



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 16, 2021

BY ELECTRONIC MAIL ONLY

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Laurence E. Gold, Esq.
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1000 Connecticut Avenue, NW, Fifth Floor
Washington, DC 20009

RE: MUR 7038
National Nurses United for Patient Protection
and Martha Kuhl in her official capacity as
treasurer

Dear Mr. Gold:

On April 13, 2016, the Federal Election Commission notified your clients, National Nurses United for Patient Protection and Martha Kuhl in her official capacity as treasurer; of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended.

Upon further review of the allegations contained in the complaint, and information provided by your clients, the Commission, on June 4, 2021, voted to dismiss the allegation that National Nurses United for Patient Protection and Martha Kuhl in her official capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to adequately disclose the payee of certain disbursements. Also on that date, the Commission voted to find no reason to believe that National Nurses United for Patient Protection and Martha Kuhl in her official capacity as treasurer violated 52 U.S.C. §§ 30116(a) and 30118(a) by making excessive and prohibited contributions in the form of coordinated communications. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

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If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Lynn Y. Tran
Assistant General Counsel

Enclosure

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Bernie 2016 and Susan Jackson in her official capacity as treasurer
Senator Bernard Sanders
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

I. INTRODUCTION

15 This matter was generated by a Complaint filed with the Federal Election Commission
16 (the “Commission”) alleging that Respondents violated the Federal Election Campaign Act of
17 1971, as amended (the “Act”), in several ways. First, the Complaint alleges that an independent
18 expenditure-only political committee, Progressive Kick Independent Expenditure and Joshua
19 Grossman in his official capacity as treasurer (“PKIE”), impermissibly used the name “People
20 for Bernie” for a special project of the committee and failed to include an adequate disclaimer on
21 the People for Bernie website.¹ Additionally, the Complaint alleges that PKIE and another
22 independent expenditure-only political committee, the National Nurses United for Patient
23 Protection Committee (“NNUPP”),² engaged in illegal coordination with Senator Bernard
24 Sanders and his principal campaign committee, Bernie 2016 and Susan Jackson in her official
25 capacity as treasurer (the “Sanders Committee”).³ Finally, the Complaint alleges that NNUPP

¹ Compl. at 5-9 (Apr. 8, 2016).

² The Complaint refers to this Respondent as “NNU” while the Respondent refers to itself as “NNUPP.” Response of the National Nurses United for Patient Protection (“NNUPP Resp.”) at 1 (Jun. 17, 2016). The Commission refers to this Respondent as NNUPP.

3 Compl. at 9-11.

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1 violated the Act by concealing the ultimate payee of some of its expenses for independent
2 expenditures by reporting payments to the California Nurses Association (“CNA”).⁴

3 As set forth below, the Commission dismisses the allegations that People for Bernie and
4 PKIE violated 52 U.S.C. § 30102(e)(4) and 11 C.F.R. § 102.14(a)⁵ regarding the use of a
5 candidate name and 52 U.S.C. § 30120(a) by failing to provide a disclaimer. Further, because
6 the available information does not indicate that the Respondents engaged in activity that
7 constituted illegal coordination, the Commission has determined to find no reason to believe that
8 PKIE or NNUPP violated 52 U.S.C. §§ 30116(a) and 30118(a) by making excessive and
9 prohibited contributions in the form of coordinated communications, and no reason to believe
10 that the Sanders Committee violated 52 U.S.C. §§ 30116(f) and 30118(a) by accepting excessive
11 and prohibited contributions in the form of coordinated communications. Consistent with the
12 Commission’s prosecutorial discretion, the Commission also dismisses the allegation that
13 NNUPP violated 52 U.S.C. § 30104(b) by failing to adequately disclose the payee of certain
14 disbursements.

⁴ *Id.* at 11-12.

⁵ See *Pursuing Am.’s Greatness v. Fed. Election Comm’n*, 363 F. Supp. 3d 94 (D.D.C. 2019) (“PAG”) (holding that 11 C.F.R. § 102.14(a) is unconstitutional and enjoining the Commission from enforcing the regulation).

