

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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3
4 In the Matter of)
5)
6 Australian Labor Party) MUR 7035
7 Bernie 2016 and Susan Jackson in her official)
8 capacity as treasurer)
9

10 **SECOND GENERAL COUNSEL'S REPORT**

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12 **I. ACTIONS RECOMMENDED**

13 (1) Enter into pre-probable cause conciliation with Australian Labor Party ("ALP") and
14 Bernie 2016 and Susan Jackson in her official capacity as treasurer ("Committee"); (2) approve
15 the two attached conciliation agreements; and (3) approve the appropriate letters.

16 **II. BACKGROUND**

17 On March 7, 2017, the Commission found reason to believe that ALP made foreign
18 national contributions to the Committee in violation of 52 U.S.C. § 30121(a)(1)(A) by paying
19 stipends and the travel costs from Australia for a number of ALP-related individuals
20 ("delegates") who were placed in the Committee's field offices and performed campaign work.
21 The Commission also found reason to believe that the Committee violated 52 U.S.C.
22 § 30121(a)(2) by accepting the in-kind foreign national contributions.¹ Pursuant to the
23 Commission's findings, the Office of the General Counsel began an investigation to obtain
24 additional information about ALP's costs and the circumstances leading to the delegates'
25 placement with the Committee.²

26 ALP and the Committee separately responded to the Commission's reason to believe
27 findings and submitted responses to our informal discovery requests. Although both

¹ See Certification (Mar. 8, 2017).

² See First Gen. Counsel's Rpt. at 12-13 (Dec. 7, 2016).

1 Respondents denied any violation, they also both requested pre-probable cause conciliation to
2 resolve this matter, and we believe we have obtained sufficient information in our investigation
3 to proceed to conciliation.³ Specifically, we now know the value of the in-kind contributions,
4 and the responses we received confirm that the Committee knowingly accepted the in-kind
5 contribution of the costs of the delegates' flights.

6 **III. DISCUSSION**

7 The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits any
8 foreign national from making "a contribution or donation of money or other thing of value" in
9 connection with a federal, state, or local election.⁴ The Act and Commission regulations also
10 prohibit persons from knowingly soliciting, accepting, or receiving a contribution or donation
11 from a foreign national.⁵ A person knowingly accepts a prohibited foreign national contribution
12 or donation if that person has actual knowledge that funds originated from a foreign national, is
13 aware of facts that would lead a reasonable person to conclude that there is a substantial
14 probability that the funds originated from a foreign national, or is aware of facts that would lead
15 a reasonable person to inquire whether the funds originated from a foreign national but failed to
16 conduct a reasonable inquiry.⁶

³ ALP RTB Resp. at 1-2 (May 5, 2017); Committee RTB Resp. at 2 (May 8, 2017).

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

⁵ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

⁶ 11 C.F.R. § 110.20(a)(4).

NOT RECORDED

1 **A. Stipends**

2 ALP, a foreign political party, sent seven delegates to the Committee and paid a total of
3 \$8,282 for their stipends.⁷ Consistent with statements in its response to the Complaint, ALP's
4 discovery response states that the primary purpose of its "campaign exchange program" was to
5 "exchange ideas" and "use the lessons learned" in Australia: "Delegates were instructed to
6 observe their Bernie 2016 hosts to learn about innovations in voter contact and develop
7 relationships with progressive campaigners in the United States."⁸ Nevertheless, ALP
8 acknowledges that "learning involves hands-on practical experience," and it "stipulates that its
9 delegates did engage in hands-on volunteer activity while they were with Bernie 2016."⁹ ALP's
10 stipulation corroborates the Commission's findings on this point, which were based on the
11 delegates' own written reports outlining campaign-related services they provided to the
12 Committee.¹⁰ Those services included persuading voters to caucus for Sanders and recruiting
13 campaign volunteers.¹¹ Thus, the delegates provided campaign services to the Committee.¹²

7 ALP RTB Resp. at 1.

8 ALP Disc. Resp. at 2 (June 30, 2017).

9 *Id.*

10 ALP Factual & Legal Analysis at 6-7.

11 *Id.*

12 *See* First Gen. Counsel's Rpt. at 8-9.

