

**FEDERAL ELECTION COMMISSION**

Washington, D.C. 20463

April 27, 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
VIA EMAIL TO:
petra@political.law

Petra Mangini, Esq.
Counsel
Committee to Defend the President
203 S. Union Street, Suite 300
Alexandria, VA 22314

RE: MUR 7347

Dear Ms. Mangini:

This is in reference to the complaint that the Committee to Defend the President filed with the Federal Election Commission on March 18, 2018, concerning End Citizens United and Deanna Nesburg in her official capacity as treasurer (“ECU”), Conor Lamb, Conor Lamb for Congress and Marco Attisano in his official capacity as treasurer (“Conor Lamb for Congress”), and ActBlue and Erin Hill in her official capacity as treasurer (“ActBlue”). Based on that complaint, on July 23, 2019, the Commission found that there was reason to believe that ECU violated 52 U.S.C. § 30120(a), a provision of the Federal Election Campaign Act of 1971, as amended, (the “Act”) and 11 C.F.R. § 110.11(b), a regulation promulgated pursuant to the Act, and found no reason to believe ECU violated 52 U.S.C. § 30124(b). On that same date, the Commission dismissed the allegations that Conor Lamb and Conor Lamb for Congress violated 52 U.S.C. § 30125(e)(1)(A) and 52 U.S.C. § 30116(f). Further, on that same date, the Commission found no reason to believe that ActBlue violated the Act. Accordingly, the Commission closed the file as it related to ActBlue, Conor Lamb and Conor Lamb for Congress. After considering the circumstances of this matter related to ECU, on March 25, 2021, the Commission determined as a matter of prosecutorial discretion to dismiss this matter as to ECU and closed the file.

The Factual and Legal Analyses, which more fully explain the basis for the Commission’s initial decisions, are enclosed. A Statement of Reasons further explaining the basis for the Commission’s decision to close the file as to ECU will follow.

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Petra Mangini, Esq.
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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 Federal Election Campaign Act of 1971, as amended, allows a complainant to seek
judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If
you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter,
at (202) 694-1616.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: *Mark Allen*
Mark Allen
Assistant General Counsel

Enclosures

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
2 \$100 and an unspecified “Other Amount.”⁴ The name “*Conor*” appears at the bottom of the
3 message along with a disclaimer stating, “Paid For By End Citizens United PAC
4 (endcitizensunited.org) 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**

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.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).

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).

\$100 and an unspecified “Other Amount.”³ The name “*Conor*” appears at the bottom of the message along with a disclaimer stating, “Paid For By End Citizens United PAC (endcitizensunited.org) and Not Authorized By Any Candidate or Candidate’s Committee.”⁴ End Citizens United (“ECU”) is a multicandidate committee registered with the Commission.⁵

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

³ Compl. Ex. A.

⁴ *Id.*

⁵ *See* ECU Amended Statement of Organization at 2 (Jan. 24, 2019).

⁶ *Id.*

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

⁸ Compl. Ex. B.

⁹ *Id.*

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

III. LEGAL ANALYSIS

Under the soft money provisions of the Act, a candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of one or more candidates or individuals holding office, shall not solicit, receive, direct, transfer, or spend funds in connection with an election for federal office, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.¹¹ For the 2018 election cycle, a contribution to any candidate or his authorized committee was limited to \$2,700 per election.¹² The limitation on contributions to multicandidate committees, such as ECU, is \$5,000 in a calendar year.¹³ No candidate or political committee shall knowingly accept any contribution in violation of the provisions of 52 U.S.C. § 30116.¹⁴

The Complaint alleges that Conor Lamb and the Lamb Committee solicited and accepted excessive contributions because the webpage connected to Lamb’s solicitation permitted contributions up to a total of \$7,700 – the maximum permissible amount for giving to Lamb and to ECU (\$2,700 and \$5,000, respectively) – more than \$2,700 of which the Complaint alleges

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

¹¹ 52 U.S.C. § 30125(e)(1)(A).

¹² See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

¹³ See 52 U.S.C. § 30116(a)(1)(C).

