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May 31, 2016

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Mr. Dan Petalas
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

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COMMISSION
2016 MAY 31 PM 1:41
OFFICE OF GENERAL
COUNSEL

Re: MUR 7038 - Response of Bernie 2016 and Susan Jackson in her capacity as Treasurer & Senator Bernard Sanders

Dear Mr. Petalas:

This response is submitted on behalf of the above-referenced respondents in relation to the April 13, 2016, letters from the Commission notifying Bernie 2016 (the “Campaign”), Ms. Jackson and Senator Bernard Sanders (collectively, the “Sanders Respondents”) of a complaint (“Complaint”) filed by Brad Woodhouse of the American Democracy Legal Fund (“Complainant”), designated by the Commission as MUR 7038.

Relying entirely on a handful of press reports, the Complainant has done nothing more than pointed to a series of perfectly lawful interactions between the Campaign and its supporters. In fact, as detailed below, all of the activities described in these press reports constitute nothing more – and nothing less – than permissible civic engagement residing at the very core of the American political process.¹

Accordingly, for the reasons set forth below, and pursuant to 52 U.S.C. § 30109, the matter should be dismissed.

¹ Moreover, the Complaint falls far short of the requirements in 11 CFR 111.4(d)(3) (a complaint must “contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction”).



I. The Complaint Mistakes Permissible Political Engagement for Impermissible Coordination

The Federal Election Campaign Act of 1971 (the “Act”) and the Commission’s regulations require that any *expenditure*² by an outside group “made in cooperation, consultation or concert with, or at the request or suggestion of” a candidate (*i.e.*, that is “coordinated” with a candidate) be treated as a contribution by the outside group to that candidate.³

And so, the necessary starting point for any analysis of whether an outside group has coordinated with a candidate is to *first* identify a specific *expenditure* made by an outside group and only then, for each expenditure, to determine whether it was “made in cooperation, consultation or concert with, or at the request or suggestion of” a candidate.

The Complaint alleges “a pattern of coordination” between the Campaign and two outside groups – National Nurses United for Patient Protection (“NNUPP”) and People for Bernie – but because the Complaint has failed to identify a single *expenditure* by either of these outside groups, the Complaint has also failed to identify any coordination resulting in a contribution to the Campaign.

With respect to NNUPP, citing to only a Time Magazine article,⁴ the Complaint alleges the following activities without any elaboration whatsoever:

- “Bernie 2016 and [NNUPP] have held joint events;”⁵
- “Nurses associated with [NNUPP] have received training from Bernie 2016;”⁶ and
- “In Nevada, Bernie 2016 organizers have ‘prepared packets of voter files for the nurses to use on their canvassing rounds.’”⁷

With respect to People for Bernie, the Complaint cites two articles, one from Bloomberg Politics⁸ and one from the online magazine Bustle.⁹ Once again, however, the Complaint provides no elaboration beyond a summary list of activities:

² See 11 CFR 100.111(a) (an *expenditure* is a payment, gift or other thing of value made for the purpose of influencing an election for Federal office).

³ See 52 U.S.C. 30116(a)(7)(B)(i); 11 CFR 109.20(b). The Commission’s more intricate “coordinated communication” regulation, 11 CFR 109.21, is not applicable here because the Complaint does not allege that any outside group paid for an electioneering communication or a public communication as defined in 11 CFR 100.26.

⁴ Sam Frizell, *The Activist Nurse Union SuperPAC That Is Helping Bernie Sanders Stoke the Bern*, Time (Feb. 23, 2016), available at <http://time.com/4233514/bernie-sanders-hillary-clinton-nurse-superpac/>.

⁵ *Complaint* at unnumbered pp. 3 and 10.

⁶ *Id.*

⁷ *Id.*

⁸ 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>.

⁹ Madhuri Sathish, *Bernie Sanders Supporters 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>.



