

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

American Democracy Legal Fund  
455 Massachusetts Avenue, N.W.  
Washington, DC 20001

Complainant,

v.

Senator Bernard Sanders  
221 Van Patten Parkway  
Burlington, VT 05408

Bernie 2016 and Susan Jackson, Treasurer  
P.O. Box 905  
Burlington, VT 05402

National Nurses United for Patient Protection and Martha Kuhl, Treasurer  
8630 Fenton Street  
Suite 1100  
Silver Spring, MD 20910

Progressive Kick Independent Expenditures and Joshua Grossman, Treasurer  
1904 Franklin Street  
Suite 725  
Oakland, CA 94612

Respondents.

MUR # 7038  
OFFICE OF GENERAL COUNSEL  
2016 APR -8 AM 9:52  
RECEIVED  
FEDERAL ELECTION  
COMMISSION

**COMPLAINT**

Complainant files this complaint with the Federal Election Commission (the "FEC" or "Commission") under 52 U.S.C. § 30109(a)(1) against Senator Bernard Sanders; Bernie 2016 and Susan Jackson, its treasurer, in her official capacity; National Nurses United for Patient Protection ("NNU") and its treasurer, Martha Kuhl, in her official capacity; and Progressive Kick Independent Expenditures ("Progressive Kick") and its treasurer, Joshua Grossman, in his official capacity (collectively, "Respondents") for violating the Federal Election Campaign Act

of 1971, as amended (“the Act”). Progressive Kick is operating a project using a name that the FEC and a federal court have established is illegal: “People for Bernie.” Additionally, the website for “People for Bernie” does not contain the proper required disclaimer. Further, according to publicly available reports filed by the Respondents with the Commission and information in the media, Respondents appear to have engaged in illegal coordination. Lastly, NNU appears to be hiding the ultimate payee of some of its independent expenditure expenses in violation of the law. The Commission should act immediately to investigate the full scope of these violations, ensure they cease immediately, and seek the appropriate financial penalties.

## I. FACTUAL BACKGROUND

Senator Sanders is a candidate for the President of the United States.<sup>1</sup> His principal campaign committee is Bernie 2016.<sup>2</sup> NNU is an independent-expenditure only political committee (or a “Super PAC”) registered with the Commission.<sup>3</sup> NNU endorsed Senator Sanders for President and Senator Sanders has called NNU “one of the sponsors of [his] campaign.”<sup>4</sup> NNU has spent nearly \$1.2 million of nurses’ union dues to send mailers and make phone calls to voters in primary states around the country to promote Senator Sanders’ candidacy.<sup>5</sup> NNU is also operating a bus tour in several states in support of Senator Sanders.<sup>6</sup>

<sup>1</sup> FEC Form 2, Statement of Candidacy, Bernard Sanders (April 30, 2015), available at <http://docquery.fec.gov/pdf/533/15031422533/15031422533.pdf>

<sup>2</sup> FEC Form 1, Statement of Organization, Bernie 2016 (amended Jan. 6, 2016), available at <http://docquery.fec.gov/pdf/460/201601069004436460/201601069004436460.pdf>.

<sup>3</sup> Letter to Fed. Election Comm’n, Nat’l Nurses United for Patient Protection (Sept. 30, 2010), available at <http://docquery.fec.gov/pdf/690/10030443690/10030443690.pdf>; FEC Form 1, Statement of Organization, Nat’l Nurses United for Patient Protection (amended Jan. 31, 2016), available at <http://docquery.fec.gov/pdf/365/201601319004962365/201601319004962365.pdf>.

<sup>4</sup> Vote Nurses’ Values, Nat’l Nurses United, <http://www.nationalnursesunited.org/site/entry/vote-nurses-values>; Sam Frizell, *The Activist Nurse Union SuperPAC that is Helping Bernie Sanders Stoke the Bern*, Time (Feb. 2, 2016), available at <http://time.com/4233514/bernie-sanders-hillary-clinton-nurse-superpac/>.

