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2016 JUN 17 AM 8:53

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June 6, 2016

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**RE: MUR 7038, National Nurses United for Patient Protection**

Dear Mr. Jordan:

We are writing on behalf of respondents National Nurses United for Patient Protection and its Treasurer, Martha Kuhl (together “NNUPP”), to respond to the complaint dated April 8, 2016 filed by American Democracy Legal Fund (“ADLF”) (“Complaint”). NNUPP respectfully requests that the Federal Election Commission (“Commission” or “FEC”) determine that there is no reason to believe that NNUPP violated the Federal Election Campaign Act (“FECA” or “the Act”) as ADLF alleges, or in any other manner that might be considered from ADLF’s factual allegations and legal contentions. Alternatively, the Commission should dismiss this matter as it pertains to NNUPP because this matter does not merit the significant expenditure of Commission resources that pursuing it would necessarily entail.

**The Allegations of Coordination With the Bernie Sanders Campaign Are Baseless**

Many of the Complaint’s allegations – particularly those related to coordination – are based solely on inferences made from press accounts that are either unsourced, rely on second-hand information, or contain only editorial characterizations. See Complaint at 3-5, 10-11. A “reason to believe” determination is not appropriate when a complaint’s allegations are “not credible.” FEC, “Agency Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process,” 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (“RTB Policy Statement”). And “[a]s a general evidentiary matter,” the Commission should “decline to open investigations based solely upon hearsay reports or editorial characterizations contained in press articles.” MURs 6470, 6482, 6484, Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman, at 7 (Mar. 30, 2016). *See also* MUR 6795, Concurring Statement of Reasons of Commissioners Goodman and Hunter, at 8 (Jan. 29, 2015) (expressing criticism of “draw[ing] inferences based on unsourced accusations or characterizations in press accounts”); MUR 6094, Statement of Reasons by Chairman Petersen and Commissioners Hunter and McGahn, at 6, n.20 (July 8, 2009) (noting that “adherence to the Commission’s regulations regarding sources of

information contained in complaints cautions against accepting as true the statements of anonymous sources”).

The Complaint alleges that “nurses associated with NNU have received training from Bernie 2016,” that “Bernie 2016 organizers have ‘prepared packets of voter files for the nurses to use on their canvassing rounds,’” and that “Bernie 2016 and NNU have held joint events.”<sup>1</sup> Complaint at 3, 10. These allegations are based *solely* on a news article that fails to cite any source or make any attribution for its same terse assertions. See Sam Frizell, *The Activist Nurse Union SuperPAC That Is Helping Bernie Sanders Stoke the Bern*, Time (Feb. 23, 2016) (“Sanders and DeMoro’s nurses have sometimes blurred the line [on coordination]. In Nevada, the nurses received training from the Sanders campaign. Sanders organizers in Nevada even prepared packets of voter files for the nurses to use on their canvassing rounds.... Sanders and the nurses have often held joint events.”). Simply parroting unsourced, conclusory assertions that lack any specific facts, such as dates, places, or people involved, provides no reason to believe that a violation has occurred.

Moreover, there is no allegation – much less evidence presented – that any participation by nurses or NNU members in Sanders events occurred on anything other than an individual volunteer basis, which of course NNU members, other nurses and all individuals are free to undertake. Indeed, such volunteer activities comprise ordinary and highly valued grassroots political activity, protected by the First Amendment. Yet the Complaint’s evident premise is that a volunteer’s union membership is legally indicative of a union’s – or a union-related political committee’s – violation of the Act. Of course, that is not so.