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Naming and Disclaimer Allegations**

3 Senator Sanders was a candidate for President of the United States during the 2016
 4 election cycle.⁶ His principal campaign committee was the Sanders Committee.⁷ Two
 5 independent expenditure-only political committees, NNUPP and PKIE, reported making
 6 independent expenditures supporting Sanders during this election cycle.⁸

7 People for Bernie is an organization described on its website as a collective formed
 8 before Sanders announced his candidacy for President with the stated mission of advancing
 9 progressive principles.⁹ The Complaint alleges that the People for Bernie website was a special
 10 project of PKIE and concludes that PKIE violated the Act and Commission regulations by
 11 improperly using Sanders's nickname "Bernie" for this project.¹⁰ It further alleges that PKIE
 12 failed to include a proper disclaimer identifying PKIE as the political committee paying for the
 13 communication on the People for Bernie website and its connected social media pages.¹¹ To
 14 support its allegation that People for Bernie was a project of PKIE, the Complaint points to a
 15 \$45,000 contribution from NNUPP to PKIE that was allegedly intended to allow People for
 16 Bernie to "run online ads and expand its social media presence."¹²

⁶ FEC Form 2, Statement of Candidacy, Bernard Sanders (April 30, 2015).

⁷ FEC Form 1, Statement of Organization, Bernard Sanders (amended Jan. 6, 2016).

⁸ NNUPP 2015 Year-End Rpt. (June 7, 2016) at 12-53. Progressive Kick Independent Expenditures 2015 Year-End Rpt. (Jan. 28, 2016) at 71.

⁹ <http://www.peopleforbernie.com/about>.

¹⁰ Compl. at 2.

¹¹ *Id.* at 7 – 9.

¹² Compl. at 3.

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1 PKIE denies these claims. It asserts that the Complaint errs in identifying People for
 2 Bernie as its project, and it states that People for Bernie is not operated by any federal political
 3 committee.¹³ Indeed, PKIE maintains that neither PKIE nor People for Bernie were even
 4 involved in the making or receiving of the \$45,000 donation at issue. PKIE identifies two other
 5 parties to the transaction: the donor, Progressive Kick (“PK”), a 527 organization that is not a
 6 federal committee and shares overlapping leadership with PKIE; and the recipient of the funds
 7 totaling \$45,000, “Feel the Bern,” an entity that is neither registered as a political committee with
 8 the Commission nor as a political organization with the IRS.¹⁴ PKIE further states that PK
 9 donated these funds to Feel the Bern “with the explicit proviso that they were to be used for
 10 online advertising that did not contain any express advocacy as defined by Commission
 11 regulations at 11 C.F.R. § 100.22.”¹⁵ In addition, PKIE states that “the funds that PK donated
 12 were not intended to pay People for Bernie for any work associated with People for Bernie’s
 13 website or its associated social media pages.”¹⁶ PKIE further asserts that it “did not have any

¹³ Response of PKIE (“PKIE Resp.”) at 2, 3 (Jun. 3, 2016).

¹⁴ *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?, available at http://web.archive.org/web/20160408122124/http://feelthebern.org/about-us](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.*

¹⁵ PKIE Resp. at 2.

¹⁶ *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.*

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1 role” in the process by which the donated funds at issue ultimately reached Feel the Bern.¹⁷ It
 2 concludes that “[n]either PK, PKIE nor Joshua Grossman (President of PK and Treasurer of
 3 PKIE) played any direct role in the administration of Feel the Bern or People for Bernie and its
 4 connected social media pages.”¹⁸

5 Likewise, People for Bernie’s Response states that the Complaint has mistaken it for
 6 another entity, stating that it is not a political committee, has no bank account or tax I.D. number,
 7 and has “never received a penny from Progressive Kick or anyone else.”¹⁹

8 The Act and Commission regulations provide that the name of each unauthorized
 9 committee shall not include the name of any candidate.²⁰ The Commission has interpreted
 10 “name” for the purposes of this section of the Act to include “any name under which a
 11 committee conducts activities, such as solicitations or other communications, including a special
 12 project name or other designation.”²¹ The Complaint’s repeated allegation that People for Bernie

¹⁷ *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” (“NNU”) as the donor of the \$45,000 in question. 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, *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.

¹⁸ *Id.*

¹⁹ Response of People for Bernie (“Bernie Resp.”) at 2 (Oct. 21, 2016).

