

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7038

DATE COMPLAINT FILED: April 8, 2016

DATE OF NOTIFICATION: April 13, 2016

LAST RESPONSE RECEIVED: October 21, 2016

DATE ACTIVATED: March 15, 2017¹

EARIEST SOL: July 1, 2020

LATEST SOL: February 1, 2021

ELECTION CYCLE: 2016

COMPLAINANT: American Democracy Legal Fund, by Brad Woodhouse

RESPONDENTS: Bernie 2016 and Susan Jackson in

her official capacity as treasurer
Secretary, Board of Trade.

Senator Bernard Sanders
National Unit

National Nurses United for Patient Protection
and Martha Kuhl in her official capacity as
treasurer

Progressive Kick Independent Expenditures and Joshua Grossman in his official capacity as treasurer

People for Bernie

RELEVANT STATUTES 52 U.S.C. § 30102(e)(4)

AND REGULATON: 52 U.S.C. § 30104(b)

52 U.S.C. § 30116

52 U.S.C. § 30120(a)

11 C.F.R. § 102.14(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

¹ OGC initially deferred recommendations in this matter in anticipation of a ruling in *Pursuing Am.’s Greatness v. FEC*. See *Pursuing Am.’s Greatness v. FEC*, 363 F. Supp. 3d 94, 2019 WL 1296949 at *8 (D.D.C. 2019) [hereinafter “PAG”]. On March 21, 2019, the court issued an opinion holding that 11 C.F.R. § 102.14(a) is unconstitutional and enjoined the Commission from enforcing the regulation. *Id.*

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1 **I. INTRODUCTION**

2 The Complaint² in this matter alleges that Respondents violated the Federal Election
 3 Campaign Act of 1971, as amended (the “Act”), in several ways. First, the Complaint alleges
 4 that an independent expenditure-only political committee, Progressive Kick Independent
 5 Expenditure and Joshua Grossman in his official capacity as treasurer (“PKIE”), impermissibly
 6 used the name “People for Bernie” for a special project of the committee and failed to include an
 7 adequate disclaimer on the People for Bernie website.³ Additionally, the Complaint alleges that
 8 PKIE and another independent expenditure-only political committee, the National Nurses United
 9 for Patient Protection Committee (“NNUPP”),⁴ engaged in illegal coordination with Senator
 10 Bernard Sanders and his principal campaign committee, Bernie 2016 and Susan Jackson in her
 11 official capacity as treasurer (“Sanders Committee”).⁵ Finally, the Complaint alleges that
 12 NNUPP violated the Act by concealing the ultimate payee of some of its expenses for
 13 independent expenditures by reporting payments to the California Nurses Association.⁶

14 As discussed below, we conclude that the Complaint does not raise a reasonable
 15 inference that People for Bernie was a special project of PKIE. Accordingly, we recommend
 16 that the Commission dismiss the allegations that People for Bernie and PKIE violated 52 U.S.C.

² On June 17, 2016, the Commission received a letter from the Complainant stating that it was withdrawing its complaint. On the same day, the Office of General Counsel sent a letter to the Complainant stating that its request to withdraw the Complaint will not prevent the Commission from taking appropriate action on the Complaint under the Act. *See* 52 U.S.C. § 30109.

³ Compl. at 5-9 (Apr. 8, 2016).

⁴ The Complaint refers to this Respondent as “NNU” while the Respondent refers to itself as “NNUPP.” Compl. at 1; Response of the National Nurses United for Patient Protection (“NNUPP Resp.”) at 1 (Jun. 17, 2016). In this report we refer to this Respondent as NNUPP.

⁵ Compl. at 9-11.

⁶ *Id.* at 11-12.

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1 § 30102(e)(4) and 11 C.F.R. § 102.14(a) regarding the use of a candidate name and 52 U.S.C.
2 § 30120(a) by failing to provide a disclaimer. Further, because the available information does
3 not indicate that the Respondents engaged in activity that constituted illegal coordination, we
4 recommend that the Commission find no reason to believe that PKIE or NNUPP violated
5 52 U.S.C. § 30116(a) and 30118(a) by making excessive and prohibited contributions in the form
6 of coordinated communications; and no reason to believe that Senator Bernard Sanders or the
7 Sanders Committee violated 52 U.S.C. § 30116(f) and 30118(a) by accepting excessive and
8 prohibited contributions in the form of coordinated communications. We also recommend that
9 the Commission dismiss the allegation that NNUPP violated 52 U.S.C. § 30104(b) by failing to
10 adequately disclose the payee of certain disbursements consistent with the Commission's
11 prosecutorial discretion to determine the proper ordering of its priorities and use of agency
12 resources. Finally, we recommend that the Commission close the file.