<sup>5</sup> Matea Gold, *Inside the Pro-Sanders Groups Taking on Clinton’s Powerhouse Allies*, Washington Post (Jan. 27, 2016), available at [https://www.washingtonpost.com/politics/inside-the-pro-sanders-groups-taking-on-clintons-powerhouse-allies/2016/01/27/61aa4e00-c440-11e5-a4aa-f25866ba0dc6\\_story.html](https://www.washingtonpost.com/politics/inside-the-pro-sanders-groups-taking-on-clintons-powerhouse-allies/2016/01/27/61aa4e00-c440-11e5-a4aa-f25866ba0dc6_story.html); Michelle Ye Hee Lee, *Sanders’s Claim that He ‘Does Not Have a Super PAC’*, Washington Post (Feb. 11, 2016), available at

NNU has filed numerous independent expenditure reports with the FEC reporting expenses for, among other things, postage, printing, online ads, and bus tours.<sup>7</sup> Many of these reports contain expenditures to the California Nurses Association as the payee for online ads, site rentals, printing, and payroll expenses.<sup>8</sup> Further, on these reports, NNU certified that the independent expenditures “were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or (if the reporting entity is not a political party committee) any political party committee or its agent.”<sup>9</sup> Notwithstanding that certification, Bernie 2016 and NNU have held joint events; and nurses associated with NNU have received training from Bernie 2016.<sup>10</sup> Additionally, in Nevada, Bernie 2016 organizers have “prepared packets of voter files for the nurses to use on their canvassing rounds.”<sup>11</sup>

NNU has recently been associated with Progressive Kick, another Super PAC registered with the FEC, that also supports Senator Sanders’s presidential bid.<sup>12</sup> NNU gave Progressive Kick \$45,000 so that a project of Progressive Kick, called People for Bernie, could run online

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<https://www.washingtonpost.com/news/fact-checker/wp/2016/02/11/sanderss-claim-that-he-does-not-have-a-super-pac/>.

<sup>6</sup> Gold, *supra* note 5,

<sup>7</sup> See e.g., 24/48 Hour Report of Independent Expenditures, Schedule E, Nat’l Nurses United for Patient Protection (Feb. 25, 2016), <http://docquery.fec.gov/pdf/208/201602259009625208/201602259009625208.pdf#navpanes=0>; 24/48 Hour Report of Independent Expenditures, Schedule E, Nat’l Nurses United for Patient Protection (Feb. 17, 2016), <http://docquery.fec.gov/pdf/190/201602179008477190/201602179008477190.pdf#navpanes=0>; 24/48 Hour Report of Independent Expenditures, Schedule E, Nat’l Nurses United for Patient Protection (Feb. 13, 2016), <http://docquery.fec.gov/pdf/292/201602139008458292/201602139008458292.pdf#navpanes=0>.

<sup>8</sup> See e.g., 24/48 Hour Report of Independent Expenditures, Schedule E, Nat’l Nurses United for Patient Protection (Feb. 12, 2016), <http://docquery.fec.gov/pdf/996/201602129008457996/201602129008457996.pdf#navpanes=0>; 24/48 Hour Report of Independent Expenditures, Schedule E, Nat’l Nurses United for Patient Protection (Feb. 17, 2016), <http://docquery.fec.gov/pdf/190/201602179008477190/201602179008477190.pdf#navpanes=0>; 24/48 Hour Report of Independent Expenditures, Schedule E, Nat’l Nurses United for Patient Protection (Feb. 25, 2016), <http://docquery.fec.gov/pdf/208/201602259009625208/201602259009625208.pdf#navpanes=0>.

<sup>9</sup> See 24/48 Hour Report of Independent Expenditures, Schedule E, Nat’l Nurses United for Patient Protection (Feb. 25, 2016), <http://docquery.fec.gov/pdf/208/201602259009625208/201602259009625208.pdf#navpanes=0>.

<sup>10</sup> Sam Frizell, *The Activist Nurse Union SuperPAC that is Helping Bernie Sanders Stoke the Bern*, Time (Feb. 2, 2016), available at <http://time.com/4233514/bernie-sanders-hillary-clinton-nurse-superpac/>.

<sup>11</sup> *Id.*

<sup>12</sup> Form/Schedule F1N, FEC Form 1, Statement of Organization, Progressive Kick Independent Expenditures (Jan. 25, 2011), available at <http://docquery.fec.gov/pdf/437/11030552437/11030552437.pdf>; Gold, *supra* note 5; Progressive Kick, <http://progressivekick.org/> (“Progressive Kick endorsed Bernie Sanders because he is the only real progressive challenger to Hillary Clinton.”),

ads and expand its social media presence.<sup>13</sup> People for Bernie organizes volunteers using social media.<sup>14</sup> People for Bernie “is not set up as a legal entity or registered as a political committee.”<sup>15</sup> Instead, People for Bernie is a project of Progressive Kick.<sup>16</sup>

People for Bernie “uses its large online following to promote Sanders and help connect volunteers to the official campaign.”<sup>17</sup> People for Bernie operates a website, PeopleforBernie.com,<sup>18</sup> and boasts that it has different constituent groups, each with their own websites, Twitter handles, and/or Facebook pages: Women for Bernie,<sup>19</sup> African Americans for Bernie,<sup>20</sup> Millennials for Bernie,<sup>21</sup> Vets for Bernie,<sup>22</sup> Labor for Bernie,<sup>23</sup> Socialists for Bernie,<sup>24</sup> Jew for Bernie,<sup>25</sup> and Latinos for Bernie.<sup>26</sup> None of these websites contain the proper disclaimer disclosing Progressive Kick as the political committee paying for the communication.