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

²¹ *Id.*

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1 is a special project of PKIE is central to its disclaimer and naming allegations.²² The
 2 Commission has previously determined that the operation of a website by a political committee
 3 qualifies as a “special project or other communication.”²³ The Act requires political committees
 4 that make a disbursement for any type of public communication to identify who paid for the
 5 communication and whether such communication was authorized by a candidate or candidate’s
 6 committee.²⁴

7 Contrary to the Complaint’s allegations, however, the available information does not
 8 indicate that People for Bernie was a project of PKIE or connected to any other Respondent in
 9 this matter. PKIE denies any interactions with People for Bernie or Feel the Bern. And People
 10 for Bernie states that it did not enter into any monetary transactions with anyone, including
 11 PKIE. Although these assertions are unsworn, PK’s IRS Reports of Contributions and
 12 Expenditures (Form 8872) appears to support Respondents’ contention that another entity made
 13 the \$45,000 donation at issue, as it reflects that PK made three donations totaling \$45,000 to
 14 “Feel the Bern” for the purpose of a “social media campaign.”²⁵ The Complaint does not
 15 provide any information to the contrary, and the Commission has not separately identified such
 16 information.

17 Based on the available record, there is insufficient evidence indicating that People for
 18 Bernie was a website of PKIE or another political committee and therefore was required to place

²² An unauthorized committee is not prohibited from using the name of a candidate in the title of a special project name or other communication. *See PAG*, 363 F. Supp. 3d at 105.

²³ 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”).

²⁴ 52 U.S.C. § 30120(a).

²⁵ PK IRS 2015 Year-End Rpt. (Jan. 29, 2016) at 3; PK IRS 2016 First Quarterly Rpt. at 2 (Apr. 26, 2016).

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1 a disclaimer on its website.²⁶ In light of these circumstances and the *PAG* decision relating to
 2 the use of candidate names by non-authorized committees,²⁷ the Commission dismisses the
 3 allegations that People for Bernie and PKIE violated 52 U.S.C. § 30102(e)(4) and 11 C.F.R.
 4 § 102.14(a) regarding the use of a candidate name and 52 U.S.C. § 30120(a) by failing to provide
 5 a disclaimer.

6 **B. Coordination Allegation**

7 The Complaint also alleges that NNUPP and PKIE each made impermissible
 8 contributions to Sanders and his principal campaign committee, the Sanders Committee, and that
 9 Sanders and the Sanders Committee accepted these contributions.²⁸ The Complaint does not
 10 refer to any specific communications that were coordinated between the parties, instead stating
 11 generally that NNUPP has made numerous independent expenditures in support of Senator
 12 Sanders's presidential campaign, and "has been openly coordinating its activity with Senator
 13 Sanders's presidential campaign."²⁹ The Complaint alleges that the Sanders Committee and
 14 NNUPP "have held joint events and nurses associated with NNUPP have received [campaign
 15 worker] training from Bernie 2016."³⁰ For example, the Complaint states that "[i]n Nevada,
 16 Senator Sanders's campaign prepared packets of voter files for NNU[PP] nurses to use as they
 17 canvassed the state. And yet this canvassing effort was reported as an independent expenditure
 18 by NNU[PP]."³¹ The Complaint also alleges that PKIE may have been coordinating with the

²⁶ See 52 U.S.C. §§ 30102(e)(4) and 30120(a).

²⁷ See n.5, *supra*.

²⁸ Compl. at 9-11.

²⁹ *Id.* at 10.

³⁰ *Id.*

³¹ *Id.*

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1 Committee through its special project, People for Bernie, contending that People for Bernie has
 2 been openly working with the campaign at various campaign related events.³²

3 Respondents deny that their actions reflected coordinated activity. Rich Pelletier, the
 4 Sanders Committee’s Deputy Campaign Manager, attests in his sworn affidavit that to the best of
 5 his knowledge, “none of the activities cited in the [C]omplaint involved spending by an outside
 6 group made in cooperation, consultation or concert with, or at the request or suggestion of,
 7 anyone at the campaign.”³³ Sanders and the Sanders Committee also state that the Complaint
 8 fails to distinguish between permissible political engagement and impermissible coordination
 9 and “has failed to identify a single instance where an outside group has made an expenditure, and
 10 certainly not one in coordination with the Campaign.”³⁴

