



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA ELECTRONIC AND FIRST CLASS MAIL**

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**MAR 30 2017**

RE: MUR 7035  
Australian Labor Party

Dear Mr. Reiff and Ms. Lindenbaum:

On April 11, 2016, the Federal Election Commission notified your client, Australian Labor Party ("ALP"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint, and information supplied by you, the Commission, on March 7, 2017, found that there is reason to believe that ALP violated 52 U.S.C. § 30121(a)(1)(A), 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 U.S.C. § 30109(a)(4).

Please note that you 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 you 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](http://www.fec.gov/em/respondent_guide.pdf).

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. 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.<sup>1</sup>

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or [epaoli@fec.gov](mailto:epaoli@fec.gov).

On behalf of the Commission,



Steven T. Walther  
Chairman

Enclosure  
Factual and Legal Analysis

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<sup>1</sup> 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).

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Australian Labor Party

**MUR 7035**

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7 **I. INTRODUCTION**

8 This matter was generated by a Complaint filed with the Federal Election Commission  
9 alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by  
10 the Australian Labor Party ("ALP"). The Complaint alleges that ALP violated the Act's  
11 prohibition on foreign national contributions by paying the expenses of Australian citizens to  
12 travel to the United States to work on the 2016 presidential campaign of Bernie Sanders. The  
13 Commission finds reason to believe that the Australian Labor Party violated 52 U.S.C.  
14 § 30121(a)(1)(A).

15 **II. FACTS**

16 The ALP is an Australian political party.<sup>1</sup> According to ALP, it sends "delegates" around  
17 the world, including the United States, as part of its international exchange program "to engage  
18 with progressive, social democratic and Labor parties."<sup>2</sup> Exchange activities have "involved  
19 embedding delegates with political parties for a 4-5 week period, similar to the ALP's recent  
20 engagement with Bernie 2016 ...," with the objectives of "strengthen[ing] bilateral links with

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<sup>1</sup> 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.

<sup>2</sup> 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.*

1 political parties, progressive organizations and think tanks to further the dissemination of best  
2 practices and skills in progressive policy development.”<sup>3</sup>

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

14 According to ALP, delegates engaged in “hands-on practical experience[s] to see how the  
15 tools the campaigns were using worked.”<sup>10</sup> Committee delegates themselves reported that they

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3 *Id.*

4 *Id.*

5 *Id.* at 1-2.

6 *See id.* at 2.

7 *Id.*

8 *Id.*

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

10 *Id.* at 4.

1 used predictive dialer call systems, participated in volunteer recruitment meetings, and canvassed  
2 voters with field organizers, among other activities.<sup>11</sup>

3 **III. ANALYSIS**

4 The Complaint alleges that ALP paid for Australian citizens to travel to the United States  
5 and work for Bernie 2016.<sup>12</sup> The Complaint bases its allegations on a video containing, among  
6 other things, footage of ALP delegates describing how the ALP paid all their expenses and sent  
7 workers to Bernie 2016 field offices in New Hampshire and other states.<sup>13</sup>

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

13 The Act prohibits any foreign national from making “a contribution or donation of money  
14 or other thing of value” in connection with a federal, state, or local election.<sup>17</sup> A “foreign

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11 *See id.* and attachments.

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.”<sup>18</sup> 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.”<sup>19</sup>  
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.”<sup>20</sup>

6 In Advisory Opinion 2015-14 (Hillary for America) (“AO 2015-14”), the Commission  
7 considered the stipend paid to students of a university and concluded that, under those facts, the  
8 university’s payment of a \$3,000 stipend to cover some living expenses to an undergraduate  
9 student volunteering for a candidate’s campaign would not constitute a prohibited corporate  
10 contribution.<sup>21</sup> The \$3,000 stipend provided by DePauw University reimbursed the student in  
11 part for travel and subsistence expenses, which were estimated to total \$4,735.<sup>22</sup> The student  
12 also received academic credit toward a graduation requirement.<sup>23</sup> The Commission determined  
13 that the “stipends are provided to students for *bona fide* educational objectives, not for the  
14 provision of personal services to federal campaigns.”<sup>24</sup> Thus, even though the university student  
15 provided “substantive work” to the Clinton Committee, including helping with vetting, the  
16 stipend was not offered or received as compensation for the provision of the personal services.<sup>25</sup>

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

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

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

<sup>21</sup> See AO 2015-14 (Hillary for America).

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 3-4.

