

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

2016 DEC -7 PM 3:32

MUR: 7035 **CELA**
DATE COMPLAINT FILED: April 4, 2016
DATE OF NOTIFICATION: April 11, 2016
DATE OF LAST RESPONSE: May 31, 2016
DATE ACTIVATED: August 9, 2016

EXPIRATION OF SOL: January 1, 2021 (earliest)
to March 30, 2021 (latest)
ELECTION CYCLE: 2016

COMPLAINANT:

William L. O'Brien

RESPONDENTS:

Australian Labor Party
Bernie 2016 and Susan Jackson in her
official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(8)(A)(ii)
52 U.S.C. § 30101(8)(B)(i)
52 U.S.C. § 30101(8)(B)(iv)
52 U.S.C. § 30121(a)(1)(A)
52 U.S.C. § 30121(a)(2)
11 C.F.R. § 100.54
11 C.F.R. § 100.74
11 C.F.R. § 110.20(b)
11 C.F.R. § 110.20(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that the Australian Labor Party ("ALP") made a prohibited foreign national contribution to the campaign of then-Presidential candidate Bernie Sanders by paying for Australian citizens to work on Sanders's campaign in four states. The Complaint also alleges that Bernie 2016 and Susan Jackson in her official capacity as treasurer ("Committee" or "Bernie 2016"), Sanders's principal campaign committee, knowingly accepted the prohibited

1 contribution. In response, ALP asserts that it sent the "delegates" to observe American elections
2 and that no contribution resulted. The Committee asserts that the Australians were
3 uncompensated volunteers, and that the stipends it paid them did not constitute contributions in
4 violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

5 As discussed below, the available information indicates that ALP made, and the
6 Committee knowingly accepted, prohibited foreign national in-kind contributions in the form of
7 stipends and flight costs for the delegates. Accordingly, we recommend that the Commission
8 find reason to believe that ALP violated 52 U.S.C. § 30121(a)(1)(A) and that the Committee
9 violated 52 U.S.C. § 30121(a)(2), and approve an investigation.

10 II. FACTS

11 The ALP is an Australian political party.¹ According to ALP, it sends "delegates" around
12 the world, including the United States, as part of its international exchange program "to engage
13 with progressive, social democratic and Labor parties."² Exchange activities have "involved
14 embedding delegates with political parties for a 4-5 week period, similar to the ALP's recent
15 engagement with Bernie 2016 ..., " with the objectives of "strengthen[ing] bilateral links with
16 political parties, progressive organizations and think tanks to further the dissemination of best
17 practices and skills in progressive policy development."³

¹ ALP Resp. at 1. ALP has an international component funded by the Australian Political Parties for Democracy Program ("APPDP"). See Marian Sawyer, *Inside Story*, "Democratic by Name, Secretive by Nature," Feb. 26, 2016 ("Under the APPDP, the Liberal and Labor parties each receive \$1 million per year... for work that contributes to 'strengthening democracy internationally.'") (available at <http://insidestory.org.au/democratic-by-name-secretive-by-nature>). Although ALP explained in its Response that the source of its campaign exchange funding was APPDP, ALP does not suggest that it did not make the payments at issue.

² ALP Resp. at 2. Based on information in ALP's Response, Bernie 2016 appears to be the first candidate committee with which ALP has placed delegates; ALP sent delegates to the Democratic Congressional Campaign Committee in 2010. See *id.*

³ *Id.*

1 For the 2016 program, ALP contacted the Committee and two other entities, Hillary
2 Clinton's campaign committee and America Votes, a 501(c)(3) coalition of progressive nonprofit
3 groups, "to ask if they were willing to allow [d]elegates to be embedded with their programs."⁴
4 The Sanders Committee and America Votes "agreed," and, after an "extensive" application
5 process, ALP selected 14 delegates and sent them to New Hampshire, South Carolina, Iowa, and
6 Nevada for four-to-five week periods.⁵ ALP states that all delegates were required to take leave
7 from their employers, including one delegate ALP employed.⁶ ALP paid the delegates' airfare
8 plus a daily stipend of approximately \$46 (USD).⁷ Delegates were housed by campaign
9 volunteers or in campaign-provided staff housing.⁸ Delegates were required to report to ALP on
10 their experiences.⁹

11 According to ALP, delegates engaged in "hands-on practical experience[s] to see how the
12 tools the campaigns were using worked."¹⁰ Committee delegates themselves reported that they
13 used predictive dialer call systems, participated in volunteer recruitment meetings, and canvassed
14 voters with field organizers, among other activities.¹¹ The Committee's Response does not
15 describe the work the delegates performed.