Lastly, despite being a project of a Super PAC supporting Senator Sanders, People for Bernie and Bernie 2016 have coordinated efforts on various activities. In July 2015, the founder

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<sup>13</sup> Gold, *supra* note 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> About, People for Bernie, <http://www.peopleforbernie.com/about>.

<sup>19</sup> Women for Bernie, <http://www.women4bernie.us/> (last visited Feb. 24, 2016); *Women for Bernie*, Facebook, <https://www.facebook.com/Women4Bernie> (last visited Feb. 24, 2016); Women For Bernie (@Women4Bernie), Twitter, <https://twitter.com/Women4Bernie> (last visited Feb. 24, 2016).

<sup>20</sup> *African-Americans For Bernie Sanders*, Facebook, <https://www.facebook.com/AfricanAmericansForBernie> (last visited Feb. 24, 2016).

<sup>21</sup> Millennials for Bernie, <http://millennialsforbernie.org/> (last visited Feb. 24, 2016); *Millennials For Bernie Sanders*, Facebook, <https://www.facebook.com/youngberners> (last visited Feb. 24, 2016); Millennials 4 Bernie (@Bernlennials), Twitter, <https://twitter.com/Bernlennials> (last visited Feb. 24, 2016).

<sup>22</sup> Veterans for Bernie, <http://vetsforbernie.org/> (last visited Feb. 24, 2016); *Veterans for Bernie Sanders*, Facebook, <https://www.facebook.com/Vets4Sanders> (last visited Feb. 24, 2016); Veterans For Bernie (@Vets4Bernie), Twitter, <https://twitter.com/Vets4Bernie> (last visited Feb. 24, 2016); Veterans For Bernie (@VetsForBernie), Twitter, <https://twitter.com/VetsForBernie> (last visited Feb. 24, 2016).

<sup>23</sup> Labor for Bernie, <http://www.laborforbernie.org/> (last visited Feb. 24, 2016); *Labor Campaign For Bernie Sanders*, Facebook, <https://www.facebook.com/LaborForBernie/> (last visited Feb. 24, 2016); Labor For Bernie (@LaborForBernie), Twitter, <https://twitter.com/LaborForBernie> (last visited Feb. 24, 2016).

<sup>24</sup> *Socialists for Bernie*, Facebook, <https://www.facebook.com/socialistsforbernie/> (last visited Feb. 24, 2016).

<sup>25</sup> *Join Jews for Bernie!*, Action Network, <https://actionnetwork.org/forms/join-jews-for-bernie> (last visited Feb. 24, 2016); Jews for Bernie (@jewsforbernie), Twitter, <https://twitter.com/jewsforbernie> (last visited Feb. 24, 2016).

<sup>26</sup> *Latinos for Bernie*, Facebook, <https://www.facebook.com/LatinosForBernie> (last visited Feb. 24, 2016); Latinos for Bernie (@Latinos4Bernie), Twitter, <https://twitter.com/Latinos4Bernie> (last visited Feb. 24, 2016).

of People for Bernie said he was in contact with Bernie 2016.<sup>27</sup> In fact, the campaign provided buttons and posters for People for Bernie to use in the New York City Gay Pride Parade.<sup>28</sup> The campaign has also asked People for Bernie to promote campaign events.<sup>29</sup> Marcus Ferrell, the African American outreach director of Bernie 2016, participated on a conference call addressing structural racism co-sponsored by People for Bernie.<sup>30</sup> Additionally, after a recent campaign event where Carlos Rojas-Alvarez, a coordinator for the Student Immigration Movement, and Patty Healy, from the National Nurses United union, introduced Senator Sanders, People for Bernie emailed Carlos Rojas-Alvarez with the video of the event.<sup>31</sup>

## II. LEGAL ANALYSIS

### A. People for Bernie, and its related and affiliated websites and social media accounts that include Senator Sanders' first name are impermissible under 11 C.F.R. § 102.14.

