this knowledge to Australian campaigns.

³ Exhibit A has been marked “Confidential and Privileged Business Information” pursuant to the Freedom of Information Act Exemption 4.

- **Purpose:** Kurt Steel Campaign Exchange Program is intended for experienced Labor campaigners to observe and learn from the Democratic Party, during the United States Presidential Primaries.
- **Purpose:** The aim of the Kurt Steel Exchange Program to the United States was to observe and learn from the Presidential campaigns and progressive organisations throughout the Democratic Presidential Primaries.

As part of the Program, the Delegates did engage in hands-on practical experience to see how the tools the campaigns were using worked. This included using predictive dialer call systems, participating in volunteer recruitment meetings and joining field organizers while they canvassed. These activities, were educational and not intended to provide personal services to federal campaigns. Further, any personal services provided by Delegates to the Campaign were on the Delegates' own time, outside the bounds and purpose of the Program, and permissible uncompensated volunteer services. See AO 1987-25 (Otaola).

In sum, the ALP did not send the Delegates to the United States to perform personal services while embedded with either Bernie 2016 or America Votes. The primary purpose of the Program is not to influence elections but to exchange ideas regarding progressive and social democratic ideas across the world. To be sure, a handful of individuals to a Presidential campaign in the United States will not have any discernable influence on the election. Even if they were performing services, these services do not constitute compensation for personal services within the meaning of the Act.

2. The stipends and travel expenses were not compensation for personal services provided by Delegates to Bernie 2016.

In *Hillary for America II* ("HFAII"), the Commission held that a stipend from DePauw University for travel and subsistence to a student interning with Hillary for America does not constitute compensation for personal services within the meaning of the Act. The student engaged in substantive work for HFA, which the requestor and Commission agreed provided a service to HFA, and accordingly, the Committee received the benefit of the intern's personal services. The Commission reviewed the selection criteria for stipend recipients, the amount of the stipend in connection to financial expenses of the student, and the purpose of the program. Because the grant stipends were provided for bona fide educational objectives, not for the provision of personal services to federal campaigns, the Commission held that the stipends were not compensation for personal services to the Committee and not a contribution or expenditure under 52 U.S.C. § 30101(8)(A)(ii). HFAII at 6.

Here, the stipend and travel expenses are for bona fide educational objectives, not for the provision of personal services to federal campaigns. The Program has been run in countries all over the world to educate Delegates, the ALP and progressive partners about the best practices for progressive campaigns. The targeted host groups that ALP reached out to are consistent with its mission and past activities of placing Delegates in Programs with progressive, social democratic and Labor parties. In addition to Bernie 2016, Delegates were hosted by America

Votes, a 501(c)(4) organization. In past years, Delegates have been hosted by the Democratic Congressional Campaign Committee and the State Department. Delegates have also been placed with the New Zealand Labour Party in 2014, The Israeli Labor Party in 2015, and the UK Labour Party in 2015. The objective of all of these programs, are to educate Delegates and ALP, not to provide services to the various parties, candidates and organizations.

The stipend and travel expenses were solely provided to Delegates to provide financial support for the basic travel and subsistence expenses incurred during their experience, not to compensate them for services provided to the organization for which they are placed. The stipend amount was not dependent on the entity in which the Delegate was placed, the number of hours he or she spent with the Campaign or America Votes, or the economic value of any work he or she performed. See HFAII at 5-6 (Stipends for basic travel and subsistence expenses are not to compensate them for services provided to the organizations for which they intern.).

Finally, the Delegates were required to submit detailed written reports about their learnings and conclusions at the completion of their trip. As shown in Exhibit A, these reports were detailed and similar in nature to the blog entries DePauw interns were required to submit according to HFAII. The Delegates' reports included purpose statements, key outcomes, contact lists, commentary, and lessons for the ALP, and supporting documents.

Therefore, ALP's stipend to the Delegates is not compensation for personal services provided by the Delegates to the Campaign and is not a contribution or expenditure under 52 U.S.C. § 30101(8)(A)(ii).

3. Payment for Delegate travel costs are not contributions or expenditures.

The travel costs for ALP Delegates are not contributions to the Campaign as these costs were not incurred "on behalf of any candidate."⁴ The Act exempts "unreimbursed payment for travel expenses made by an individual on behalf of any candidate... to the extent that the cumulative value...does not exceed \$1,000 with respect to any single election" from the definition of contribution.⁵ "The corollary to the exception is that travel expenses that are not incurred "on behalf of any candidate" are not considered contributions, regardless of whether such expenses exceed \$1,000."⁶ As the Court in *Buckley v. Valeo* held, "...only travel that is 'authorized or requested' by the candidate or his agents would involve incidental expenses chargeable against the volunteer's contribution limit."⁷

In MUR 5937, Romney for President hosted a fundraising event in Boston, Massachusetts. The following day, the Campaign rented Banknorth Garden, at which attendees could deliver the contributions they had raised, call friends and colleagues to solicit contributions

⁴ MUR 5937 (Romney for President), Matthew S. Peterson, Caroline C. Hunter, and Donald F. McGahn II, Statement of Reasons, March 10, 2009 at 2.

⁵ 52 U.S.C. 30101(8)(B)(iv); 11 C.F.R. §100.79.

⁶ MUR 5937 Statement of Reasons at 2.

⁷ 424 U.S. 1, 37 n.43.

for the Campaign, consume food and drinks, and otherwise socialize with other supporters. Kem Gardner chartered a plane to travel to the event. He invited friends and family members to accompany him on the flight. The Campaign knew about the chartered flight and arranged for ground transportation for the flight's passengers. However, the campaign did not ask Mr. Gardner, or any other individual, to provide the travel for other attendees. Commissioners Peterson, Hunter and McGahn determined that the travel was not made "on behalf of" or "authorized or requested" by the Campaign, and therefore not a contribution to the Campaign.⁸

Here, the airfare provided to the Delegates by ALP was not made "on behalf of" or "authorized or requested" by Bernie 2016. Bernie 2016 did not request that the Delegates travel to the United States nor did it invite the Delegates. At the Program's inception, ALP reached out to Bernie 2016, America Votes and Hillary for America to ask if the groups would accept the ALP delegates and if they would find supporter housing while they were there. Their travel was not undertaken "at the direction of the candidate."⁹ Therefore, travel costs for ALP Delegates are not contributions or expenditures to the Campaign.

Conclusion

The Delegates participating in the Program were not performing personal services while embedded with Bernie 2016. The primary purpose of the Program is not to influence elections but to exchange ideas regarding progressive and social democratic ideas across the world. To be sure, sending 3 to 4 individuals to a Presidential campaign in the United States will not have any discernable influence on the election. The stipend and travel expenses provided to Delegates were merely to cover basic living expenses during their experience, not to compensate them for personal services to the Campaign. Finally, the airfare provided to the Delegates by ALP was not made "on behalf of" or "authorized or requested" by Bernie 2016. Therefore, the stipends and travel expenses provided to Program Delegates were not contributions or expenditures under the Act, and ALP has not violated 52 U.S.C. § 30121(a). ALP respectfully requests that the Commission dismiss the Complaint and take no further action in the matter.

Sincerely,



Neil Reiff
Dara Lindenbaum
Counsel to the Australian Labor Party

⁸ MUR 5937 Statement of Reasons at 7.

⁹ *Id.* at 2.