



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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AUG 01 2019

RE: MUR 7347
End Citizens United and Deanna Nesburg in her
official capacity as treasurer

Dear Mr. Werbrock:

On March 20, 2018, the Commission notified your clients, End Citizens United and Deanna Nesburg in her official capacity as treasurer ("Committee"), of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the complaint.

After reviewing the allegations contained in the complaint and the Committee's response, the Commission, on July 23, 2019, found reason to believe that the Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b). The Commission also found no reason to believe that the Committee violated 52 U.S.C. § 30124(b). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Committee as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law.

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Please note that the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as the Committee is notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If the Committee is interested in engaging in pre-probable cause conciliation please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, the Committee may submit any factual or legal materials that it believes are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if the Committee is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's Guidebook for Complaints and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

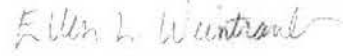
This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless the Committee notifies the Commission in writing that it wishes the matter to be made public.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: End Citizens United and Deanna Nesburg
in her official capacity as treasurer

MUR 7347

I. INTRODUCTION

The Complaint alleges that End Citizens United and Deanna Nesburg in her official capacity as treasurer (“ECU”) violated the Federal Election Campaign Act of 1971, as amended, (the “Act”) when it disseminated a fundraising solicitation via email that fraudulently misrepresented it was from Conor Lamb, a candidate in a special congressional election in Pennsylvania. The Complaint also alleges that the solicitation failed to include the appropriate disclaimer.¹ For the reasons discussed below, the Commission finds reason to believe that ECU violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(b) and finds no reason to believe that ECU violated 52 U.S.C. § 30124(b).

II. FACTUAL BACKGROUND

ECU is a multicandidate committee registered with the Commission.² Conor Lamb was the Democratic candidate for the United States House of Representatives in Pennsylvania’s special election for the 18th Congressional District held on March 13, 2018.

The Complaint contains a copy of an email dated March 9, 2018, that purports to be from Conor Lamb, refers to his special election, and asks for online donations: “My Special Election is virtually tied,” “Republicans are outspending us,” “I still need 9,103 donations before tomorrow’s budget deadline,” “If we fall short, we’ll lose,” “[P]lease rush an online donation

¹ Compl. at 7-9.

² ECU Resp. at 1; *see* ECU Amended Statement of Organization at 2 (Jan. 24, 2019).

1 now.”³ The email contains a series of hypertext links to donate amounts ranging from \$5 to \$100
2 and an unspecified “Other Amount.”⁴ The name “*Conor*” appears at the bottom of the message
3 along with a disclaimer stating, “Paid For By End Citizens United PAC (endcitizensunited.org)
4 and Not Authorized By Any Candidate or Candidate’s Committee.”⁵

5 The email also contains a link to a separate donation page titled “End Citizens
6 United,” <http://act.endcitizensunited.org/Elect-Lamb>, and the Complaint includes images of the
7 linked donation page.⁶ The donation page states “Rush \$5 or whatever you can afford directly to
8 Conor Lamb’s campaign:” followed by a note, “Your contribution will be divided evenly
9 between Conor Lamb and End Citizens United[.] Click here to allocate amounts differently.”
10 These statements are followed by dollar figures ranging from \$15 to \$1,000 and a fill-in blank
11 amount.⁷ A box titled “Contribution rules” states that contributions to ECU “are subject to the
12 contribution limits and prohibitions of federal law. Contributions that exceed \$5,000 in the
13 aggregate in a calendar year will be deposited in End Citizens United’s non-federal account.”⁸
14 The “Contribution rules” do not refer to contributions to the Lamb Committee. Finally, a
15 disclaimer at the bottom of the page reads “Paid for by ActBlue (actblue.com) and not authorized
16 by any candidate or candidate’s committee.”⁹ ActBlue and Erin Hill in her official capacity as

³ Compl. Ex. A. The full “From” line reads “Conor Lamb [<mailto:admin@endcitizensunited.org>][.]” *Id.*

⁴ Compl. Ex. A.

