

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL’S REPORT**

**MUR 7347**

DATE COMPLAINT FILED: March 13, 2018

DATE OF NOTIFICATION: March 20, 2018

LAST RESPONSE RECEIVED: May 4, 2018

DATE ACTIVATED: September 14, 2018

EARLIEST SOL: March 9, 2023

LATEST SOL: March 13, 2023

ELECTION CYCLE: 2018

**COMPLAINANT:**

Committee to Defend the President

**RESPONDENTS:**

Conor Lamb

Conor Lamb for Congress and Marco Attisano

in his official capacity as treasurer

End Citizens United and Deanna Nesburg in her

official capacity as treasurer

ActBlue and Erin Hill in her official capacity as  
treasurer**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30116(f)

52 U.S.C. § 30120(a)

52 U.S.C. § 30124(b)

52 U.S.C. § 30125(e)(1)(A)

11 C.F.R. § 110.11

**INTERNAL REPORTS CHECKED:** Disclosure Reports**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

38 The Complaint alleges that End Citizens United and Deanna Nesburg in her official  
39 capacity as treasurer (“ECU”) violated the Federal Election Campaign Act of 1971, as amended,  
40 (the “Act”) when it disseminated a fundraising solicitation via email that fraudulently  
41 misrepresented it was from Conor Lamb, a candidate in a special congressional election in  
42 Pennsylvania. The Complaint also alleges that the solicitation failed to include the appropriate

1 disclaimer and that Conor Lamb and Conor Lamb for Congress and Marco Attisano in his  
2 official capacity as treasurer (“Lamb Committee”) solicited and accepted excessive  
3 contributions.<sup>1</sup> Based on the discussion below, we recommend that the Commission: (1) find  
4 no reason to believe that ECU violated 52 U.S.C. § 30124(b) by engaging in fraudulent  
5 misrepresentation; (2) find reason to believe that ECU violated 52 U.S.C. § 30120(a) and  
6 11 C.F.R. § 110.11(b) by using an improper disclaimer on a solicitation and enter into pre-  
7 probable cause conciliation with ECU to resolve this violation; (3) dismiss the allegations that  
8 Lamb and the Lamb Committee violated 52 U.S.C. §§ 30125(e)(1)(A) and 30116(f) by soliciting  
9 and accepting excessive contributions; and (4) find no reason to believe that ActBlue, which  
10 administered the webpage through which the contributions were made, violated the Act.

## 11 **II. FACTUAL BACKGROUND**

12       Conor Lamb was the Democratic candidate for the United States House of  
13 Representatives in Pennsylvania’s special election for the 18th Congressional District held on  
14 March 13, 2018. The Lamb Committee is Lamb’s principal campaign committee.<sup>2</sup> ECU is a  
15 multicandidate committee registered with the Commission.<sup>3</sup> ActBlue and Erin Hill in her  
16 official capacity as treasurer (“ActBlue”) is a “hybrid” political committee with a “Carey” non-

---

<sup>1</sup> Compl. at 7-9.

<sup>2</sup> Lamb Committee Amended Statement of Organization at 2 (Aug. 31, 2018).

<sup>3</sup> ECU Resp. at 1; *see* ECU Amended Statement of Organization at 2 (Jan. 24, 2019).

1 contribution account<sup>4</sup> that acts as an intermediary for individual contributions made on its  
2 website to Democratic candidates and committees.<sup>5</sup>

3 The Complaint contains a copy of an email dated March 9, 2018, that purports to be from  
4 Conor Lamb and refers to his special election and asks for online donations. The email contains  
5 a series of hypertext links to donate amounts ranging from \$5 to \$100 and an unspecified “Other  
6 Amount.”<sup>6</sup> The name “*Conor*” appears at the bottom of the message along with a disclaimer  
7 stating, “Paid For By End Citizens United PAC ([endcitizensunited.org](http://endcitizensunited.org)) and Not Authorized By  
8 Any Candidate or Candidate’s Committee.”<sup>7</sup>