- The Campaign “provided buttons and posters for People for Bernie to use in the New York City Gay Pride Parade;”¹⁰
- The Campaign “asked People for Bernie to promote campaign events;”¹¹ and
- “Marcus Ferrell, the African American outreach director for Bernie 2016, participated on a conference call addressing structural racism co-sponsored by People for Bernie.”¹²

Finally, the Complaint points to an unspecified “TWEET”¹³ for “reports of People for Bernie sharing media with individuals coordinating with the campaign.”¹⁴

Simply put, to the best of the Campaign’s knowledge, not one of these activities involved any spending whatsoever by either NNUPP or People for Bernie. Because there was no spending, there was no *expenditure*. And because there was no expenditure, there cannot be coordination as defined by the Commission’s rules.¹⁵

We now address the listed activities in turn.

Bernie 2016 and NNUPP have held joint events. Neither the Complaint, nor the Time Magazine article upon which it relies, points to any specific “joint event.” Moreover, although the term “joint event” is used in the Time Magazine article, there is no discussion of what is meant by such a “joint event.”

While it is certainly true that NNUPP has publicly stated its support of Senator Sanders’ presidential campaign,¹⁶ the Campaign has not participated in any NNUPP events at which NNUPP has made an expenditure.¹⁷ Of course, there have been several Campaign events at which individual members of the National Nurses United labor organization have been visible audience participants and have also provided uncompensated volunteer services to the Campaign. However, all of these events have been official Campaign events where all expenses have been paid for by the Campaign.¹⁸

Nurses associated with NNUPP have received training from Bernie 2016. Members of the National Nurses United labor organization have been visible and dedicated supporters of the Campaign. As such,

¹⁰ *Complaint* at unnumbered pp. 4 and 11.

¹¹ *Id.*

¹² *Id.*

¹³ *Complaint* at fn. 31.

¹⁴ *Complaint* at unnumbered pp. 4 and 11.

¹⁵ In the unlikely event the Commission may determine that, unbeknownst to the Campaign, one of the outside groups somehow made an expenditure that is deemed to have been coordinated, there would still be no reason to believe the Campaign violated any Commission rules because the Campaign would not have knowingly accepted or received the resulting contribution. *See* 11 CFR 114.2(d) (restriction is limited to “knowingly accepting or receiving any contribution prohibited by this section”).

¹⁶ To the extent that Senator Sanders has been quoted as having said that NNUPP has been “one of the *sponsors* of my campaign,” there was no implication whatsoever of financial sponsorship of the Campaign by NNUPP.

¹⁷ *See generally* 11 CFR 114.4.

¹⁸ *See* 11 CFR 100.74 (uncompensated volunteer activity does not result in a contribution). The Time Magazine article explicitly refers to the nurses as “volunteers.”



many National Nurses United members in their individual capacity as uncompensated volunteers have received training from the Campaign just as is the case with any other uncompensated volunteer.¹⁹

In Nevada, Bernie 2016 organizers prepared packets of voter files for the nurses to use on their canvassing rounds. Again, individual members of the National Nurses United labor organization have conducted canvassing for the Campaign strictly as individual uncompensated volunteers.²⁰ To the extent the Campaign has ever provided a member of the National Nurses United with a voter file packet, it took place in the context of Campaign-organized activities in which the member participated as an uncompensated volunteer for the Campaign.²¹

The Campaign provided buttons and posters for People for Bernie to use in the New York City Gay Pride Parade. Here, the Complaint has not identified any spending whatsoever by an outside group, let alone an *expenditure*. Campaign funds were spent on Campaign buttons and posters and then, according to People for Bernie founder Charles Lenchner,²² the Campaign provided those items to its supporters to wear during a parade at which funds were neither spent nor raised.

The Campaign asked People for Bernie to promote campaign events. Although the Campaign is not aware of anyone within the Campaign specifically asking Mr. Lenchner to “promote events,” to the best of the Campaign’s knowledge all such promotion was limited to Internet communications that were subject to the broad exemption for Internet activities.²³

Marcus Ferrell, the African American outreach director for Bernie 2016, participated on a conference call addressing structural racism co-sponsored by People for Bernie. Again, to the best of the Campaign’s knowledge, there was no spending involved in this public nationwide conference call. Indeed, a Campaign employee participated in this meaningful dialogue about structural racism, but this important activity simply does not trigger any element of the Commission’s coordination regulation – there was no *expenditure*; there was no *cooperation*; there was no *consultation*; there was no *concert*; there was no *request*; there was no *suggestion*.