The name of any political committee which is not an authorized committee of a federal candidate may not include the name of any candidate in its name.<sup>32</sup> The FEC's regulations implementing this law explain that "name" in this context "includes any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation."<sup>33</sup> The only exceptions to this prohibition include political committees established solely to draft an individual to become a candidate or the "title of a special project name or other communications if the title clearly and unambiguously shows

<sup>27</sup> Arit John, *Inside the Grassroots Group that Wants America to Feel the Bern*, Bloomberg Politics (July 1, 2015), available at <http://www.bloomberg.com/politics/articles/2015-07-01/inside-the-grassroots-group-that-wants-america-to-feel-the-bern>.

<sup>28</sup> *Id.*

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

<sup>30</sup> Madhuri Sathish, *Bernie Sanders Supports Tackle Racism in a "State of Emergency" Conference Call*, Bustle (July 29, 2015), available at <http://www.bustle.com/articles/100557-bernie-sanders-supporters-tackle-racism-in-a-state-of-emergency-conference-call>.

<sup>31</sup> TWEET

<sup>32</sup> 52 U.S.C. § 30102(e)(4).

<sup>33</sup> 11 C.F.R. § 102.14(a).

opposition to the named candidate.”<sup>34</sup> This rule is designed “to further the legitimate governmental interest in minimizing the possibility of fraud and abuse” and to help persons receiving communications “understand that it is made on behalf of the committee rather than the candidate whose name appears in [a] project’s title.”<sup>35</sup>

In advisory opinions, the FEC has interpreted this prohibition and most recently, applied the prohibition to websites and social media accounts designed to support Senator Sanders’ presidential campaign. Specifically, in FEC Adv. Op. 2015-04, the Commission said that Collective Actions PAC could “not use Senator Sanders’s name in the names of the Committee’s websites or social media pages,” including “RunBernieRun.com, ProBernie.com, BelieveInBernie.com, and related Facebook and Twitter pages such as the Facebook page Run Bernie Run and the Twitter accounts @Bernie\_Run and @ProBernie.”<sup>36</sup> The Commission explained that directly incorporating Senator Sanders’ first name into the names of websites and social media accounts is inconsistent with the law.<sup>37</sup> Further, the FEC rejected a proposal to limit this name restriction to fundraising projects and thus, the FEC said it did not matter that the websites or social media pages that have Senator Sanders’ names in their name did not solicit contributions.<sup>38</sup>

More recently, the District Court for the District of Columbia denied a preliminary injunction filed by Pursing America’s Greatness (“PAG”), which argued that the FEC must be enjoined from applying this name regulation to PAG’s internet properties, including “www.ilikemikehuckabee.com” and the Facebook page “I Like Mike Huckabee” located at

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<sup>34</sup> *Id.* § 102.14(b)(2), (3).

<sup>35</sup> Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees, 57 Fed. Reg. 31,424, 31,425 (July 15, 1992).

<sup>36</sup> FEC Adv. Op. 2015-04.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

www.facebook.com/ilikemikehuckabee.<sup>39</sup> The court denied PAG's motion because the FEC's rulemakings establish "the requisite rational connection between the facts found and the choice made in promulgating the" the name regulation and Advisory Opinion 2015-04.<sup>40</sup> Specifically, the court said the FEC's "'anti-confusion rationale' is easily discernible" in that the name regulation "helps to avoid confusion by making clear to the voting public that communications disseminated via unauthorized committees' special projects are not funded by a candidate or political party."<sup>41</sup> The court explained that the rule is "best construed as a disclosure provision"<sup>42</sup> and a disclosure provision like the name regulation "is particularly apparent in the context of dissemination of communications via internet-based special projects like websites, Facebook pages, and Twitter accounts."<sup>43</sup>

As explained above, People for Bernie, as a project of Progressive Kick, a Super PAC, is improperly using Senator Sanders' first name, Bernie, in the name of the project and in doing so, is misleading the public and violating federal law. People for Bernie's name and website, and the names, websites, Twitter handles, and/or Facebook pages of its affiliated organizations, including Women for Bernie, African Americans for Bernie, Millennials for Bernie, Vets for Bernie, Labor for Bernie, Socialists for Bernie, Jews for Bernie, and Latinos for Bernie, are all impermissibly using Senator Sanders' first name. The FEC's advisory opinions interpreting the naming regulation are clear that that the regulation applies to websites, Facebook pages, and other social media sites. By misusing Senator Sanders's first name in the name of these projects, Progressive Kick – through People for Bernie – is confusing the public about who is sponsoring

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<sup>39</sup> *Pursuing America's Greatness v. Fed. Election Comm'n*, No. 15-cv-1217, 2015 WL 5675428, \*1, 6 (D.D.C. Sept. 24, 2015).