11 NNUPP argues that there is no evidence indicating that the participation by the nurses
 12 associated with the National Nurses United (“NNU”) at Sanders events reflects anything other
 13 than individual volunteer activity.³⁵ Ifeoma Adams, the Controller for NNU and CNA, a labor
 14 organization affiliated with NNUPP, attests in an affidavit included with NNUPP’s Response
 15 that “NNUPP did not pay for any Nevada canvass that was either conducted by the Bernie
 16 Sanders presidential campaign or that used Sanders campaign materials.”³⁶ She also attests that,
 17 “[a]s the Controller of NNU, [she is] familiar with the activities of [NNUPP], a federal

³² *Id.* at 1.

³³ Sanders Committee and Senator Bernard Sanders Response (“Sanders Resp.”), Rich Pelletier Aff. ¶ 3 (May 31, 2016).

³⁴ Sanders Resp. at 2-3.

³⁵ NNUPP Resp. at 2-3.

³⁶ NNUPP Resp., Ifeoma Adams Aff. ¶¶ 1-2, 3, and 7.

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1 independent-expenditure committee that NNU administers and controls.”³⁷ Additionally, despite
 2 the Complaint’s allegation that an individual named Patty Healy was acting on behalf of NNUPP
 3 when she introduced Sanders at a campaign event,³⁸ Adams attests that Healy was “not an
 4 employee, officer, or other agent of NNUPP or NNU” and was not acting as an agent of NNU or
 5 NNUPP in her introduction of Sanders.³⁹

6 PKIE’s Response simply states that “neither PKIE nor [PKIE treasurer] Mr. Grossman
 7 has coordinated any of its campaign activities with the Sanders campaign or its agents.”⁴⁰

8 The Act prohibits corporations and independent expenditure-only political committees
 9 from making, and candidates or their committees from knowingly accepting, contributions in
 10 connection with any election to political office.⁴¹ Expenditures made by any person “in
 11 cooperation, consultation, or concert with, or at the request or suggestion of” a candidate or his
 12 authorized committee or agent qualify as an in-kind contribution to the candidate and must be
 13 reported as expenditures made by the candidate’s authorized committee.⁴²

14 A communication that is coordinated with a candidate or his authorized committee is
 15 considered an in-kind contribution and is subject to the limits, prohibitions, and reporting

³⁷ *Id.* ¶ 2.

³⁸ Compl. at 5.

³⁹ NNUPP Resp., Ifeoma Adams Aff. ¶ 5. In her affidavit, Adams states that “[a]ccording 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.” *Id.*

⁴⁰ PKIE Resp. at 3.

⁴¹ See 52 U.S.C. §§ 30116(a), 30116(f), and 30118(a); Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

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

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1 requirements of the Act.⁴³ A communication is coordinated with a candidate, his authorized
2 committee, or agent of either, if it meets a three-prong test set forth in the Commission's
3 regulations: (1) it is paid for, in whole or in part, by a person other than the candidate or
4 authorized committee; (2) it satisfies a content standard in 11 C.F.R. § 109.21(c); and (3) it
5 satisfies a conduct standard in 11 C.F.R. § 109.21(d). All three prongs must be satisfied for a
6 communication to be considered coordinated under Commission regulations.⁴⁴

7 Here, the Complaint does not identify any specific communications with which to
8 conduct a coordination analysis.⁴⁵ Nor do the Complaint's conclusory allegations of interactions
9 between the Sanders Committee and individuals associated with PKIE and NNUPP and the
10 available record support the Complaint's claim that impermissible coordination under the Act or
11 Commission regulations occurred. Because the allegations fail to give rise to a reasonable
12 inference that a violation occurred, the Commission has determined to find no reason to believe
13 that PKIE or NNUPP violated 52 U.S.C. § 30116(a) and 30118(a) by making excessive and
14 prohibited contributions in the form of coordinated communications; and no reason to believe
15 that Senator Bernard Sanders or the Sanders Committee violated 52 U.S.C. § 30116(f) and
16 30118(a) by accepting excessive and prohibited contributions in the form of coordinated
17 communications.

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

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

⁴⁵ Compl.