13 **II. FACTUAL BACKGROUND AND LEGAL ANALYSIS**

14 **A. Naming and Disclaimer Allegations**

15 Senator Sanders was a candidate for the President of the United States during the 2016
16 election cycle.⁷ His principal campaign committee was the Sanders Committee.⁸ Two
17 independent expenditure-only political committees, NNUPP and PKIE, reported making
18 independent expenditures supporting Sanders during this election cycle.⁹

⁷ FEC Form 2, Statement of Candidacy, Bernard Sanders (April 30, 2015).

⁸ FEC Form 1, Statement of Organization, Bernard Sanders (amended Jan. 6, 2016).

⁹ NNUPP 2015 Year-End Rpt. (June 7, 2016) at 12-53. Progressive Kick Independent Expenditures 2015
Year-End Rpt. (Jan. 28, 2016) at 71.

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1 People for Bernie is an organization described on its website as a collective formed
2 before Sanders announced his candidacy for President with the stated mission of advancing
3 progressive principles.¹⁰ The Complaint alleges that the People for Bernie website was a special
4 project of PKIE and concludes that PKIE violated the Act and Commission regulations by
5 improperly using Sanders's nickname "Bernie" for this project.¹¹ It further alleges that PKIE
6 failed to include a proper disclaimer identifying PKIE as the political committee paying for the
7 communication on the People for Bernie website and its connected social media pages.¹² To
8 support its allegation that People for Bernie was a project of PKIE, the Complaint points to a
9 \$45,000 contribution from NNUPP to PKIE that was allegedly intended to allow People for
10 Bernie to "run online ads and expand its social media presence."¹³

11 PKIE denies these claims. It asserts that the Complaint errs in identifying People for
12 Bernie as its project, and it states that People for Bernie is not operated by any federal political
13 committee.¹⁴ Indeed, PKIE maintains that neither PKIE nor People for Bernie were even
14 involved in the making or receiving of the \$45,000 donation at issue. PKIE identifies two other
15 parties to the transaction: the donor, Progressive Kick ("PK"), a 527 organization that is not a
16 federal committee and shares overlapping leadership with PKIE; and the recipient of the funds
17 totaling \$45,000, "Feel the Bern," an entity that is neither registered as a political committee with

¹⁰ <http://www.peopleforbernie.com/about>.

¹¹ Compl. at 2.

¹² *Id.* at 7 – 9.

¹³ *Id.* at 3.

¹⁴ Response of PKIE ("PKIE Resp.") at 2, 3 (Jun. 3, 2016).

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1 the Commission nor as a political organization with the IRS.¹⁵ PKIE further states that PK
 2 donated these funds to Feel the Bern “with the explicit proviso that they were to be used for
 3 online advertising that did not contain any express advocacy as defined by Commission
 4 regulations at 11 C.F.R. § 100.22.”¹⁶ In addition, PKIE states that “the funds that PK donated
 5 were not intended to pay People for Bernie for any work associated with People for Bernie’s
 6 website or its associated social media pages.”¹⁷ PKIE further asserts that it “did not have any
 7 role” in the process by which the donated funds at issue ultimately reached Feel the Bern.¹⁸ It
 8 concludes that “[n]either PK, PKIE nor Joshua Grossman (President of PK and Treasurer of

¹⁵ *Id.* at 2. Feel the Bern is an organization described on its website as a “broad coalition” of “over 125 unpaid volunteers (and counting)” who are “inspired by Bernie Sanders’s campaign for presidency of the United States.” *See* [FeelTheBern.org About Us – Who are We?](http://web.archive.org/web/20160408122124/http://feelthebern.org/about-us), *available at* <http://web.archive.org/web/20160408122124/http://feelthebern.org/about-us> (snapshot from April 8, 2016). The website further states that the volunteers “came together because [they] wanted to make clear [Sanders’s] record on and plans to address the most important issues affecting our communities, nation, and planet.” *Id.* The website also states that it “was built & maintained by volunteers with no official relation to Bernie Sanders,” and that the group is “unassociated with any Super PACs or billionaires.” *Id.*

¹⁶ PKIE Resp. at 2.