9 The email also contains a link to a separate donation page titled “End Citizens  
10 United,” <http://act.endcitizensunited.org/Elect-Lamb>, and the Complaint includes images of the  
11 linked donation page.<sup>8</sup> The donation page states “Rush \$5 or whatever you can afford directly to  
12 Conor Lamb’s campaign:” followed by a note, “Your contribution will be divided evenly  
13 between Conor Lamb and End Citizens United[.] Click here to allocate amounts differently.”  
14 These statements are followed by dollar figures ranging from \$15 to \$1,000 and a fill-in blank  
15 amount.<sup>9</sup> A box titled “Contribution rules” states that contributions to ECU “are subject to the  
16 contribution limits and prohibitions of federal law. Contributions that exceed \$5,000 in the  
17 aggregate in a calendar year will be deposited in End Citizens United’s non-federal account.”<sup>10</sup>

---

<sup>4</sup> See ActBlue Miscellaneous Report (Form 99) (Oct. 20, 2011).

<sup>5</sup> ActBlue Resp. at 1.

<sup>6</sup> Compl. Ex. A. The full “From” line reads “Conor Lamb [<mailto:admin@endcitizensunited.org>][.]” *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Compl. Ex. B. See <http://act.endcitizensunited.org/Elect-Lamb>.

<sup>10</sup> Compl. Ex. B.

1 The “Contribution rules” do not refer to contributions to the Lamb Committee. Finally, a  
2 disclaimer at the bottom of the page reads “Paid for by ActBlue (actblue.com) and not authorized  
3 by any candidate or candidate’s committee.”<sup>11</sup>

### 4 **III. LEGAL ANALYSIS**

5

#### 6 **A. Fraudulent Misrepresentation**

7

8 Under the Act, no person shall fraudulently misrepresent the person as speaking, writing,  
9 or otherwise acting for or on behalf of any candidate for the purpose of soliciting contributions or  
10 donations.<sup>12</sup> The Complaint, noting that the email purports to be from Lamb but contains a  
11 disclaimer stating that it was “not authorized by any candidate or candidate’s committee,” alleges  
12 that if Lamb neither sent nor authorized the email, ECU fraudulently represented itself as acting  
13 on behalf of Lamb for the purpose of soliciting contributions.<sup>13</sup> ECU asserts in response that the  
14 Lamb campaign consented to the solicitation before ECU disseminated the email and that the  
15 solicitation directed donors to an ActBlue page where they could donate directly to the Lamb  
16 campaign.<sup>14</sup> The Lamb Committee acknowledges in its response that “Lamb did, in fact, solicit  
17 contributions to ECU and the committee” through this email.<sup>15</sup> On the basis of this information,  
18 we recommend that the Commission find no reason to believe that ECU violated 52 U.S.C.  
19 § 30124(b) by fraudulently misrepresenting that it was acting on behalf of Lamb.

---

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

<sup>12</sup> 52 U.S.C. § 30124(b)(1).

<sup>13</sup> Compl. at 9.

<sup>14</sup> ECU Resp. at 2.

<sup>15</sup> Lamb Committee Resp. at 3.

1           **B. Disclaimer**

2           All electronic mail of more than 500 substantially similar communications sent by a  
3 political committee requires a disclaimer.<sup>16</sup> A “disclaimer” is a statement that must identify who  
4 paid for the communication; if the communication is authorized by a candidate, an authorized  
5 committee of a candidate, or an agent of the candidate or committee, but is paid for by any other  
6 person, the disclaimer must clearly state that the communication is paid for by such other person  
7 and authorized by such candidate, authorized committee or agent.<sup>17</sup> In the absence of fraudulent  
8 misrepresentation, the accuracy of the disclaimer stating that the ECU email was “not  
9 authorized” by any candidate or committee is called into question.

10           The Complaint alleges that the email was most likely sent to more than 500 recipients.<sup>18</sup>  
11 Neither ECU nor the Lamb Committee argues otherwise. Thus, ECU’s email appeared to require  
12 a disclaimer.<sup>19</sup> The Complaint also alleges that the solicitation appeared to be from Lamb and  
13 thus the disclaimer that the communication was “not authorized by any candidate or candidate’s  
14 committee” was “fraudulent and illegal.”<sup>20</sup> ECU acknowledges that the Lamb campaign  
15 consented to the email solicitation.<sup>21</sup> Given Lamb’s authorization of the communication, the  
16 communication’s disclaimer was required to include that information.

---

<sup>16</sup> See 11 C.F.R. § 110.11(a)(1).

<sup>17</sup> See 52 U.S.C. § 30120(a)(2); 11 C.F.R. § 110.11(b)(2).