The Complaint also alleges that “NNU” reported “this canvassing effort” as an independent expenditure, citing a January 15, 2016, Schedule E 24/48 Hour Report filed by NNUPP. The Complaint does not allege which of the report’s six Nevada-attributed entries reflected “this canvassing effort,” and, in fact, no such entry could have done so, because, in fact, NNUPP did *not* pay for *any* Nevada canvass either by the Sanders campaign or using Sanders campaign materials, and the Nevada-related expenses on that report instead consisted of the following:

- \$28,000 to Campaign Workshop for the Nevada portion of a digital media campaign;
- \$1,400 to Clear Channel Outdoor for billboards in Nevada;
- Two payments of \$400 each to California Nurses Association for use of its office space for Nevada phone-banking; and
- Payments of \$1,165.66 and \$833.79 to Autumn Press for Nevada direct mail pieces

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<sup>1</sup> All or most of the Complaint’s repeated references to “NNU” (National Nurses United) appear actually to mean NNUPP, and this response treats all such references as if they did so. Even if they were considered to mean NNU, which is not a respondent, they would provide no reason to believe that a violation occurred for the same reasons set forth in this response.

See Affidavit of Ifeoma Adams ¶¶ 3, 4 (“Adams Affid.”) (attached). Accordingly, *none* of these expenditures pertained to canvassing in Nevada, much less canvassing using materials or training provided by the Sanders campaign.

The Complaint’s coordination allegations also appear to include the statement, at p. 5, that “Patty Healy, from the National Nurses United union, introduced Senator Sanders” at a “recent campaign event,” citing as the basis for this claim “TWEET”, with nothing more in the way of evidence. This bare allegation and its meaningless citation do not even describe when or where this alleged event took place, much less what NNUPP’s role was, if any, in any such event. Nor does it allege any NNUPP spending in connection with Ms. Healy’s alleged appearance. Accordingly, the Complaint here “fails to describe a violation of the Act.” RTB Policy Statement, 72 Fed. Reg. at 12546. In any event, Ms. Healy is a registered nurse who is a member of the Massachusetts Nurses Association, a separate labor organization that is affiliated with NNU. She is not, and was not at any such event, an employee, officer or other agent of NNUPP or NNU. Adams Affid. ¶ 5. Accordingly, this allegation, such as it is, provides no reason to believe that NNUPP violated the Act.

**NNUPP Donated to Progressive Kick For Internet Issue Advocacy and Did Not Control Progressive Kick’s Subsequent Spending**

Again in sole reliance upon a media article, the Complaint, at pp. 3-4, alleges that “NNU gave Progressive Kick \$45,000 so that a project of Progressive Kick; called People for Bernie, could run online ads and expand its social media presence” (footnote omitted). But the Complaint alleges violations of the Act in connection with that alleged transaction *only* by Progressive Kick and People for Bernie, not NNUPP (or NNU). See Complaint at pp. 5-9, 11. And, in fact, NNUPP (not NNU) donated \$45,000 to Progressive Kick – a nonfederal Internal Revenue Code § 527 organization that is not registered with the Commission – in order to promote issue-based Internet advocacy, but NNUPP neither had nor exercised any control over how Progressive Kick spent these funds, let alone over the actions of any recipient of any subsequent Progressive Kick donations.<sup>2</sup> Adams Affid. ¶ 6. Moreover, the Complaint’s factual allegations about People for Bernie’s Internet activities (at p. 4) are that People for Bernie “operates a website” and “boasts that it has constituent groups, each with their own websites, Twitter handles, and/or Facebook pages,” which provides no reason to believe that these activities are even “contributions” or “expenditures” regulated by the Act, see 11 C.F.R. § 100.26, 100.94, 100.155.

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<sup>2</sup> According to Progressive Kick’s Internal Revenue Service (IRS) Forms 8872, Progressive Kick received NNUPP’s donation of \$45,000 on October 10, 2015 (incorrectly attributing it to NNU; see NNUPP’s FEC 2015 Year-End Form 3X, p. 10). Contrary to the Complaint’s allegations, Progressive Kick has reported no donations since then to People for Bernie. It has reported three donations to “Feel the Bern”: \$15,000 on October 21, 2015, \$9,000 on December 18, 2016, and \$21,000 on February 18, 2016. NNUPP is unaware of the organizational status, if any, of either People for Bernie or Feel the Bern, or the relationship if any between them. Neither is registered as a political committee with the Commission or as a political organization with the IRS.