<sup>40</sup> *Id.* at \*8 (internal quotation marks and citations omitted s removed).

<sup>41</sup> *Id.* at \*13.

<sup>42</sup> *Id.* at \*12.

<sup>43</sup> *Id.* at \*14.



those projects. People visiting the websites of People for Bernie and its related organizations may think that the websites were made on behalf of Senator Sanders rather than Progressive Kick. The regulation was written to avoid this problem specifically. Thus, it is clear that Progressive Kick through People for Bernie, and its affiliated organizations, has violated 52 U.S.C. 30102(e)(4) and 11 C.F.R. § 102.14(a) by using a candidate's name in the name of the committee's projects.

**B. Progressive Kick has failed to put its disclaimer on the websites and pages associated with its project, People for Bernie, and its related organizations.**

Under federal law, when a political committee makes a disbursement for any type of general public political advertising, or whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, the communication must identify who paid for the communication and whether such communication was authorized by a candidate or candidate's committee.<sup>44</sup> Specifically, all Internet websites of political committees available to the general public must contain a disclaimer depending on whether the communication was authorized and/or paid for by a candidate, candidate's committee, or agent thereof.<sup>45</sup> For a communication that is not authorized by a candidate, authorized committee of a candidate, or an agent thereof, the disclaimer must clearly state the full name and permanent street address, telephone number, or website address of the person who paid for the communication and that the communication is not authorized by any candidate or candidate's committee.<sup>46</sup>

Here, Progressive Kick has failed to put the proper disclaimer on the website of its projects, including the website of People for Bernie. Because Progressive Kick is a Super PAC,

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<sup>44</sup> 52 U.S.C. § 30120(a).

<sup>45</sup> 11 C.F.R. § 110.11(a), (b).

<sup>46</sup> *Id.* § 110.11(b)(3).



which may not coordinate its communications with candidates, it needed a disclaimer that said it paid for the communication and that the communication was not authorized by any candidate or candidate's committee. Disclaimers are needed to keep the public informed and without such disclaimer, Progressive Kick is misleading the public about who paid for the website. It is clear that Progressive Kick through People for Bernie, and its affiliated organizations, has violated 52 U.S.C. 30120(a) and 11 C.F.R. § 110.11(b) by failing to include the proper disclaimer on a political committee's website.

**C. Bernie 2016 may have accepted and NNU and Progressive Kick may have each made an illegal in-kind contribution to Senator Sander's campaign.**

The FEC should investigate whether Bernie 2016 accepted and NNU and Progressive Kick made illegal in-kind contributions to Mr. Sander's campaign.

The Act limits the amount of money that any person may contribute to Federal candidates and political committees.<sup>47</sup> It is illegal for anybody to contribute, and for any candidate to receive, contributions to candidates in excess of \$2,700 per election.<sup>48</sup> The Act also prohibits corporations from making contributions or expenditures in connection with Federal elections.<sup>49</sup>

Federal law treats expenditures by a non-party, non-candidate sponsor that are coordinated with a campaign as in-kind contributions to the candidates or political party with whom they were coordinated. Specifically, "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate."<sup>50</sup> An expenditure for a communication is considered an in-kind contribution to a campaign if it is

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<sup>47</sup> 52 U.S.C. § 30116(a).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* § 30118.

<sup>50</sup> *Id.* § 30116(a)(7)(B)(i).

(1) paid for by an entity other than the campaign; (2) meets certain content standards, including by expressly advocating the election or defeat of a clearly identified federal candidate or constituting the functional equivalent of express advocacy; and (3) meets certain conduct standards regarding the coordination between the entity financing the communication and the campaign.<sup>51</sup>

Here, based on their activity this election cycle, it appears that NNU and Progressive Kick have each made an impermissible contribution to Senator Sanders and that Senator Sanders has accepted this impermissible contribution. NNU has made numerous independent expenditures in support of Senator Sanders's presidential campaign. NNU certified that it did not cooperate, consult, or act in concert with, or at the request or suggestion of, any candidate or authorized committee or agent thereof with regard to its independent expenditures. Nonetheless, NNU has been openly coordinating its activity with Senator Sanders's presidential campaign. Bernie 2016 and NNU have held joint events and nurses associated with NNU have received training from Bernie 2016.