<sup>18</sup> Compl. at 5.

<sup>19</sup> See 11 C.F.R. § 110.11(a)(1).

<sup>20</sup> *Id.* at 10, 11.

<sup>21</sup> ECU Resp. at 2. See also Lamb Committee Resp. at 2.

1 ECU asserts that communications paid for by third parties only require candidate or  
2 candidate committee authorization statements where the communications meet the  
3 Commission's definition of coordinated communications.<sup>22</sup> ECU cites two previous matters in  
4 support of its position. Both matters are readily distinguishable. In MUR 6044 (Musgrove), five  
5 Commissioners explained their decision to dismiss the alleged disclaimer violation on the basis  
6 that there was insufficient information on which to conclude that the communication *was*  
7 authorized, given that the ad contained video of the candidate but the candidate did not speak,  
8 there was no information that he reviewed the ad before it aired, and the ad did not constitute a  
9 coordinated communication.<sup>23</sup> In the instant matter, both ECU and Lamb admit that the Lamb  
10 campaign consented to the email solicitation. Accordingly, the Commissioners' discussion in  
11 MUR 6044 of factors that might determine authorization are not relevant here. In the other  
12 matter cited by ECU, MUR 6037 (Merkley), the candidate spoke directly to the viewer in  
13 advertisements paid for by two party committees, the content of the advertisements was very  
14 similar to the language in Merkley's own press releases, and there was a short period of time  
15 between when the press releases were issued and the advertisements aired. This Office  
16 recommended the Commission find reason to believe a disclaimer violation occurred in order to  
17 investigate whether the candidate had authorized the final communication. The Commission  
18 split on OGC's recommendation and three Commissioners issued a Statement of Reasons.<sup>24</sup>

---

<sup>22</sup> ECU Resp. at 2-3.

<sup>23</sup> See Statement of Reasons, Comm'rs Walther, Petersen, Bauerly, Hunter and McGahn at 6, MUR 6044 (Musgrove for Senate). The Commission determined that there was no basis on which to determine that the candidate authorized the ad, concluding that there were "insufficient grounds to justify the use of additional Commission resources to investigate whether the candidate authorized the ad such that the DSCC should have included authorization and approval statements in the disclaimer." *Id.*

<sup>24</sup> See Certification, MUR 6037 (Merkley for Oregon) (Nov. 18, 2009); see also Statement of Reasons, Comm'rs Hunter, Petersen and McGahn at 4, 5, MUR 6037. The three Commissioners' Statement of Reasons explained their position that no candidate authorization was required if the advertisement was not a "coordinated

1 Here, both the Committee and ECU state that the Lamb campaign consented to the solicitation  
2 “from” Lamb, which distinguishes these facts from those in MURs 6044 and 6037.<sup>25</sup>  
3 ECU additionally asserts that even if the Commission finds that there is a “technical  
4 violation,” the Commission’s practice has been to dismiss such violations so long as the  
5 communication contained language sufficient to avoid confusion about its sponsor.<sup>26</sup> While it is  
6 true that the Commission has dismissed matters involving disclaimers with technical errors or  
7 omissions, it has done so when there was adequate information contained in the disclaimer to  
8 identify the payor.<sup>27</sup> Here, the issue is not who paid for the communication, but whether Lamb  
9 or the Lamb Committee authorized the communication. As discussed above, the record confirms  
10 that Lamb did authorize the solicitation. Therefore, the affirmative statement that no candidate  
11 authorized the solicitation is false and misleading to the reader, and we found no instances where  
12 the Commission has dismissed a disclaimer violation under these circumstances.<sup>28</sup> Accordingly,  
13 we recommend that the Commission find reason to believe that ECU violated 52 U.S.C.

---

communication,” which the Merkley advertisement was not. The three Commissioners also stated their position that the circumstances in MUR 6044 (Musgrove) were indistinguishable in all material respects from MUR 6037 and cited MUR 6044 as precedent for not finding reason to believe on the disclaimer allegation.

<sup>25</sup> See Advisory Opinion 2003-23 (WE LEAD) at 5 (concluding that a solicitation coordinated with a candidate must include in the disclaimer that the candidate authorized the communication).

<sup>26</sup> ECU Resp. at 3, n.2.