⁵ *Id.*

⁶ *Id.*

⁷ Compl. Ex. B. *See* <http://act.endcitizensunited.org/Elect-Lamb>.

⁸ Compl. Ex. B.

⁹ *Id.*

1 treasurer (“ActBlue”) is a “hybrid” political committee with a “Carey” non-contribution
2 account¹⁰ that acts as an intermediary for individual contributions made on its website to
3 Democratic candidates and committees.

4 **III. LEGAL ANALYSIS**

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6 **A. Fraudulent Misrepresentation**

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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.¹¹ 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.¹² 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.¹³ Information in the Commission’s possession indicates that Lamb did, in fact, solicit
17 contributions to ECU and the Lamb Committee through this email. On the basis of this
18 information, the Commission finds no reason to believe that ECU violated 52 U.S.C. § 30124(b)
19 by fraudulently misrepresenting that it was acting on behalf of Lamb.

¹⁰ See ActBlue Miscellaneous Report (Form 99) (Oct. 20, 2011).

¹¹ 52 U.S.C. § 30124(b)(1).

¹² Compl. at 9.

¹³ ECU Resp. at 2.

1 **B. Disclaimer**

2 All electronic mail of more than 500 substantially similar communications sent by a
3 political committee requires a disclaimer.¹⁴ 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.¹⁵ 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.¹⁶
11 The email said Lamb “still need[s] 9,103 donations before tomorrow’s budget deadline,”
12 indicating it likely would have been sent to enough recipients to meet that pronounced goal.
13 Neither ECU nor the Lamb Committee argues otherwise. Thus, ECU’s email appeared to require
14 a disclaimer.¹⁷ The Complaint also alleges that the solicitation appeared to be from Lamb and
15 thus the disclaimer that the communication was “not authorized by any candidate or candidate’s
16 committee” was “fraudulent and illegal.”¹⁸ ECU acknowledges that the Lamb campaign

14 *See* 11 C.F.R. § 110.11(a)(1).

15 *See* 52 U.S.C. § 30120(a)(2); 11 C.F.R. § 110.11(b)(2).

16 Compl. at 5.

17 *See* 11 C.F.R. § 110.11(a)(1).

18 *Id.* at 10, 11.

1 consented to the email solicitation.¹⁹ Given Lamb's authorization of the communication, the
2 communication's disclaimer was required to include that information.

3 ECU asserts that communications paid for by third parties only require candidate or
4 candidate committee authorization statements where the communications meet the
5 Commission's definition of coordinated communications.²⁰ ECU cites two previous matters in
6 support of its position. Both matters are readily distinguishable. Here, ECU states that the Lamb
7 campaign consented to the solicitation "from" Lamb, which distinguishes these facts from those
8 in MURs 6044 and 6037.²¹

9 ECU additionally asserts that even if the Commission finds that there is a "technical
10 violation," the Commission's practice has been to dismiss such violations so long as the
11 communication contained language sufficient to avoid confusion about its sponsor.²² While it is
12 true that the Commission has dismissed matters involving disclaimers with technical errors or
13 omissions, it has done so when there was adequate information contained in the disclaimer to
14 identify the payor.²³ Here, the issue is not who paid for the communication, but whether Lamb
15 or the Lamb Committee authorized the communication. As discussed above, the record confirms
16 that Lamb did authorize the solicitation. Therefore, the affirmative statement that no candidate

¹⁹ ECU Resp. at 2.

²⁰ ECU Resp. at 2-3.

²¹ 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).

²² ECU Resp. at 3, n.2.

²³ 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).

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1 authorized the solicitation is false and misleading to the reader, and there are no instances where
2 the Commission has dismissed a disclaimer violation under these circumstances.²⁴ Accordingly,
3 the Commission finds reason to believe that ECU violated 52 U.S.C. § 30120(a) and 11 C.F.R.
4 § 110.11(b) by failing to include in the disclaimer that the communication was authorized by
5 Lamb or the Lamb Committee.

²⁴ 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).