There is not merely evidence that Senator Sanders' campaign has coordinated in general with NNU; there is also specific evidence that NNU has coordinated its independent expenditure efforts with the campaign. In Nevada, Senator Sanders' campaign prepared packets of voter files for NNU nurses to use as they canvassed the state. And yet this canvassing effort was reported as an independent expenditure by NNU.<sup>52</sup> Given these facts, these expenditures were not "independent" and Bernie 2016 may have accepted and NNU may have made illegal in-kind contributions to Mr. Sander's campaign.

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<sup>51</sup> See 11 C.F.R. §§ 109.20(b), 109.21.

<sup>52</sup> See Schedule 24/48 Hour Report of Independent Expenditures (Schedule E), filed on January 15, 2016, available at <http://docquery.fec.gov/pdf/513/201601159004505513/201601159004505513.pdf>.

Similarly, Progressive Kick is an independent expenditure-only political committee that may not cooperate, consult, or act in concert with, or at the request or suggestion of, any candidate or authorized committee or agent thereof with regard to its independent expenditures. Nonetheless, as noted above, People for Bernie, a project of Progressive Kick, has been openly working with Senator Sander's campaign. The founder of People for Bernie said he was in contact with Senator Sanders' campaign in July 2015 and the campaign provided swag for People for Bernie to use in the New York City Gay Pride Parade. Bernie 2016 has asked People for Bernie to promote its campaign events, and Bernie 2016 and People for Bernie staff have participated in events co-sponsored by one another. There is also reports of People for Bernie sharing media with the individuals coordinating with the campaign. These examples show a pattern of coordination that is impermissible for a Super PAC. Thus, the FEC should investigate whether Progressive Kick has been coordinating with Senator Sander's campaign through its project, People for Bernie, and whether Bernie 2016 has accepted and Progressive Kick has made any illegal in-kind contributions to Mr. Sander's campaign.

**D. NNU failed to disclose the person to whom its expenditures were made for many of its independent expenditure reports.**

Federal law requires political committees to file reports of receipts and disbursements with the FEC.<sup>53</sup> Specifically, with respect to disbursements, the reports must include, among other things, the total amount of disbursements and all disbursements for committee operating expenses.<sup>54</sup> A report of such a disbursement must include the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year was made by the committee to meet a committee operating expense, as well as the date, amount, and purpose of such operating expenditure.<sup>55</sup> The FEC has explained that the "person to whom

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<sup>53</sup> 52 U.S.C. § 30104.

<sup>54</sup> *Id.* § 30104(b)(4).

an expenditure was made” is the person providing the services to the committee. For example, the FEC entered in a conciliation agreement with Jenkins for Senate 1996 after the campaign reported disbursements to Courtney Communications instead of Impact Mail & Printing, which was associated with David Duke, when Courtney Communications only served as a conduit for payment to Impact Mail & Printing.<sup>56</sup> The FEC rejected the argument that the law does not require reporting the ultimate vendor (Impact Mail & Printing) but only requires reporting the person to whom an expenditure was made (Courtney Communications).<sup>57</sup> The FEC said that because Impact Mail & Printing was not a sub-vendor of Courtney Communications, but rather actually provided the services directly to Jenkins for Senate, the campaign could not distance itself from Impact Mail & Printing by listing Courtney Communications as the payee and instead, was required to report disbursements to Impact Mail & Printing.<sup>58</sup>

Here, NNU has concealed its ultimate vendor through payments to the California Nurses Association. As noted above, NNU has filed numerous independent expenditure reports that list the California Nurses Association as the ultimate payee for online ads, site rentals, printing, and payroll expenses. However, the California Nurses Association is mostly likely not the ultimate payee for these expenses and instead, those services are being provided by other vendors. NNU may not hide the ultimate vendor it has paid by making its payments through the California Nurses Association. This is a clear violation of the law and the FEC should undertake an immediate investigation.

### III. REQUESTED ACTION

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<sup>55</sup> *Id.* § 30104(b)(5)(A).

<sup>56</sup> *See* MUR 4872 Conciliation Agreement (Feb. 15, 2002).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

As we have shown, there is strong likelihood that Respondents have violated the Federal Election Campaign Act. We respectfully request the Commission to investigate these likely violations, including whether they were knowing and willful. Should the Commission determine that Respondents have violated FECA, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 29 day of March, 2016.



Notary Public

My Commission Expires: 10/31/2020