¹⁴ 52 U.S.C. § 30116(f).

could be allocated to Lamb.¹⁵ The Complaint alleges that the ActBlue website administering the contributions defaults to divide contributions evenly between Lamb and ECU, which would allow an individual contributor to give up to \$3,850 to Lamb.¹⁶ The Complaint also alleges that a contributor could, via manual allocation, give all \$7,700 to Lamb.¹⁷ The Complaint alleges that the ActBlue website does not say what will be done with contributions to Lamb that exceed \$2,700.¹⁸

The Lamb Committee asserts in response that there is no soft money restriction on federal candidates soliciting funds within the federal contribution limitations, as it asserts was done here, and that it did not accept excessive contributions through this fundraising email.¹⁹ Further, the Lamb Committee asserts that ActBlue's landing page is compliant with the Commission's requirements for online fundraising.²⁰ The Lamb Committee claims that an allocation resulting in an excessive contribution would not be possible because ActBlue's website is designed to reject any attempt to allocate any amount in excess of the contribution limit.²¹ According to the Lamb Committee, had Complainants tried to make an actual contribution, "they would have

¹⁵ 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.

¹⁶ Compl. at 7; *see also id.* at 6 (quoting ActBlue contribution page indicating that contributions will be "evenly divided" between the Committee and ECU).

¹⁷ *Id.* at 7.

¹⁸ *Id.* The website states that contributions to ECU that exceed \$5,000 will be deposited into ECU's nonfederal account. *Id.*, Ex. B.

¹⁹ 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.

²⁰ Lamb Committee Resp. at 2.

²¹ *Id.*

discovered that such an allocation was simply not possible.”²² Additional information in the Commission’s possession similarly indicates that if an individual attempted to make an excessive contribution to either the Committee or ECU, the system would not process the contribution and would instead notify the individual that the contribution was not processed.

Based on the combination of a solicitation to give “whatever you can afford” and a fill-in blank amount with no information referencing \$2,700 contribution limit, Lamb effectively solicited contributions in excess of that limit. The Lamb Committee, however, denies that the webpage would allow a contribution to Lamb that exceeded the \$2,700 contribution limit, and the available information does not indicate otherwise. Under these circumstances, in which there was no affirmative solicitation of amounts outside the contribution limits, and it appears that it was not possible for a contributor to contribute an amount beyond the limits, the Commission exercises its prosecutorial discretion and dismisses the alleged violations of 52 U.S.C. §§ 30125(e)(1)(A) and 30116(f) by Lamb and the Lamb Committee.²³

²² *Id.*

²³ *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).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: ActBlue and Erin Hill MUR 7347
in her official capacity as treasurer

I. INTRODUCTION

The Complaint makes allegations regarding End Citizens United's dissemination of a fundraising solicitation via email from Conor Lamb, a candidate in a special congressional election in Pennsylvania. For the reasons discussed below, the Commission finds no reason to believe that ActBlue, which administered the webpage through which the contributions were made, violated the Federal Election Campaign Act of 1971, as amended, (the "Act").

II. FACTUAL BACKGROUND

ActBlue and Erin Hill in her official capacity as treasurer ("ActBlue") is a "hybrid" political committee with a "Carey" non-contribution account¹ that acts as an intermediary for individual contributions made on its website to Democratic candidates and committees.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. End Citizens United ("ECU") is a multicandidate committee registered with the Commission.³

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

¹ See ActBlue Miscellaneous Report (Form 99) (Oct. 20, 2011).

² ActBlue Resp. at 1.

³ See ECU Amended Statement of Organization at 2 (Jan. 24, 2019).

tomorrow’s budget deadline,” “If we fall short, we’ll lose,” “[P]lease rush an online donation now.”⁴ The email contains a series of hypertext links to donate amounts ranging from \$5 to \$100 and an unspecified “Other Amount.”⁵ The name “*Conor*” appears at the bottom of the message along with a disclaimer stating, “Paid For By End Citizens United PAC (endcitizensunited.org) and Not Authorized By Any Candidate or Candidate’s Committee.”⁶

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

⁴ Compl. Ex. A. The full “From” line reads “Conor Lamb [<mailto:admin@endcitizensunited.org>][.]” *Id.*

⁵ Compl. Ex. A.

⁶ *Id.*

⁷ *Id.*

⁸ Compl. Ex. B. See <http://act.endcitizensunited.org/Elect-Lamb>.

⁹ Compl. Ex. B.

¹⁰ *Id.*

III. LEGAL ANALYSIS

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