¹⁷ *Id.* PKIE does not provide details regarding any advertising that “Feel the Bern” actually performed, but states its belief that People for Bernie founder Charles Lenchner also owned and controlled Feel the Bern. *Id.*

¹⁸ *Id.* The factual record reflects a discrepancy regarding the origin of the \$45,000 donation that PK received and ultimately disbursed to Feel the Bern. PKIE’s Response to the Complaint identifies “National Nurses United” as the donor of the \$45,000 in question. National Nurses United (“NNU”), a professional association of registered nurses, is an organization described on its website as the “largest union and professional association of registered nurses in U.S. history,” with more than 150,000 members nationwide. *See* [National Nurses United — About](https://web.archive.org/web/20190715004047/https://www.nationalnursesunited.org/), *available at* <https://web.archive.org/web/20190715004047/https://www.nationalnursesunited.org/> (snapshot from July 15, 2019). NNUPP is the separate segregated fund of NNU. FEC Form 1, Statement of Organization, NNUPP (amended Jan. 31, 2016). According to PK’s 2015 Year-End IRS Report of Contributions and Expenditures (Form 8872), on October 10, 2015, NNU donated \$45,000 to PK. PK IRS 2015 Year-End Rpt. at 2 (Jan. 29, 2016). By contrast, NNUPP’s Response states that “NNUPP (not NNU) donated \$45,000 to [PK].” NNUPP Resp. at 3 (Jun. 17, 2016). Further, NNUPP’s Amended 2015 Year-End Report discloses a \$45,000 contribution that it made to PK. NNUPP Amended 2015 Year-End Rpt. at 11 (June 7, 2016). In any event, PKIE’s Response links the \$45,000 donation to PK to the three subsequent expenditures that PK made to Feel the Bern totaling this amount. PKIE Resp. at 2.

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1 PKIE) played any direct role in the administration of Feel the Bern or People for Bernie and its
 2 connected social media pages.”¹⁹

3 Likewise, People for Bernie’s Response states that the Complaint has mistaken it for
 4 another entity, noting that it is not a political committee, has no bank account or tax I.D. number,
 5 and has “never received a penny from Progressive Kick or anyone else.”²⁰

6 The Act and Commission regulations provide that the name of each unauthorized
 7 committee shall not include the name of any candidate.²¹ The Commission has interpreted
 8 “name” for the purposes of this section of the Act to include “any name under which a
 9 committee conducts activities, such as solicitations or other communications, including a special
 10 project name or other designation.”²² The Complaint’s repeated allegation that People for Bernie
 11 is a special project of PKIE is central to its disclaimer and naming allegations.²³ The
 12 Commission has previously determined that the operation of a website by a political committee
 13 qualifies as a “special project or other communication.”²⁴ The Act requires political committees
 14 that make a disbursement for any type of public communication to identify who paid for the

¹⁹ *Id.*

²⁰ Response of People for Bernie (“Bernie Resp.”) at 2 (Oct. 21, 2016).

²¹ 52 U.S.C. § 30102(e)(4); 11 C.F.R. § 102.14(a).

²² *Id.*

²³ An unauthorized committee may only include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate. 11 C.F.R. § 102.14(b)(3). *See PAG.*

²⁴ Advisory Op. 1995-9 (NewtWatch PAC) (“The operation of a World Wide Web site would be considered a project of the Committee”); Advisory Op. 2015-04 at 3-4 (Collective Actions PAC) (determining that a committee’s “online activities are ‘projects’ that fall within the scope of 11 C.F.R. § 102.14”).

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1 communication and whether such communication was authorized by a candidate or candidate's
 2 committee.²⁵

3 Contrary to the Complaint's allegations, however, the available information does not
 4 indicate that People for Bernie was a project of PKIE or connected to any other Respondent in
 5 this matter. PKIE denies any interactions with People for Bernie or Feel the Bern. And People
 6 for Bernie states that it did not enter into any monetary transactions with anyone, including
 7 PKIE. Although these assertions are unsworn, PK's IRS Reports of Contributions and
 8 Expenditures (Form 8872) appears to support Respondents' contention that another entity made
 9 the \$45,000 donation at issue, as it reflects that PK made three donations totaling \$45,000 to
 10 "Feel the Bern" for the purpose of a "social media campaign."²⁶ The Complaint does not
 11 provide any information to the contrary, and we have not separately identified such information.