1. Instead, the Commission found that the sole purpose of the stipend was to assist students with an  
2. educational experience in a wide variety of settings.<sup>26</sup> In addition, the program awarding the  
3. stipend was non-partisan and not for the purpose of advancing political goals.<sup>27</sup>

4. ALP asserts that, like the university intern in AO 2015-14, the Australian delegates'  
5. activities were for educational purposes and not intended to provide personal services to the  
6. campaign.<sup>28</sup> ALP states that any personal services provided by delegates were on their own time  
7. and constituted permissible uncompensated volunteer services.<sup>29</sup>

8. Although ALP relies on AO 2015-14, the facts here are distinguishable. Here, for  
9. example, the ALP is a political party that placed delegates in particular partisan settings during  
10. the primary election season.<sup>30</sup>

11. Although ALP argues that it sent delegates to observe the primary election practices of a  
12. like-minded campaign, learn about innovations in voter contact, and develop relationships with  
13. progressive campaigners,<sup>31</sup> the delegates' own reports, attached to ALP's Response, describe the  
14. campaign-related services they performed for the Committee:

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 4.

<sup>28</sup> ALP Resp. at 4.

<sup>29</sup> *Id.*

<sup>30</sup> *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.").

<sup>31</sup> ALP Resp. at 3.

1-800-877-8339

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

- 2           • “work with the LGBTIQ and labour outreach ... encourage people to head along to the  
3           [Sanders] event and to persuade people to caucus for Sanders.”

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

- 5           • “Conducted volunteer recruitment calls”  
6           • “Conducted my own 1:1 volunteer recruitment meetings”  
7           • “Canvassed with volunteers”  
8           • “Was the Bedford Staging Location Director for GOTV”

9           **Report #4 (Nevada)**

- 10          • “Event Planning”  
11          • “Canvassing (phone and doors) as well as the logistics associated (i.e. Routeing[sic])”  
12          • “Caucus day logistics ... trouble shooting”

13           These examples demonstrate that the delegates provided campaign services to the  
14   Committee while being paid a stipend by ALP. In addition, the available information does not  
15   support ALP’s assertion that delegates provided volunteer personal services on their “own time”  
16   and not as part of the ALP program. The delegate reports do not make such a differentiation, and  
17   one report seemingly conflicts with ALP’s argument.<sup>32</sup>

18           The Complaint alleges that the Australian delegates’ flights from Australia to the United  
19   States also constitute prohibited in-kind contributions to the Committee. ALP asserts that the

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<sup>32</sup> 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).



1 delegates' travel costs were "not incurred on behalf of any candidate," and thus are not  
2 considered contributions.<sup>33</sup>

3 Although not directly applicable in this case, 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.<sup>34</sup> The Supreme Court in *Buckley v. Valeo* elaborated that to distinguish travel  
6 payments that would be considered independent of the candidate, only payments exceeding \$500  
7 [the exemption amount at the time] "taken at the direction of the candidate or his staff" or  
8 "authorized or requested" by the candidate, an authorized committee of the candidate, or an  
9 agent of the candidate, would be considered a contribution.<sup>35</sup> Thus, if the delegates' travel was  
10 on behalf of, at the direction of, or authorized or requested by Sanders, his committee, or an  
11 agent of either, any direct or reimbursed costs by ALP would be considered a contribution by a  
12 foreign national and prohibited by the Act.

13 Here, the available information in the record indicates that ALP made the initial contact  
14 with the Committee requesting permission to place Australian delegates with the campaign, and  
15 the Committee agreed to accept the delegates.<sup>36</sup>

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<sup>33</sup> ALP Resp. at 5.

<sup>34</sup> 52 U.S.C. § 30101(8)(B)(iv).

<sup>35</sup> *Buckley v. Valeo*, 424 U.S. 1, 37, 38 (1976).

<sup>36</sup> 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.

The Complaint alleges that ALP paid for the delegates' housing in New Hampshire. ALP asserts that campaign volunteers provided housing for the delegates.<sup>36</sup> It does not appear that ALP specifically paid for delegates' housing. Thus, the value of any contribution provided by ALP does not include housing costs.

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 . Although the stated purpose of ALP's campaign exchange program was to "observe  
2 American elections and to learn best practices,"<sup>37</sup> 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.<sup>38</sup>  
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).<sup>39</sup>

7 **IV. CONCLUSION**

8 Therefore, in light of the information in the record regarding the compensation to and the  
9 travel by the Australian delegates, the Commission finds reason to believe that the Australian  
10 Labor Party has violated 52 U.S.C. § 30121(a)(1)(A).

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<sup>37</sup> ALP Resp. at 1.

<sup>38</sup> See ALP Resp., Report #2.

<sup>39</sup> See *id.*, Report #4.