<sup>27</sup> See *e.g.*, MUR 6785 (Kwasman for Congress) (dismissing allegation because campaign materials at issue contained partial disclaimer identifying Kwasman for Congress as the payor and it was unlikely the public was misled about whether the candidate authorized the communication.); MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (dismissing allegations that campaign websites and flyers lacked requisite disclaimers where partial payor information in the form of contact information was included).

<sup>28</sup> See *Citizens United v. FEC*, 558 U.S. 310, 368 (2010) (holding that disclaimers “provide the electorate with information and insure that the voters are fully informed about the person or group who is speaking,” and stating that identifying the sources of advertising enables people “to evaluate the arguments to which they are being subjected”) (internal citations and alterations removed).

1 § 30120(a) and 11 C.F.R. § 110.11(b) by failing to include in the disclaimer that the  
2 communication was authorized by Lamb or the Lamb Committee.

3 **C. Alleged Solicitation and Acceptance of Excessive Contributions**  
4

5 Under the soft money provisions of the Act, a candidate, individual holding Federal  
6 office, agent of a candidate or an individual holding Federal office, or an entity directly or  
7 indirectly established, financed, maintained or controlled by or acting on behalf of one or more  
8 candidates or individuals holding office, shall not solicit, receive, direct, transfer, or spend funds  
9 in connection with an election for federal office, unless the funds are subject to the limitations,  
10 prohibitions, and reporting requirements of the Act.<sup>29</sup> For the 2018 election cycle, a contribution  
11 to any candidate or his authorized committee was limited to \$2,700 per election.<sup>30</sup> The  
12 limitation on contributions to multicandidate committees, such as ECU, is \$5,000 in a calendar  
13 year.<sup>31</sup> No candidate or political committee shall knowingly accept any contribution in violation  
14 of the provisions of 52 U.S.C. § 30116.<sup>32</sup>

15 The Complaint alleges that Conor Lamb and the Lamb Committee solicited and accepted  
16 excessive contributions because the webpage connected to Lamb's solicitation permitted  
17 contributions up to a total of \$7,700 – the maximum permissible amount for giving to Lamb and  
18 to ECU (\$2,700 and \$5,000, respectively) – more than \$2,700 of which the Complaint alleges  
19 could be allocated to Lamb.<sup>33</sup> The Complaint alleges that the ActBlue website administering the

---

<sup>29</sup> 52 U.S.C. § 30125(e)(1)(A).

<sup>30</sup> *See* 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

<sup>31</sup> *See* 52 U.S.C. § 30116(a)(1)(C).

<sup>32</sup> 52 U.S.C. § 30116(f).

<sup>33</sup> Compl. at 6-7. Neither Lamb's solicitation to "donate every dollar you can" nor the button to specify "other amount" limits the appropriate contributions to permissible amounts. *See id.* at 5-6.



1 contributions defaults to divide contributions evenly between Lamb and ECU, which would  
2 allow an individual contributor to give up to \$3,850 to Lamb.<sup>34</sup> The Complaint also alleges that  
3 a contributor could, via manual allocation, give all \$7,700 to Lamb.<sup>35</sup> The Complaint alleges  
4 that the ActBlue website does not say what will be done with contributions to Lamb that exceed  
5 \$2,700.<sup>36</sup>

6 The Lamb Committee asserts in response that there is no soft money restriction on federal  
7 candidates soliciting funds within the federal contribution limitations, as it asserts was done here,  
8 and that it did not accept excessive contributions through this fundraising email.<sup>37</sup> Further, the  
9 Lamb Committee asserts that ActBlue's landing page is compliant with the Commission's  
10 requirements for online fundraising.<sup>38</sup> The Lamb Committee claims that an allocation resulting  
11 in an excessive contribution would not be possible because ActBlue's website is designed to  
12 reject any attempt to allocate any amount in excess of the contribution limit.<sup>39</sup> According to the  
13 Lamb Committee, had Complainants tried to make an actual contribution, "they would have  
14 discovered that such an allocation was simply not possible."<sup>40</sup>

---

<sup>34</sup> Compl. at 7; *see also id.* at 6 (quoting ActBlue contribution page indicating that contributions will be "evenly divided" between the Committee and ECU).

<sup>35</sup> *Id.* at 7.