12 Based on the available record, there is insufficient evidence indicating that People for
 13 Bernie was a website of PKIE or another political committee and therefore was required to place
 14 a disclaimer on its website.²⁷ In light of these circumstances, coupled with a recent decision in
 15 *PAG* relating to the use of candidate names by non-authorized committees,²⁸ we recommend that
 16 the Commission dismiss the allegations that People for Bernie and Progressive Kick Independent
 17 Expenditures and Joshua Grossman in his official capacity as treasurer violated 52 U.S.C.
 18 § 30102(e)(4) and 11 C.F.R. § 102.14(a) regarding the use of a candidate name and 52 U.S.C.
 19 § 30120(a) by failing to provide a disclaimer.

²⁵ 52 U.S.C. § 30120(a).

²⁶ PK IRS 2015 Year-End Rpt. (Jan. 29, 2016) at 3; PK IRS 2016 First Quarterly Rpt. at 2 (Apr. 26, 2016).

²⁷ See 52 U.S.C. §§ 30102(e)(4) and 30120(a); 11 C.F.R. § 102.14(a).

²⁸ See n.1, *supra*.

1 **B. Coordination Allegation**

2 The Complaint also alleges that NNUPP and PKIE each made impermissible
3 contributions to Sanders and his principal campaign committee, the Sanders Committee, and that
4 Sanders and the Sanders Committee accepted these contributions.²⁹ The Complaint does not
5 refer to any specific communications that were coordinated between the parties, instead stating
6 generally that NNUPP has made numerous independent expenditures in support of Senator
7 Sanders's presidential campaign, and "has been openly coordinating its activity with Senator
8 Sanders's presidential campaign."³⁰ The Complaint alleges that the Sanders Committee and
9 NNUPP "have held joint events and nurses associated with NNUPP have received [campaign
10 worker] training from Bernie 2016."³¹ For example, the Complaint states that "[i]n Nevada,
11 Senator Sanders's campaign prepared packets of voter files for NNU[PP] nurses to use as they
12 canvassed the state. And yet this canvassing effort was reported as an independent expenditure
13 by NNU[PP]."³² The Complaint also alleges that PKIE may have been coordinating with the
14 Committee through its special project, People for Bernie, contending that People for Bernie has
15 been openly working with the campaign at various campaign related events.³³

16 Respondents deny that their actions reflected coordinated activity. Rich Pelletier, the
17 Sanders Committee's Deputy Campaign Manager, attests in his sworn affidavit that to the best of
18 his knowledge, "none of the activities cited in the [C]omplaint involved spending by an outside

²⁹ Compl. at 9-11.

³⁰ *Id.* at 10.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 1.

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1 group made in cooperation, consultation or concert with, or at the request or suggestion of,
 2 anyone at the campaign.”³⁴ Sanders and the Sanders Committee also state that the Complaint
 3 fails to distinguish between permissible political engagement and impermissible coordination
 4 and “has failed to identify a single instance where an outside group has made an expenditure, and
 5 certainly not one in coordination with the Campaign.”³⁵

6 NNUPP argues that there is no evidence indicating that the participation by the nurses
 7 associated with the National Nurses United (“NNU”) at Sanders events reflects anything other
 8 than individual volunteer activity.³⁶ Ifeoma Adams, the Controller for NNU and California
 9 Nurses Association (“CNA”), a labor organization affiliated with NNUPP, attests in an affidavit
 10 included with NNUPP’s Response that “NNUPP did not pay for any Nevada canvass that was
 11 either conducted by the Bernie Sanders presidential campaign or that used Sanders campaign
 12 materials.”³⁷ She also attests that, “[a]s the Controller of NNU, [she is] familiar with the
 13 activities of [NNUPP], a federal independent-expenditure committee that NNU administers and
 14 controls.”³⁸ Additionally, despite the Complaint’s allegation that Patty Healy was acting on
 15 behalf of NNUPP when she introduced Sanders at a campaign event,³⁹ Adams attests that Healy

³⁴ Sanders Committee and Senator Bernard Sanders Response (“Sanders Resp.”), Rich Pelletier Aff. ¶ 3 (May 31, 2016).

³⁵ Sanders Resp. at 2-3.

³⁶ NNUPP Resp. at 2-3.

³⁷ NNUPP Resp., Ifeoma Adams Aff. ¶¶ 1-2, 3, and 7.

³⁸ *Id.* ¶ 2.

³⁹ Compl. at 5.