Reports of People for Bernie sharing media with individuals coordinating with the campaign. As indicated above, the Complaint only cites to “TWEET” for this activity and appears to point to one non-Campaign individual emailing a video taken at a Campaign event to another non-Campaign individual. The Complaint has not specified how this activity could possibly implicate the Commission’s coordination regulations and, as such, there is simply nothing here for the Campaign to respond to.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Despite the Complaint’s assertion (at fn. 52 and accompanying text) that NNUPP has reported canvassing efforts as an independent expenditure, the referenced 24/48 Hour Report of Independent Expenditures, <http://docquery.fec.gov/pdf/513/201601159004505513/201601159004505513.pdf>, does not appear to report any spending for canvassing activities.

²² *See* fn. 8, above.

²³ *See* 11 CFR 100.94 (an uncompensated individual or group of individuals, acting independently or in coordination with a candidate may engage in Internet activities such as creating a Web site and sending e-mail messages).



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May 31, 2016

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In sum, despite the Complaint's cavalier and conclusory assertion that the Sanders Respondents "appear to have engaged in illegal coordination,"²⁴ the Complainant has failed to identify a single instance where an outside group has made an *expenditure*, and certainly not one in coordination with the Campaign.²⁵

II. Conclusion

The Complaint has failed to describe a single violation of either the Act or the Commission's regulations.²⁶ Accordingly, the Complaint should be dismissed.²⁷

Respectfully Submitted,

Brad Deutsch
*Counsel to Bernie 2016
and Senator Bernard Sanders*

GSB:7779334.3

²⁴ *Complaint* at unnumbered p. 2.

²⁵ *See* fn. 15, above.

²⁶ 11 CFR 111.4.

²⁷ *See* Factual and Legal Analysis, *MUR 5943 (Rudy Giuliani Presidential Committee, Inc.)*, pp. 11-12.

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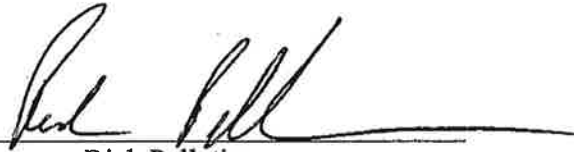
AFFIDAVIT OF RICH PELLETIER

I, Rich Pelletier, being duly sworn, hereby declare the following:


OFFICE OF GENERAL
COUNSEL

1. I have served as Deputy Campaign Manager of Bernie 2016 since March 2016, and before that I served as the campaign's National Field Director starting in November 2015. In both of these positions, I have had supervisory responsibility for the campaign's staff and activities.
2. I have reviewed the complaint filed by Brad Woodhouse of the American Democracy Legal Fund, designated by the Commission as MUR 7038, and I am one of the most senior campaign staffers with responsibilities and knowledge regarding the activities mentioned in the complaint.
3. To the best of my knowledge, none of the activities cited in the complaint involved spending by an outside group made in cooperation, consultation or concert with, or at the request or suggestion of, anyone at the campaign.
4. Specifically,
 - a. To the best of my knowledge, the campaign has not participated in any National Nurses United for Patient Protection ("NNUPP") events at which NNUPP has made an expenditure.
 - b. To the best of my knowledge, any time that a member of the National Nurses United labor organization has received volunteer training from the campaign, that individual has received the training as an uncompensated campaign volunteer.
 - c. To the best of my knowledge, any time that the campaign has provided a member of the National Nurses United labor organization with a voter file packet, it has been for campaign canvassing efforts and the individual campaign supporter has participated as an uncompensated volunteer.
 - d. To the best of my knowledge, campaign staff have not asked representatives of "People for Bernie" to promote campaign events.

I submit, under penalty of perjury, that the foregoing information is true and accurate to the best of my knowledge.


Rich Pelletier

Sworn to before me this
27 day of May, 2016


Notary Public

GSB:7779593.1