### **NNUPP Lawfully Reported Its Payments to California Nurses Association**

The Complaint also alleges that NNUPP “concealed its ultimate vendor through payments to the California Nurses Association” (“CNA”) because CNA “is mostly likely [sic] not the ultimate payee for these expenses and instead, those services are being provided by other vendors.” Complaint at 12. But this allegation fails as a matter of law, because the Act does *not* require a political committee to report the “ultimate payee” (however phrased) of its expenditures. Instead, 52 U.S.C. § 30104(b)(5) requires NNUPP to provide “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 is made.” *See also* 11 C.F.R. § 104.3(b)(3). This does not require reporting any further recipient of a committee’s disbursements or a payee’s sub-vendors. *See, e.g.*, FEC, “Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements” (June 27, 2013) (providing three scenarios of ultimate payee reporting, none of which are applicable here); MUR 6894, Factual and Legal Analysis (Oct. 29, 2015); MUR 6755, Statement of Reasons of Commissioner Goodman at 4 (March 29, 2016). When “[a] complaint fails to describe a violation of the Act,” then “a ‘no reason to believe’ finding would be appropriate.” RTB Policy Statement, 72 Fed. Reg. at 12,546.

The Complaint’s *only* cited authority for its contrary theory of violation is the Conciliation Agreement in MUR 4872. But that agreement explicitly *confirms* that the Act does *not* require a committee to report the “ultimate” recipients of its expenditures. The admitted violation in that case was that the respondents deliberately arranged for an intermediary that played no other role in the transaction to be the only reported payee *in order to conceal the actual vendor with which respondents had contracted* because that vendor was associated with Ku Klux Klan leader David Duke. As the Conciliation Agreement, at pp. 2-4 (Feb. 15, 2002), explained:

After the 1996 primary election in Louisiana, David Duke contacted [respondent U.S. Senate candidate] Woody Jenkins and recommended that he use the services of a computerized phone bank system run by Impact Mail. Jenkins purchased several rounds of calls from Impact Mail. After the first round of calls, Jenkins began hearing complaints that Duke’s name would appear on the caller ID when a phone bank message would arrive. At that point, Jenkins tried to cancel the transaction but was unable to because Tony Perkins, his campaign manager, had signed a contract with Impact Mail. Subsequently, Jenkins instructed Perkins to put a stop payment on the check issued to Impact Mail and directed that Impact Mail be paid through Courtney Communications, the campaign’s media firm. The Jenkins Committee issued three \$27,500 checks to Courtney. Courtney, in turn, made out three checks in the same amount to Impact Mail....

The Jenkins Committee contracted with Impact Mail for computerized phone bank services. Jenkins acknowledged that Impact Mail provided the services to the Jenkins Committee. Courtney Communications was not involved in the provision of services by Impact Mail. Jenkins decided to make disbursements for the services through

Courtney Communications because he did not want his campaign to be associated with Impact Mail and did not want Impact Mail listed on the Jenkins Committee's disclosure reports....

The Respondents contend that the Act and regulations require reporting of "the person to whom an expenditure is made" and not the "ultimate vendor." Respondents further contend that Impact Mail was the "ultimate vendor" in this matter, and cite that Courtney Communications, the vendor that provided media services for [respondent] Jenkins for Senate 1996, was paid and directed to pay in turn various other vendors e.g., television and radio stations. Respondents contend that the committee did not further itemize payments Courtney made to these and to other third party vendors.....

Unlike [those] third party vendors, Impact Mail was not an "ultimate vendor" or sub vendor of Courtney Communications. Whereas Courtney played a role in the purchase of services and placement of political advertising with newspapers, radio stations, and television stations, in some cases contracting with these entities, Courtney had no involvement whatsoever with the services provided by Impact Mail. Indeed, the Jenkins Committee contracted directly with Impact Mail. Courtney's only role was to serve as a conduit for payment to Impact Mail so as to conceal the transactions with Impact Mail.