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1 was “not an employee, officer, or other agent of NNUPP or NNU” and was not acting as an agent of
 2 NNU or NNUPP in her introduction of Sanders.⁴⁰

3 PKIE’s Response simply states that “neither PKIE nor [PKIE treasurer] Mr. Grossman
 4 has coordinated any of its campaign activities with the Sanders campaign or its agents.”⁴¹

5 The Act prohibits corporations and independent expenditure-only political committees
 6 from making, and candidates or their committees from knowingly accepting, contributions in
 7 connection with any election to political office.⁴² Expenditures made by any person “in
 8 cooperation, consultation, or concert with, or at the request or suggestion of” a candidate or his
 9 authorized committee or agent qualify as an in-kind contribution to the candidate and must be
 10 reported as expenditures made by the candidate’s authorized committee.⁴³

11 A communication that is coordinated with a candidate or his authorized committee is
 12 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting
 13 requirements of the Act.⁴⁴ A communication is coordinated with a candidate, his authorized
 14 committee, or agent of either, if it meets a three-prong test set forth in the Commission’s
 15 regulations: (1) it is paid for, in whole or in part, by a person other than the candidate or
 16 authorized committee; (2) it satisfies a content standard in 11 C.F.R. § 109.21(c); and (3) it

⁴⁰ NNUPP Resp., Ifeoma Adams Aff. ¶ 5.

⁴¹ PKIE Resp. at 3.

⁴² See 52 U.S.C. §§ 30116(a), 30116(f), and 30118(a); Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

⁴³ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(a), (b).

⁴⁴ 52 U.S.C. §§ 30104, 30116, and 30118; 11 C.F.R. § 109.21(b).

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- 1 satisfies a conduct standard in 11 C.F.R. § 109.21(d). All three prongs must be satisfied for a
- 2 communication to be considered coordinated under Commission regulations.⁴⁵

3 Here, the Complaint does not identify any specific communications with which to
4 conduct a coordination analysis.⁴⁶ Nor do the Complaint's conclusory allegations of interactions
5 between the Sanders Committee and individuals associated with PKIE and NNUPP and the
6 available record support the Complaint's claim that impermissible coordination under the Act or
7 Commission regulations occurred. Because the allegations fail to give rise to a reasonable
8 inference that a violation occurred, we recommend that the Commission find no reason to
9 believe that PKIE or NNUPP violated 52 U.S.C. § 30116(a) and 30118(a) by making excessive
10 and prohibited contributions in the form of coordinated communications; and no reason to
11 believe that Senator Bernard Sanders or the Sanders Committee violated 52 U.S.C. §§ 30116(f)
12 and 30118(a) by accepting excessive and prohibited contributions in the form of coordinated
13 communications.

C. Allegation that NNUPP Concealed its Ultimate Vendors through Payments to CNA

Finally, the Complaint alleges that NNUPP has concealed the identities of the vendors who were the ultimate recipients of payments it made to CNA, contending that the services were likely performed by someone other than CNA.⁴⁷ In response, NNUPP states that its payments

⁴⁵ 11 C.F.R. § 109.21(a); see also Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

46 Compl.

47 *Id.* at 12.

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1 were legal and were not part of a scheme to conceal the identity of other payees.⁴⁸ NNUPP
 2 states that it routinely pays CNA, an organization affiliated with NNU and that shares offices
 3 with NNU in California, for expenses relating to NNUPP's independent expenditure activity, as
 4 NNUPP has no staff or facilities of its own and is entirely administered by NNU.⁴⁹ NNUPP's
 5 Response refers to a number of payments that it made in connection with its relevant
 6 independent expenditure activity for the use of CNA staff, equipment, and event space, which
 7 are disclosed as "payroll expenses," "equipment expenses," and "site rental" on its disclosure
 8 reports filed with the Commission.⁵⁰ With respect to NNUPP's payments to CNA for other
 9 services, including online activity and printing, NNUPP states that CNA arranges for third-party
 10 vendors to perform some of these services.⁵¹

11 The Act and Commission regulations require political committees to report the name and
 12 address of each person to whom they make expenditures or other disbursements aggregating
 13 more than \$200 per calendar year, or per election cycle for authorized committees, as well as the
 14 date, amount, and purpose of such payments.⁵² The relevant reporting requirements under the
 15 Act and Commission regulations are intended to ensure public disclosure of "where political