⁴ *Id.*

⁵ *Id.* at 1-2.

⁶ *See id.* at 2.

⁷ *Id.*

⁸ *Id.* and Committee Resp. at 3 n.11.

⁹ ALP Resp. at 3. ALP attached to its Response the reports of six delegates.

¹⁰ *Id.* at 4.

¹¹ *Id.* and attachments.

1 **III. ANALYSIS**

2 The Complaint alleges that ALP paid for Australian citizens to travel to the United States
3 and work for Bernie 2016.¹² The Complaint bases its allegations on a video containing, among
4 other things, footage of ALP delegates describing how the ALP paid all their expenses and sent
5 workers to Bernie 2016 field offices in New Hampshire and other states.¹³

6 Complainant focuses on three types of costs ALP paid that it alleges constitute prohibited
7 in-kind foreign national contributions: the flights from Australia to New Hampshire and other
8 states, housing, and food for the delegates.¹⁴ The Complaint alleges that these costs exceeded
9 "tens of thousands of dollars."¹⁵ The Complaint further alleges that the ALP workers were not
10 volunteers, several individuals were paid ALP staff, and the Committee knowingly accepted the
11 contributions.¹⁶

12 **A. There Is Reason to Believe that ALP's Stipends to Delegates Constitute**
13 **Prohibited In-Kind Foreign Contributions**

14
15 The Act prohibits any foreign national from making "a contribution or donation of money
16 or other thing of value" in connection with a federal, state, or local election.¹⁷ A "foreign

12 Compl. at 2.

13 Compl. at 2-3. See <http://www.projectveritasaction.com/video/australian-labor-party-assisting-democratic-us-campaigns-violation-campaign-finance-laws> ("Project Veritas video").

14 *Id.* at 2-5.

15 *Id.* at 5.

16 *Id.* at 4. The Complaint further alleges that ALP engaged in "prohibited foreign intervention, perhaps in furtherance of its international goals of eliminating national borders." *Id.* at 5. The Complaint does not allege how this activity violates FECA. The Complaint also requests that any criminal violations be referred to the Department of Justice. *Id.*

17 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

1 national” means a foreign principal, which includes a “foreign political party.”¹⁸ A
2 “contribution” includes “the payment by any person of compensation for the personal services of
3 another person which are rendered to a political committee without charge for any purpose.”¹⁹
4 “Contribution” does not include, however, “the value of services provided without compensation
5 by any individual who volunteers on behalf of a candidate or political committee.”²⁰ The Act
6 and Commission regulations also prohibit persons from knowingly soliciting, accepting, or
7 receiving a contribution or donation from a foreign national.²¹

8 The Commission has long held that stipends and scholarships funded by corporations,
9 including non-profit corporations, to interns for campaign-related activities are contributions
10 under the Act and are subject to source prohibitions. Advisory Opinion 1979-67 (RNC-DNC)
11 (“AO 1979-67”) involved a university’s graduate-level program to place high school teachers at
12 a national party committee and at a Senate or Congressional office or campaign headquarters.
13 The source of the scholarship funds awarded to the teachers would include corporations. The
14 Commission “recognize[d] the basic educational purpose of the proposed intern program. There

¹⁸ 52 U.S.C. § 30121(b)(1), referencing 22 U.S.C. § 611(b)(1).

¹⁹ 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54.

²⁰ 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.74.

²¹ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

1 would be, however, a contribution in-kind if the interns engage in activity related to the
2 campaigns of individuals seeking Federal office."²²

3 In Advisory Opinion 2015-14 (Hillary for America) ("AO 2015-14"), the Commission
4 again considered the stipend question and concluded that, under those facts, a university's
5 payment of a non-specific \$3,000 stipend to an undergraduate student volunteering for a
6 candidate's campaign would not constitute a prohibited corporate contribution.²³ The
7 Commission determined that the "stipends are provided to students for *bona fide* educational
8 objectives, not for the provision of personal services to federal campaigns."²⁴ Thus, even though
9 the university student provided "substantive work" to the Clinton Committee, including helping
10 with vetting, the stipend was not offered or received as compensation for the provision of the
11 personal services.²⁵ Instead, the Commission found that the sole purpose of the stipend was to
12 assist students with an educational experience in a wide variety of settings.²⁶ In addition, the