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

3

4 Finally, the Complaint alleges that NNUPP has concealed the identities of the vendors

5 who were the ultimate recipients of payments it made to CNA, contending that the services were

6 likely performed by someone other than CNA.⁴⁶ In response, NNUPP states that its payments

7 were legal and were not part of a scheme to conceal the identity of other payees.⁴⁷ NNUPP

8 states that it routinely pays CNA, an organization affiliated with NNU and that shares offices

9 with NNU in California, for expenses relating to NNUPP's independent expenditure activity, as

10 NNUPP has no staff or facilities of its own and is entirely administered by NNU.⁴⁸ NNUPP's

11 Response refers to a number of payments that it made in connection with its relevant

12 independent expenditure activity for the use of CNA staff, equipment, and event space, which

13 are disclosed as "payroll expenses," "equipment expenses," and "site rental" on its disclosure

14 reports filed with the Commission.⁴⁹ With respect to NNUPP's payments to CNA for other

15 services, including online activity and printing, NNUPP states that CNA arranges for third-party

16 vendors to perform some of these services.⁵⁰

⁴⁶ *Id.* at 12.

⁴⁷ NNUPP Resp. at 5. The Commission affords 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.").

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ NNUPP Resp., Ifeoma Adams Aff. ¶ 7.

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1 The Act and Commission regulations require political committees to report the name and
 2 address of each person to whom they make expenditures or other disbursements aggregating
 3 more than \$200 per calendar year, or per election cycle for authorized committees, as well as the
 4 date, amount, and purpose of such payments.⁵¹ The relevant reporting requirements under the
 5 Act and Commission regulations are intended to ensure public disclosure of “where political
 6 campaign money comes from and how it is spent.”⁵² Disclosure requirements also “deter[] and
 7 help[] expose violations” of the Act and Commission regulations.⁵³

8 Neither the Act nor Commission regulations address the concepts of ultimate payees,
 9 vendors, agents, contractors, or subcontractors in this context.⁵⁴ The Commission has, however,
 10 found reason to believe that political committees violated the Act’s reporting requirements in
 11 circumstances where the factual record suggests that a committee reported a vendor that served
 12 merely as a stand-in for payments to another particular recipient the committee avoided

⁵¹ 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).

⁵² *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”).

⁵³ *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).

⁵⁴ 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).

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1 disclosing.⁵⁵

2 Here, the available information does not suggest that NNUPP's payments to CNA
 3 reflected a scheme designed to conceal the ultimate payees. NNUPP denies this allegation and
 4 the Commission possesses no other information to the contrary.

5 Accordingly, the Commission exercises its prosecutorial discretion and dismisses this
 6 allegation. A review of NNUPP's three disclosure reports contemporaneous to the time of the
 7 Complaint reflects that NNUPP paid CNA a total of \$218,393.92.⁵⁶ Of this figure, \$76,938.02
 8 represents the type of expenses using CNA resources — “payroll” (\$45,775.62), “overhead”
 9 (\$19,895.82); “site rental” (\$9,064.86), “office supplies” (\$1,803.61), and “admin” (\$398.11) —
 10 that NNU/CNA Controller Adams's sworn affidavit indicates would not have involved a
 11 subvendor.⁵⁷ And another payment to CNA for “Bernie Staff In-Kind” in the amount of
 12 \$2,748.82 would also appear to reflect activity where a subvendor was not used.⁵⁸ Assuming,
 13 *arguendo*, that some portion of the remaining \$138,707.06 in disbursements to CNA involved a
 14 subvendor, and all of those particular payments should have been disclosed to reflect a payee

⁵⁵ 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).

⁵⁶ 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, and 54, 56-57, 66-67, 69, and 73 (July 15, 2016).

⁵⁷ 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, 143 (June 8, 2016); 2016 July Quarterly Rpt. at 8-9, 56-57, and 67 (July 15, 2016).

⁵⁸ NNUPP Amended 2016 April Quarterly Rpt. at 13 (June 8, 2016).

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1 other than CNA, the amount that would be attributable to that entity does not appear to warrant
2 the further use of Commission resources. Under these circumstances, the Commission exercises
3 its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985) and has dismissed the
4 allegation that NNUPP violated 52 U.S.C. § 30104(b) by failing to adequately disclose the payee
5 of certain disbursements.