The Complaint here, which only speculates whether or not CNA itself used subvendors, offers *no evidence at all* that CNA acted as a conduit in a scheme to conceal ultimate payees that had a direct relationship only to NNUPP. As such, the "vagueness" and "weakness of the evidence" (none) presented offers no "credible" basis for a reason to believe that NNUPP's reporting of payments to CNA violated 52 U.S.C. § 30104. See RTB Policy Statement, 72 Fed. Reg. at 12,546.

In any event, in fact there was no such scheme. CNA is a labor organization in California that is affiliated with NNU, and shares offices with NNU in California. See <http://www.nationalnursesunited.org/site/entry/cna-about>. NNUPP has no staff or facilities of its own and is entirely administered by NNU. NNUPP routinely pays CNA in connection with NNUPP's independent expenditure activity for the use of CNA staff, equipment, and event space, and NNUPP's reports in particular reflect these payments as "payroll expenses," "equipment expenses" and "site rental." Insofar as CNA arranges for third-party vendors for some online activity, printing, and other services, NNUPP pays CNA and not those vendors. Adams Affid. ¶¶ 2, 7. And, as explained above, doing so is fully consistent with 52 U.S.C. § 30104.

Indeed, this is a routine kind of arrangement, as reflected in the analysis of the Commission's Audit Division in 2011 concerning the Service Employees International Union Committee on Political Education ("SEIU COPE"). That analysis addressed the issue of whether "additional itemization and reporting of the ultimate payees of the independent expenditures was

necessary” in SEIU COPE’s FEC reports, which disclosed 38 disbursements totaling \$14.4 million to the Service Employees International Union (“SEIU”) as part of SEIU COPE’s independent expenditure activity, but did not provide additional detail on third-party vendors paid by SEIU. See Agenda Document No. 11-20, Open Meeting of May 5, 2011, Memorandum to the Commission Re: Proposed Final Audit Report on SEIU COPE (A09-28) at p. 1-2 (April 6, 2011). The analysis reported that “[the Office of General Counsel [OGC]] concluded that it could not locate any precedent requiring SEIU COPE to report information on the individuals and/or entities that ultimately received payments made by SEIU” and the reported disbursements “adequately disclose[d] the purpose of the disbursements consistent with Commission statute and regulations.” *Id.* at 2. The analysis concluded that SEIU COPE’s reports sufficed because SEIU’s relationship with SEIU COPE resembled that in Advisory Opinion 1984-27 between a connected organization and its separate segregated fund, and SEIU was “one of the largest labor unions, with many purposes beyond independent expenditures,” as distinct from the “sham” vendor that was at issue in an enforcement case, MUR 3847 (Stockman), whose facts appear to have echoed the conduit concealment scheme involved in MUR 4872. See *id.* at 3-4.<sup>3</sup> Here too, CNA is plainly an established labor organization, and its relationship with NNU and NNUPP is ongoing and transparent. Accordingly, the Complaint fails in alleging a reporting violation by NNUPP.

### **Conclusion**

Accordingly, for the reasons set forth above, NNUPP respectfully requests that the Commission either find no reason to believe that NNUPP violated FECA, or exercise its prosecutorial discretion and otherwise dismiss this matter as to NNUPP.

Respectfully submitted,



Laurence E. Gold

Neal C. Weare

Counsel for Respondents

National Nurses United for Patient Protection  
and Martha Kuhl, as Treasurer

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<sup>3</sup>Three Commissioners voted to reject the Audit Division’s findings because “the lack of further itemization limited the Audit Division’s ability” to verify the dissemination dates of the independent expenditures, the timeliness of the 24/48 Hour Reports, and the adequacy of the disclaimers on communications. The three other Commissioners concluded that SEIU COPE “was in material compliance” because, as OGC and the Audit Division found, SEIU COPE “complied with the applicable recordkeeping requirements” and the recommendation was supported by the records and other materials. See Final Audit Report of the Commission on SEIU COPE, January 1, 2007 – December 31, 2008 at 5. Of course, the current matter under review does not concern the adequacy of NNUPP records for an Audit Division recommendation about NNUPP’s independent expenditure reporting.