⁴⁸ NNUPP Resp. at 5. We note that we afford no particular weight in this analysis to legal conclusions asserted in the Affidavits at issue. *See, e.g., A.L. Pickens Co., Inc. v. Youngstown Sheet & Tube Co.*, 650 F.3d 118, 121 (6th Cir. 1981) (giving no weight to legal conclusions in affidavit because "[t]he affidavit is no place for ultimate facts and conclusions of law") (quoting 6 MOORE'S FEDERAL PRACTICE ¶ 56.22(1), at 56-1316 (Supp. 1979)); *Schubert v. Nissan Motor Corp. in USA*, 148 F.3d 25, 30 (1st Cir. 1998); 2A C.J.S. AFFIDAVITS § 39 ("It is improper for affidavits to embody legal arguments, and legal arguments and summations in affidavits will be disregarded by the courts.").

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ NNUPP Resp., Ifeoma Adams Aff. ¶ 7.

⁵² 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (authorized committees); *id.* § 104.9(a), (b) (all political committees).

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1 campaign money comes from and how it is spent.”⁵³ Disclosure requirements also “deter[] and
2 help[] expose violations” of the Act and Commission regulations.⁵⁴

3 Neither the Act nor Commission regulations address the concepts of ultimate payees,
4 vendors, agents, contractors, or subcontractors in this context.⁵⁵ The Commission has, however,
5 found reason to believe that political committees violated the Act’s reporting requirements in
6 circumstances where the factual record suggests that a committee reported a vendor that served
7 merely as a stand-in for payments to another particular recipient the committee avoided
8 disclosing.⁵⁶

9 Here, the available information does not suggest that NNUPP’s payments to CNA
10 reflected a scheme designed to conceal the ultimate payees. NNUPP denies this allegation and
11 we have no other information to the contrary. However, if any of the third party vendors that

⁵³ *Buckley v. Valeo*, 424 U.S. 1, 66 (1976); *see also Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing importance of disclosure requirements to serve informational interest, because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

⁵⁴ *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc); *see also Buckley*, 424 U.S. at 67-68 (explaining that disclosure requirements “deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light” and that “recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations” of the Act); *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (concurring with the stated government interests in disclosure requirements described in Buckley — “providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce” the Act and Commission regulations).

⁵⁵ Advisory Op. 1983-25 (Mondale) at 2. The Commission has since addressed the requirements of section 30104(b)(5) in certain situations not applicable to these facts. *See Reporting Ultimate Payees of Political Committee Disbursements*, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013) (“Ultimate Payee Interpretive Rule”) (clarifying committees’ obligation to report “ultimate payees” in three specific scenarios that are not vendor specific).

⁵⁶ *See Factual & Legal Analysis* at 2-3, MUR 6724 (Bachmann for President) (Bachmann’s committee and Iowa state senator Kent Sorenson agreed that he would be paid by the committee in that matter through an intermediary —C&M— then simply added Sorenson’s monthly payments to the monthly fees it was already collecting from the committee); *see Conciliation Agreement* at 2, MUR 6724 (Bachmann for President); Conciliation Agreement at 2-4, MUR 4872 (Jenkins) (respondents violated the Act by concealing its relationship with the actual vendor by routing payments to another vendor that had no involvement with the services provided by the actual payee).

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1 CNA arranged to use on NNUPP's behalf performed services relating to online activity, printing,
 2 and such "other services," there is a possibility that such payments may have been improperly
 3 reported.⁵⁷ It is unclear which specific expenditures on NNUPP's disclosure reports at the time
 4 of the Complaint represented these "other services," as well as what portion of the payments to
 5 CNA required the use of subvendors. While NNUPP has submitted a sworn affidavit from the
 6 NNU/CNA Controller identifying certain payments NNUPP made to CNA for staff, equipment,
 7 and event space that did not involve the use of a subvendor, and other types that did (online
 8 activity and printing), it does not offer sworn statements that would refute the existence of an
 9 alleged concealment scheme.

10 Although an investigation could likely determine whether NNUPP concealed the identity
 11 of ultimate payees by inaccurately reporting CNA as the payee, we nevertheless recommend that
 12 the Commission exercise its prosecutorial discretion and dismiss this allegation. A review of
 13 NNUPP's three disclosure reports contemporaneous to the time of the Complaint reflects that
 14 NNUPP paid CNA a total of \$218,393.92.⁵⁸ Of this figure, \$76,938.02 represents the type of
 15 expenses using CNA resources — "payroll" (\$45,775.62), "overhead" (\$19,895.82); "site rental"
 16 (\$9,064.86), "office supplies" (\$1,803.61), and "admin" (\$398.11) — that NNU/CNA Controller
 17 Adams's sworn affidavit indicates would not have involved a subvendor.⁵⁹ And another
 18 payment to CNA for "Bernie Staff In-Kind" in the amount of \$2,748.82 would also appear to

⁵⁷ NNUPP Resp. at 5.