<sup>36</sup> *Id.* The website states that contributions to ECU that exceed \$5,000 will be deposited into ECU's nonfederal account. *Id.*, Ex. B.

<sup>37</sup> Lamb Committee Resp. at 2. The Reports Analysis Division has not sent any Requests for Additional Information to the Lamb Committee concerning excessive contributions received between March 9, 2018, the date of Lamb Committee's solicitation, and March 13, 2018, the date of the special election.

<sup>38</sup> Lamb Committee Resp. at 2.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

1           Likewise, ActBlue asserts that the default allocation on its contribution form splits the  
2 contribution evenly between the multiple committees listed on the form, but if an individual  
3 attempted to make an excessive contribution to either the Committee or ECU, the system would  
4 not process the contribution and would instead notify the individual that the contribution was not  
5 processed.<sup>41</sup> ActBlue asserts that no excessive contribution occurred as alleged, and the form  
6 that it uses for contributions earmarked to multiple candidates was approved by the Commission  
7 through an advisory opinion issued in 2014.<sup>42</sup>

8           Based on the combination of a solicitation to give “whatever you can afford” and a fill-in  
9 blank amount with no information referencing \$2,700 contribution limit, Lamb effectively  
10 solicited contributions in excess of that limit. The Lamb Committee and ActBlue however, deny  
11 that the webpage would allow a contribution to Lamb that exceeded the \$2,700 contribution  
12 limit, and the available information does not indicate otherwise. Under these unique  
13 circumstances, in which there was no affirmative solicitation of amounts outside the contribution  
14 limits, and it appears that it was not possible for a contributor to contribute an amount beyond the  
15 limits, we recommend that the Commission exercise its prosecutorial discretion and dismiss the  
16 alleged violations of 52 U.S.C. §§ 30125(e)(1)(A) and 30116(f) by Lamb and the Lamb  
17 Committee.<sup>43</sup>

---

<sup>41</sup> ActBlue Resp. at 2.

<sup>42</sup> *Id.* at 1; *see* Advisory Opinion 2014-13 (ActBlue). While the Commission approved a contribution form for ActBlue to use for individuals who make donations to multiple candidates in Advisory Opinion 2014-13, that advisory opinion does not discuss ActBlue’s efforts to avoid the processing of excessive contributions.

<sup>43</sup> *See* MUR 6218 (Ball4NY) (The Commission dismissed the allegations that Ball4NY solicited and accepted excessive contributions, but committee treasurer averred that no excessive contributions were received in connection with the event and there is no information to the contrary); *see Heckler v. Chaney*, 470 U.S. 821 (1985); Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12546 (stating that the Commission will dismiss when the matter does not merit further use of the Commission resources, due to factors such as the vagueness or weakness of the evidence).

1           **D.     ActBlue**

2           The Complaint names as a Respondent, but makes no specific allegations as to, ActBlue.  
3           Based on the available information regarding ActBlue's actions as alleged in this Complaint, we  
4           recommend that the Commission find no reason to believe that ActBlue violated the Act in  
5           connection with the allegations in this Complaint.

6

7

8

9

10

11

12

13

14

15

16   **V.   RECOMMENDATIONS**

17           1.   Find no reason to believe that End Citizens United and Deanna Nesburg in her  
18           official capacity as treasurer violated 52 U.S.C. § 30124(b);

19

2. Find reason to believe that End Citizens United and Deanna Nesburg in her official capacity as treasurer violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b);
3. Dismiss the allegations that Conor Lamb and Conor Lamb for Congress and Marco Attisano in his official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A) and 52 U.S.C. § 30116(f);
4. Find no reason to believe that ActBlue and Erin Hill in her official capacity as treasurer violated the Act;
5. Approve the attached Factual and Legal Analyses;
6. Enter into conciliation with End Citizens United and Deanna Nesburg in her official capacity as treasurer prior to a finding of probable cause to believe;
7. Approve the attached conciliation agreement with End Citizens United and Deanna Nesburg in her official capacity as treasurer; and
8. Approve the appropriate letters.

Lisa J. Stevenson  
 Acting General Counsel

2/15/19  
 Date

Kathleen M. Guith  
 Kathleen M. Guith  
 Associate General Counsel for Enforcement

Mark Allen  
 Mark Allen  
 Assistant General Counsel

DR by MA  
 Delbert K. Rigsby  
 Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44