1 The Committee previously acknowledged that it knew the ALP delegates were receiving
2 stipends from ALP.¹³ And according to the Committee, “[t]he ALP volunteers were treated no
3 differently from any other Campaign out-of-town volunteers.”¹⁴

4 Thus, the investigation confirms that ALP paid stipends to Australian delegates who
5 performed campaign services for the Committee, and that the Committee knowingly accepted
6 those services. Therefore, ALP made a prohibited, in-kind foreign national contribution to the
7 Committee by paying \$8,282 in stipends to the Australian delegates, and the Committee
8 knowingly accepted the in-kind contribution.¹⁵

9 **B. Travel Costs**

10 The Supreme Court has said that only travel “taken at the direction of the candidate or his
11 staff” or “authorized or requested” by the candidate, an authorized committee of the candidate, or
12 an agent of the candidate, would be considered a contribution.¹⁶ The investigation revealed that
13 before the delegates arrived in the United States, ALP informed the Committee of the delegates’
14 arrival dates and times, and in some cases, the Committee made arrangements to meet the

¹³ Committee Compl. Resp. at 3 (May 31, 2016). In its Response to the Complaint, the Committee describes the stipend as coming from Australian Labor International (“ALI”). According to ALP, ALI runs its international program, which is funded by the Australian Political Parties for Democracy Program. ALP Compl. Resp. at 1; ALP Disc. Resp. at 1. ALP states that it paid the delegates’ stipends and flight costs. ALP Compl. Resp. at 2; ALP RTB Resp. at 1. See also First Gen. Counsel’s Rpt. at 2 n.1.

¹⁴ Committee Disc. Resp. at 2 (June 30, 2017).

¹⁵ Although the Committee states that it wishes to conciliate, it maintains that “it did not knowingly receive or accept any foreign contributions because, to the best of the Campaign’s knowledge, each volunteer was eligible for the explicit exemptions found both in the Act and in the Commission’s regulations that apply to uncompensated personal services.” Committee Disc. Resp. at 1-2. See also 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.74 (“contribution” does not include the “value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.”). The Commission rejected the argument that the delegates were uncompensated volunteers. Bernie 2016 Factual & Legal Analysis at 4. Further, the Committee was aware that the Australian delegates were receiving a stipend. See Committee Compl. Resp. at 3.

¹⁶ See *Buckley v. Valeo*, 424 U.S. 1, 37, 38 (1976). The ALP is not an “individual,” and thus the Act’s treatment of travel as a contribution is not directly applicable. See 52 U.S.C. § 30101(8)(B)(iv).

1 delegates as they arrived.¹⁷ This evidence demonstrates that the Committee authorized the
2 delegates' travel for placement with the campaign, and thus knowingly accepted the travel
3 expenses.

4 The Committee states that in November 2015, ALP contacted the campaign, "asking to
5 place 'delegates' as volunteers with the Campaign, and in December 2015, ALP informed the
6 Campaign of the dates and arrival times for each of the volunteers."¹⁸ ALP told the Committee
7 in which States it wished to have the delegates volunteer, and the Committee provided ALP with
8 contact information for the Operations Directors in those States.¹⁹ The Committee and ALP
9 communicated to learn the delegates' "arrival points and times," so that "in some instances," the
10 Committee would send "a staffer or another volunteer to meet the ALP volunteers at the airport
11 when they arrived."²⁰ ALP paid \$16,410 for the delegates' travel expenses.²¹

12 ALP's discovery response says that when it contacted the Committee about sending
13 delegates, Bernie 2016 agreed.²² Further, the Committee's discovery response, described above,
14 reveals conversations and conduct that demonstrate this agreement, and the Committee does not
15 deny that it agreed to accept the delegates.

16 Thus, the investigation confirms that ALP paid for campaign travel, and the Committee
17 authorized that travel. Therefore, ALP made \$16,410 in prohibited, in-kind foreign national

¹⁷ Committee Disc. Resp. at 2.

¹⁸ *Id.* Based on the delegate reports provided by ALP, delegates arrived at different times, from late December 2015 to mid-February 2016. *See* ALP Compl. Resp., Ex. A (delegate reports).

¹⁹ Committee Disc. Resp. at 2.

²⁰ *Id.*

²¹ ALP RTB Resp. at 1.

²² ALP Disc. Resp. at 1; *see also* ALP Compl. Resp. at 2.

1 contributions, and the Committee knowingly accepted the contribution by authorizing the
2 delegates' travel to provide campaign services for the campaign.

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10 **V. RECOMMENDATIONS**

- 11 1. Enter into conciliation prior to a finding of probable cause to believe with
12 Australian Labor Party and Bernie 2016 and Susan Jackson in her official
13 capacity as treasurer;
- 14 2. Approve the attached conciliation agreements; and

1 3. Approve the appropriate letters.

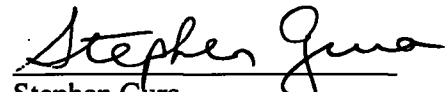
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Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel

9.18.17

Date



Stephen Gura
Deputy Associate General Counsel

Mark Allen/eip

Mark Allen
Assistant General Counsel



Elena Paoli
Attorney