⁵⁸ NNUPP Amended 2015 Year-End Rpt. at 8, 35, 43, 45, and 48, (June 7, 2016); NNUPP Amended 2016 April Quarterly Rpt. at 8-13, 19, 25, 26, 28, 31, 33-37, 39-48, 51-54, 73-78, 81-93, 98-100, 102, 105-106, 108, 110-118, 122-125, 133, 136, 138-140, 143-145, 148-149, and 151-152 (June 8, 2016); 2016 July Quarterly Rpt. at 8-9, 43-45, 48, 54, 56-57, 66-67, 69, and 73 (July 15, 2016).

⁵⁹ NNUPP Amended 2015 Year-End Rpt. at 8 (June 7, 2016); NNUPP Amended 2016 April Quarterly Rpt. at 8-13, 19, 26, 28, 31, 37-39, 41-42, 48-50, 57-59, 78-81, 101, 105, 109-110, 116, 133-134, and 143 (June 8, 2016); 2016 July Quarterly Rpt. at 8-9, 56-57, and 67 (July 15, 2016).

1 reflect activity where a subvendor was not used.⁶⁰ Assuming, *arguendo*, that some portion of the
2 remaining \$138,707.06 in disbursements to CNA involved a subvendor, and all of those
3 particular payments should have been disclosed to reflect a payee other than CNA, the amount
4 that would be attributable to that entity would not meet the referral threshold for the Office of
5 General Counsel ("OGC"). Under these circumstances, we recommend that the Commission
6 exercise its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985) and dismiss
7 the allegation that NNUPP violated 52 U.S.C. § 30104(b) by failing to adequately disclose the
8 payee of certain disbursements. We further recommend that the Commission close the file.

9 **III. RECOMMENDATIONS**

10 1. Dismiss the allegations that Progressive Kick Independent Expenditures and
11 Joshua Grossman in his official capacity as treasurer violated 52 U.S.C.
12 § 30102(e)(4) and 11 C.F.R. § 102.14(a) regarding the use of a candidate name
13 and 52 U.S.C. § 30120(a) by failing to provide a disclaimer;

14 2. Dismiss the allegations that People for Bernie violated 52 U.S.C. § 30102(e)(4)
15 and 11 C.F.R. § 102.14(a) regarding the use of a candidate name and 52 U.S.C.
16 § 30120(a) by failing to provide a disclaimer;

17 3. Dismiss the allegation that National Nurses United for Patient Protection and
18 Martha Kuhl in her official capacity as treasurer violated 52 U.S.C. § 30104(b) by
19 failing to adequately disclose the payee of certain disbursements pursuant to the
20 Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821,
21 831-32 (1985);

22 4. Find no reason to believe that National Nurses United for Patient Protection and
23 Martha Kuhl in her official capacity as treasurer violated 52 U.S.C. §§ 30116(a)

⁶⁰ NNUPP Amended 2016 April Quarterly Rpt. at 13 (June 8, 2016).

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1 and 30118(a) by making excessive and prohibited contributions in the form of
2 coordinated communications;

3 5. Find no reason to believe that Progressive Kick Independent Expenditures and
4 Joshua Grossman in his official capacity as treasurer violated 52 U.S.C.
5 §§ 30116(a) and 30118(a) by making excessive and prohibited contributions in
6 the form of coordinated communications;

7 6. Find no reason to believe that Senator Bernard Sanders violated 52 U.S.C.
8 §§ 30116(f) and 30118(a) by accepting excessive and prohibited contributions in
9 the form of coordinated communications;

10 7. Find no reason to believe that Bernie 2016 and Susan Jackson in her official
11 capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30118(a) by accepting
12 excessive and prohibited contributions in the form of coordinated
13 communications;

14 8. Approve the attached Factual and Legal Analysis;

15 9. Approve the appropriate letters;

16 10. Close the file.

17 Lisa J. Stevenson
18 Acting General Counsel
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21 November 19, 2019

22 Date

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