**AFFIDAVIT OF IFEOMA ADAMS**

Ifeoma Adams, being duly sworn, deposes and says:

1. I am employed as the Controller for California Nurses Association (CNA) and National Nurses United (NNU), a position I have held since March 2013. In my role as Controller, among other things, I manage the CNA/NNU Accounting Department and oversee a staff of seven employees, including two Certified Public Accountants (CPAs), who are assigned duties related to compliance with financial reporting requirements, payroll, and general ledger accounting. I have been a CPA licensed in California since 1981 and, prior to that, was a member of the international accountancy body known as the Association of Chartered Certified Accountants.
2. As the Controller of NNU, I am familiar with the activities of National Nurses United for Patient Protection ("NNUPP"), a federal independent-expenditure committee that NNU administers and controls. NNUPP has no staff or facilities of its own.
3. It is my responsibility to review invoices submitted to NNUPP for payment and I can confirm that NNUPP did not pay for any Nevada canvass that was either conducted by the Bernie Sanders presidential campaign or that used Sanders campaign materials.
4. The Nevada-related expenses on NNUPP's January 15, 2016 Year-End Form 3X consisted of the following:
  - \$28,000 to Campaign Workshop for the Nevada portion of a digital media campaign;
  - \$1,400 to Clear Channel Outdoor for billboards in Nevada;
  - Two payments of \$400 each to California Nurses Association for use of its office space for Nevada phone-banking; and
  - Payments of \$1,165.66 and \$833.79 to Autumn Press for Nevada direct mail pieces.
5. According to NNU's membership records, Patty Healy is a registered nurse who is a member of the Massachusetts Nurses Association, a separate labor organization that is affiliated with NNU. She is not an employee, officer or other agent of NNUPP or NNU. If she participated in an event as described on page 5 of the Complaint in FEC MUR 7038, she did not do so as an agent of NNU or NNUPP.
6. NNUPP donated \$45,000 to Progressive Kick, a nonfederal Internal Revenue Code § 527 organization that is not registered with the Commission, in order to promote

issue-based Internet advocacy. NNUPP neither had nor exercised any control over how Progressive Kick spent these funds, or over the actions of any recipient of any subsequent Progressive Kick donations.

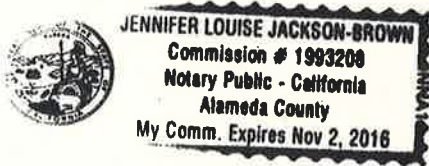
7. CNA is a labor organization in California that is affiliated with NNU, and shares offices with NNU in California. NNUPP routinely pays CNA in connection with NNUPP's independent expenditure activity for the use of CNA staff, equipment, and event space, and NNUPP's reports in particular reflect these payments as "payroll expenses," "equipment expenses" and "site rental." Insofar as CNA arranges for third-party vendors for some online activity, printing, and other services, NNUPP pays CNA and not those vendors.

Ifeoma Adams

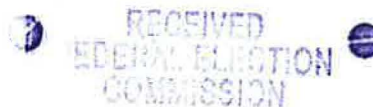
Ifeoma Adams

Sworn to and subscribed  
before me this 6<sup>th</sup> day  
of June 2016

Jennifer Louise Jackson-Brown  
Notary Public







**AFFIDAVIT OF IFEOMA ADAMS** -7 AM 9:01

Ifeoma Adams, being duly sworn, deposes and says:

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Ifeoma Adams

Ifeoma Adams

Sworn to and subscribed  
before me this 6<sup>th</sup> day  
of June 2016

Jennifer Louise Jackson-Brown  
Notary Public



JENNIFER LOUISE JACKSON-BROWN  
Commission # 1983208  
Notary Public - California  
Alameda County  
My Comm. Expires Nov 2, 2018