²² Advisory Op. 1979-67 (RNC-DNC) at 2. *See also* Advisory Op. 1985-17 (Congressional Youth Leadership Council) at 2 (corporate funding of CYLC internship permissible as long as intern is not compensated for any Federal election activity); Advisory Op. 2003-20 (Reyes) (same). *Cf.* MUR 6959 (DNC) (Commission found no reason to believe that DNC accepted a prohibited foreign national contribution by allowing a foreign national citizen to intern at DNC where the intern's stipend was paid as in-kind contributions by permissible donors.) That MUR also involved an allegation that the intern participated in the decision-making process of a political committee with regard to election related activities, in violation of 11 C.F.R. § 110.20(i). Here, the Complaint makes no such allegation and the available facts, including the delegates' reports, do not suggest that the delegates participated in decisions concerning "the making of contributions, donations, expenditures, or disbursements" or "the administration of a political committee." *See* 11 C.F.R. § 110.20(j).

²³ *See* AO 2015-14. The \$3,000 stipend provided by DePauw University reimbursed the student in part for travel and subsistence expenses, which were estimated to total \$4,735. *Id.* at 4. The student also received academic credit toward a graduation requirement.

²⁴ *Id.*

²⁵ *Id.* at 3-4.

²⁶ *Id.*

1 program awarding the stipend was non-partisan and not for the purpose of advancing political
2 goals.²⁷

3 ALP asserts that, like the university intern in AO 2015-14, the Australian delegates'
4 activities were for educational purposes and not intended to provide personal services to the
5 campaign.²⁸ ALP states that any personal services provided by delegates were on their own time
6 and constituted permissible uncompensated volunteer services.²⁹ The Committee similarly relies
7 on AO 2015-14, arguing that the delegates were uncompensated volunteers and that the payment
8 of a stipend to the delegates is unrelated to any services they provided to the Committee.³⁰

9 Although ALP and the Committee rely on AO 2015-14, the facts here are distinguishable
10 and appear more similar to those in AO 1979-67.³¹ Unlike the stipend recipient in AO 2015-14,
11 the Australian delegates were not students receiving academic credit from any institution, much
12 less an accredited, non-profit university in the United States. Also, in AO 2015-14, the
13 American university operated the stipend program in a non-partisan manner, offered stipends to
14 students interning in a variety of settings, and played no role in obtaining placements for
15 students. Here, the ALP is a political party that placed delegates in particular partisan settings

²⁷ *Id.* at 4.

²⁸ ALP Resp. at 4.

²⁹ *Id.*

³⁰ Committee Resp. at 2.

³¹ See 52 U.S.C. § 30108(c)(1)(B) ("Any advisory opinion rendered by the Commission ... may be relied upon by any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.").

1 during the primary election season, much like the university's placement of interns with the
2 DNC and RNC in AO 1979-67.³²

3 The available information indicates that the ALP, by paying stipends to delegates, made
4 prohibited foreign national contributions because the delegates provided campaign services to
5 the Committee. Although ALP argues that it sent delegates to observe the primary election
6 practices of a like-minded campaign, learn about innovations in voter contact, and develop
7 relationships with progressive campaigners,³³ the delegates' own reports, attached to ALP's
8 Response, describe the campaign-related services they performed for the Committee:

9 **Report #1 (delegate in Nevada)**

- 10 • "work with the LGBTIQ and labour outreach ... encourage people to head along to the
11 [Sanders] event and to persuade people to caucus for Sanders."
12

13 **Report #2 (New Hampshire)**

- 14 • "Conducted volunteer recruitment calls"
15 • "Conducted my own 1:1 volunteer recruitment meetings"
16 • "Canvassed with volunteers"
17 • "Was the Bedford Staging Location Director for GOTV"
18

19 **Report #4 (Nevada)**

- 20
21 • "Event Planning"
22 • "Canvassing (phone and doors) as well as the logistics associated (i.e. Routeing[sic])"
23 • "Caucus day logistics ... trouble shooting"
24

25 These examples demonstrate that the delegates provided campaign services to the
26 Committee while being paid a stipend by ALP. In addition, the available information does not

³² See, e.g., ALP Resp., Report #1 ("Bernie Sanders [sic] 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.").

