



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

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MAR 30 2017

RE: MUR 7035
Bernie 2016 and Susan Jackson in
her official capacity as treasurer

Dear Mr. Deutsch:

On April 11, 2016, the Federal Election Commission notified your clients, Bernie 2016 and Susan Jackson in her official capacity as treasurer ("Committee"), 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 clients 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 the Committee violated 52 U.S.C. § 30121(a)(2), 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.

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

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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.

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.¹

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

On behalf of the Commission,


Steven T. Walther
Chairman

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).

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Bernie 2016 and Susan Jackson
6 in her official capacity as treasurer

MUR 7035

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8 **I. INTRODUCTION**

9 This matter was generated by a Complaint filed with the Federal Election Commission
10 alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by
11 Bernie 2016 and Susan Jackson in her official capacity as treasurer ("Committee"). The
12 Complaint alleges that the Committee violated the Act's prohibition on knowingly accepting
13 foreign national contributions by allowing the Australian Labor Party ("ALP") to pay for
14 Australian citizens to work on the 2016 presidential campaign of Bernie Sanders. For the
15 reasons set forth below, the Commission finds reason to believe that Bernie 2016 and Susan
16 Jackson in her official capacity as treasurer have violated 52 U.S.C. § 30121(a)(2).

17 **II. FACTS**

18 The Committee is the principal campaign committee of then-Presidential candidate
19 Bernie Sanders. ALP is an Australian political party. According to information in the
20 Commission's possession, ALP sends "delegates" around the world, including the United States,
21 as part of its international exchange program to engage with progressive, social democratic and
22 Labor parties. Exchange activities have involved embedding delegates with political parties for a
23 4-5 week period, with the objectives of strengthening bilateral links with political parties,
24 progressive organizations and think tanks to further the dissemination of best practices and skills
25 in progressive policy development. For the 2016 program, ALP contacted the Committee,
26 among other groups, to ask if it was willing to allow delegates to be embedded with its program.

1 The Committee agreed, and ALP selected 14 delegates and sent them to New Hampshire, South
2 Carolina, Iowa, and Nevada for four-to-five week periods.

3 According to further information in the Commission's possession, ALP paid the
4 delegates' airfare plus a daily stipend of approximately \$46 (USD). Delegates were housed by
5 campaign volunteers or in campaign-provided staff housing.¹ Delegates were required to report
6 to ALP on their experiences. The Committee's Response does not describe the work the
7 delegates performed.

8 **III. ANALYSIS**

9 The Complaint alleges that Bernie 2016 knowingly accepted a prohibited contribution
10 from ALP.² The Complaint bases its allegations on a video containing, among other things,
11 footage of ALP delegates describing how the ALP paid all their expenses and sent workers to
12 Bernie 2016 field offices in New Hampshire and other states.³

13 Complainant focuses on three types of costs ALP paid that it alleges constitute prohibited
14 in-kind foreign national contributions: the flights from Australia to New Hampshire and other
15 states, housing, and food for the delegates.⁴ The Complaint alleges that these costs exceeded
16 "tens of thousands of dollars."⁵

1 Committee Resp. at 3 n.11.

2 Compl. at 2.

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

4 *Id.* at 2-5.

5 *Id.* at 5.

1
2 The Act prohibits any foreign national from making “a contribution or donation of money
3 or other thing of value” in connection with a federal, state, or local election.⁶ A “foreign
4 national” means a foreign principal, which includes a “foreign political party.”⁷ A
5 “contribution” includes “the payment by any person of compensation for the personal services of
6 another person which are rendered to a political committee without charge for any purpose.”⁸
7 “Contribution” does not include, however, “the value of services provided without compensation
8 by any individual who volunteers on behalf of a candidate or political committee.”⁹ The Act and
9 Commission regulations also prohibit persons from knowingly soliciting, accepting, or receiving
10 a contribution or donation from a foreign national.¹⁰

11 In Advisory Opinion 2015-14 (Hillary for America) (“AO 2015-14”), the Commission
12 considered a stipend paid to students of a university and concluded that, under those facts, the
13 university’s payment of a \$3,000 stipend to cover some living expenses to an undergraduate
14 student volunteering for a candidate’s campaign would not constitute a prohibited corporate
15 contribution.¹¹ The \$3,000 stipend provided by DePauw University reimbursed the student in

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

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

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

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

¹⁰ 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).

¹¹ See AO 2015-14.

1 part for travel and subsistence expenses, which were estimated to total \$4,735.¹² The student
2 also received academic credit toward a graduation requirement.¹³ The Commission determined
3 that the “stipends are provided to students for *bona fide* educational objectives, not for the
4 provision of personal services to federal campaigns.”¹⁴ Thus, even though the university student
5 provided “substantive work” to the Clinton Committee, including helping with vetting, the
6 stipend was not offered or received as compensation for the provision of the personal services.¹⁵
7 Instead, the Commission found that the sole purpose of the stipend was to assist students with an
8 educational experience in a wide variety of settings.¹⁶ In addition, the program awarding the
9 stipend was non-partisan and not for the purpose of advancing political goals.¹⁷

10 The Committee argues that the delegates were uncompensated volunteers and that the
11 payment of a stipend to the delegates is unrelated to any services they provided to the
12 Committee.¹⁸

13 Although the Committee relies on AO 2015-14, the facts here are distinguishable. Here,
14 for example, the ALP is a political party that placed delegates in particular partisan settings
15 during the primary election season.

12 *Id.* at 2.

13 *Id.*

14 *Id.* at 4.

15 *Id.* at 3-4.

16 *Id.*

17 *Id.* at 4.

18 Committee Resp. at 2.

1 The Commission has in its possession information that delegates performed campaign-
2 related services for the Committee:

3 **(Delegate in Nevada)**

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

6 **(Delegate in New Hampshire)**

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

11 **(Second Delegate in Nevada)**

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

15 This information demonstrates that the delegates provided campaign services to the
16 Committee while being paid a stipend by ALP.¹⁹

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

¹⁹ 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).

1 that it did not authorize or request the delegates to come to the United States to volunteer, and
2 that they were not campaign volunteers before arriving.²⁰

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.²¹ 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.²² 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.

16 Although the stated purpose of ALP's campaign exchange program, according to
17 available information, was to observe American elections and to learn best practices, the
18 delegates did more than observe the election; they provided campaign services. The
19 Commission has information that one delegate reported that he or she was trained in volunteer

²⁰ Committee Resp. at 2.

²¹ 52 U.S.C. § 30101(8)(B)(iv).

²² *Buckley v. Valeo*, 424 U.S. 1, 37, 38 (1976).

1 recruitment and GOTV and then proceeded to conduct these tasks for the Committee. Another
2 delegate stated that he or she participated in a large range of activities, helped out as needed, but
3 also learned a lot of new skills. And although the Committee asserts that it did not authorize or
4 request that delegates come to the United States to volunteer on the campaign, the Committee
5 agreed to accept the delegates into several campaign offices.²³

6 **IV. CONCLUSION**

7 Therefore, in light of the information in the record regarding the compensation to and the
8 travel by the Australian delegates, the Commission finds reason to believe that Bernie 2016 and
9 Susan Jackson in her official capacity as treasurer have violated 52 U.S.C. § 30121(a)(2).

²³ 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.²³ 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.