³³ ALP Resp. at 3.

1 support ALP's assertion that delegates provided volunteer personal services on their "own time"
2 and not as part of the ALP program. The delegate reports do not make such a differentiation, and
3 one report seemingly conflicts with ALP's argument.³⁴

4 Therefore, by providing compensation to the Australian delegates, ALP appears to have
5 made an impermissible foreign national contribution.³⁵ And, because it appears the Committee
6 knew delegates were receiving a stipend, it also appears that the Committee knowingly received
7 the prohibited in-kind contribution from ALP.³⁶

8 **B. There Is Reason to Believe that ALP's Payment of Delegates' Airplane**
9 **Flights Constitute Prohibited Foreign In-Kind Contributions**

10
11 The Complaint alleges that the Australian delegates' flights from Australia to the United
12 States also constitute prohibited in-kind contributions to the Committee. ALP asserts that the
13 delegates' travel costs were "not incurred on behalf of any candidate," and thus are not
14 considered contributions.³⁷ The Committee argues that it did not authorize or request the
15 delegates to come to the United States to volunteer, and that they were not campaign volunteers
16 before arriving.³⁸ As described below, we believe that the flights constitute prohibited foreign

³⁴ Report #4 indicates that one delegate considered the five weeks he or she spent during the campaign "exchange" to be different than the "personal" time he or she spent after the exchange time ended. See ALP Resp., Report #4 ("Official program, 16 Jan 2016 – 20 Feb 2016, *though I will stay on personally till 23 March 2016.*") (emphasis added).

³⁵ See 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54.

³⁶ See 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g). Although the Committee makes a legal argument that the stipend is not a contribution under the Act, the Committee acknowledges that once the delegates arrived, it learned they were receiving a stipend from a foreign entity. See Committee Resp. at 3. The Committee states that if the Commission determines that ALP made an in-kind contribution to it, the Committee did not knowingly accept the contribution because it believed the delegates were working as uncompensated volunteers. *Id.*, n.13. However, there is reason to believe the Committee knowingly accepted ALP's contribution because the Committee had actual knowledge that the stipend funds originated from a foreign national. See 11 C.F.R. § 110.20(a)(4).

³⁷ ALP Resp. at 5.

³⁸ Committee Resp. at 2.

1 national in-kind contributions, but we need more information to determine the flights' value and
2 the parties' agreement regarding the delegates.

3 Although not directly applicable here, the Act exempts from the definition of
4 "contribution" up to \$1,000 in unreimbursed travel expenses made by any individual on behalf of
5 any candidate.³⁹ *Buckley v. Valeo* elaborated that to distinguish travel payments that would be
6 considered independent of the candidate, only payments exceeding \$500 [the exemption amount
7 at the time] "taken at the direction of the candidate or his staff" or "authorized or requested" by
8 the candidate, an authorized committee of the candidate, or an agent of the candidate, would be
9 considered a contribution.⁴⁰ Under this standard, if the delegates' travel was on behalf of, at the
10 direction of, or authorized or requested by Sanders, his committee, or an agent of either, those
11 costs would be considered foreign national contributions accepted by the Sanders committee.

12 Here, the available information indicates that ALP made the initial contact with the
13 Committee requesting permission to place Australian delegates with the campaign, and the
14 Committee agreed to accept the delegates.⁴¹ Delegates were assigned to campaign offices —
15 presumably by the Committee — in four states, and this appears to have required the Committee
16 to plan for the delegates' arrivals from Australia and arrange for campaign staff to meet them and
17 help them find housing.⁴²

³⁹ 52 U.S.C. § 30101(8)(B)(iv). The contributions here were made by a political party, not an individual.

⁴⁰ *Buckley v. Valeo*, 424 U.S. 1, 37, 38 (1976).

⁴¹ ALP states that it "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 Resp. at 2.

⁴² See Project Veritas video at 4 min., 20 sec. to 4 min., 50 sec (Australian delegate describes how delegates were picked up at Manchester, New Hampshire, airport by Committee staff and that Committee staff knew delegates needed housing).

1 Although the stated purpose of ALP's campaign exchange program was to "observe
2 American elections and to learn best practices,"⁴³ the delegates did more than observe the
3 election; they provided campaign services. One delegate reported that he or she was trained in
4 volunteer recruitment and GOTV and then proceeded to conduct these tasks for the Committee.⁴⁴
5 Another delegate stated that "[o]ver the 5 weeks I participated in a large range of activities,
6 *helping out as needed*, but also learning a lot of new skills" (emphasis added).⁴⁵ And although
7 the Committee asserts that it did not authorize or request that delegates come to the United States
8 to volunteer on the campaign, the Committee agreed to accept the delegates into several
9 campaign offices, thereby authorizing them to travel to the United States to be met and helped by
10 Committee staff and volunteers across the country.

11 Under these circumstances, we believe there is sufficient information to find reason to
12 believe that the travel costs constituted a foreign national contribution from the ALP and were
13 knowingly accepted by the Committee. We believe an investigation is necessary to conclusively
14 determine the flights' value and the understanding between ALP and the Committee regarding
15 the roles of the delegates.⁴⁶

⁴³ ALP Resp. at 1.

⁴⁴ See ALP Resp., Report #2.

⁴⁵ See *id.*, Report #4.

⁴⁶ Cf. Third Gen. Counsel's Rpt. at 11-14, Conciliation Agreement ¶ 42, MUR 5020 (Gormley for Senate) (Commission concluded that campaign supporter's payment for friend's travel to campaign event was not a contribution because friend did no work "on behalf of candidate or committee" at event and was unassociated with committee). We note that in MUR 5937 (Romney for President), the Commission divided 3-3 on whether to find reason to believe that an airplane transporting campaign volunteers to a Romney fundraising event was chartered "on behalf of Romney," and thus an excessive contribution by the payor. See First Gen. Counsel's Rpt., MUR 5937 (Romney for President); Certification (Jan. 29, 2009).

1 **C. ALP Does Not Appear to Have Paid for Housing Costs**

2 The Complaint alleges that ALP paid for the delegates' housing in New Hampshire. ALP
3 and the Committee assert that campaign volunteers provided housing for the delegates.⁴⁷ The
4 Committee elaborates that they may have also been housed in campaign-provided housing for
5 staff and volunteers.⁴⁸ Apart from the delegates' daily stipend, it does not appear that ALP
6 specifically paid for delegates' housing. Thus, the apparent foreign national contribution by
7 ALP does not include housing costs.⁴⁹

8 **D. Conclusion**

9 The available information supports a reasonable inference that ALP violated the Act by
10 paying stipends to and the travel costs of the Australian delegates who worked with the
11 Committee, and that the Committee knowingly accepted these prohibited foreign national
12 contributions. Accordingly, we recommend that the Commission find reason to believe that the
13 Australian Labor Party violated 52 U.S.C. § 30121(a)(1)(A) and Bernie 2016 and Susan Jackson
14 in her official capacity as treasurer violated 52 U.S.C. § 30121(a)(2) and proceed to
15 investigation.

16 **IV. PROPOSED INVESTIGATION**

17 An investigation would seek communications between ALP and the Committee regarding
18 the delegate program, further information regarding the delegates' activities with the Committee,
19 and documents showing the number of delegates involved and how much ALP paid for stipends

⁴⁷ ALP Resp. at 2; Committee Resp. at 3 n.11.

⁴⁸ Committee Resp. at 3 n.11.

⁴⁹ Regarding the Complaint allegation that several delegates are ALP employees, a statement made by a delegate in the Project Veritas video, ALP responded that one delegate is directly employed by ALP and that she took leave to participate in the campaign exchange program. ALP Resp. at 2.

1 and flights to and from Australia.⁵⁰ We intend to obtain the information informally but request
2 that the Commission approve compulsory process, as needed.

3 **V. RECOMMENDATIONS**

- 4 1. Find reason to believe that the Australian Labor Party violated 52 U.S.C.
5 § 30121(a)(1)(A);
6
7 2. Find reason to believe that Bernie 2016 and Susan Jackson in her official capacity
8 as treasurer violated 52 U.S.C. § 30121(a)(2);
9
10 3. Approve the attached Factual and Legal Analyses;
11
12 4. Authorize the use of compulsory process, including the issuance of appropriate
13 interrogatories, document subpoenas, and deposition subpoenas, as necessary; and
14

⁵⁰ Although the Complaint frames the travel violation as the flights from Australia to the United States, we would seek information regarding return flights to Australia as well.

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5. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Acting Associate General Counsel

12.7.16


Date



Stephen Gura
Deputy Associate General Counsel



Mark Allen
Assistant General Counsel



Elena Paoli
Attorney