

SANDLER REIFF

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March 22, 2019

Federal Election Commission
 Office of Complaints Examination and Legal Administration
 Attn: Christal Dennis, Paralegal
 1050 First Street, NE
 Washington, D.C. 20463

Re: MUR 7575

Ms. Dennis:

The undersigned serves as counsel to:

- Congresswoman Alexandria Ocasio-Cortez, H8NY15148, her authorized committee Alexandria Ocasio-Cortez for Congress, C00639591, with Frank Llewellyn in his capacity as Treasurer (“AOC”),
- Saikat Chakrabarti;
- Brand New Congress, C00613810, with Amy Vilela in her capacity as Treasurer (“BNC PAC”),
- Justice Democrats, C00630665, with Natalie Trent in her capacity as Treasurer (“JD”), and
- Brand New Congress LLC (previously known as “Brand New Campaign LLC”), a vendor that provided services to AOC, BNC PAC, and JD, formed as a Limited Liability Company in Delaware, whose sole member is Saikat Chakrabarti (collectively, the “Parties”).¹

¹ Isra Allison, the listed Treasurer of BNC PAC, has since left the organization. Alexandra Rojas is no longer the Treasurer of Justice Democrats.

The Parties object to the notice that their Treasurers – Frank Llewellyn (AOC), Amy Vilela (BNC PAC), and Natalie Trent (JD) – have been named in their individual capacities. These persons were not the committee Treasurers at the time of the activities described in the Complaint – January through August of 2017. As a general matter, vague and unsubstantiated assertions that a Treasurer knew of activity described in a complaint should not give rise to them being named in their individual capacity.

This letter responds on behalf of the Parties to the Commission’s notification of a complaint from the National Legal and Policy Center (the “NLPC”, the “Complaint”) alleging that the Parties violated the Federal Election Campaign Act (the “Act”) and Federal Election Commission (the “Commission”) regulations. *As described below, the allegations made in the Complaint are baseless and not supported by fact.*

Instead, the Complaint relies on innuendo and allusions to a “sweeping and apparently illegal” and “incestuous” arrangement – and uses incendiary language to mask the true issue at hand in the Complaint.² Specifically, the Complaint alleges that AOC, BNC PAC, and JD failed

² While the Complaint states additional facts that are unrelated to the one purported violation it discusses – a reporting violation as to how payments to Brand New Congress LLC were disclosed – it does not state a specific violation to correspond with these facts. Besides going to the political nature of the Complaint, these additional facts unrelated to the legal accusation made serve to “muddy the waters,” and allowed for right-wing press outlets to make exaggerated and outlandish accusations against the Parties. See, e.g:

Washington Examiner, “AOC’s chief of staff ran \$1M slush fund by diverting campaign cash to his own companies” (March 4, 2019), available at <https://www.washingtonexaminer.com/politics/ocasio-cortezs-chief-of-staff-ran-1m-slush-fund-by-diverting-campaign-cash-to-his-own-companies>;

Daily Caller, “Ocasio-Cortez and her Chief of Staff ‘Could be Facing Jail Time’ If Their Control over PAC was Intentionally Hidden, Former FEC Commissioner Says” (March 4, 2019), at <https://dailycaller.com/2019/03/04/ocasio-cortez-justice-democrats/>;

Hans von Spakovsky on Fox News, “Ocasio-Cortez and top aide should be investigated for possible campaign finance violations” (March 9, 2019), at <https://www.foxnews.com/opinion/ocasio-cortez-and-top-aide-should-be-investigated-for-possible-campaign-finance-violations> (last accessed March 22, 2019).

More mainstream outlets, however, took a more balanced approach, and cited multiple campaign finance experts that state that there was no wrongdoing by the Parties. See:

NBC News, “Fact check: Did Ocasio-Cortez and her team break campaign finance law?” (March 6, 2019) (“Campaign finance experts, meanwhile, told NBC News that while the payment structure might be confusing, there’s no evidence some kind of million-dollar scam as has been alleged in news reports.”), at <https://www.nbcnews.com/politics/politics-news/fact-check-did-ocasio-cortez-her-team-break-campaign-finance-n980121>;

MarketWatch, “Ocasio-Cortez aide’s \$1 million moves were ‘weird’ but probably not illegal, expert says” (March 7, 2019), at <https://www.marketwatch.com/story/ocasio-cortez-aides-1-million-moves-were-weird-but-probably-not-illegal-expert-says-2019-03-07>;

Business Insider, “A conservative group accused Alexandria Ocasio-Cortez of campaign finance violations, but experts say the charges are overblown” (March 7, 2019), at <https://www.businessinsider.com/alexandria-ocasio-cortez-was-accused-of-campaign-finance-violations-2019-3> (last accessed March 22, 2019).

to report payments that Brand New Congress LLC – a vendor to each of AOC, BNC PAC, and JD (the “committees”) – “made in connection with Congressional elections in 2018.”³

This assertion is false, as the Parties sought and followed the guidance of the FEC’s Reports and Analysis Division on precisely how payments to Brand New Congress LLC (as a vendor) would be reported. The core legal question presented in this Complaint is whether a committee is required to itemize (or provide a memo entry) for subvendors used by a consulting firm such as Brand New Congress LLC. According to Commission’s extensive precedent, the answer to this question is “no.”

The Parties had no intent to hide any of their activities. Rather, the perceived burden of providing the itemization of subvendors for payments by Brand New Congress LLC’s clients was believed to be prohibitive given the scope of services that the LLC provided. It is for that reason why the Parties sought the guidance of the Commission’s Reports Analysis Division on this very question. If the Reports and Analysis Division had answered “yes” to the core legal question, the Parties would have complied and itemized subvendors.

For this reason and the reasons stated below, we ask the FEC to close the file on the Complaint and take no further action against the Parties.

1. AOC, BNC PAC, and JD reported payments to Brand New Congress LLC on the advice of the FEC’s Reports and Analysis Division.

Payments made to Brand New Congress LLC – a vendor for the committees – were properly reported. The description of “strategic consulting” used by AOC, BNC PAC, and JD correctly characterized the disbursements to Brand New Congress LLC.

a. Factual Background

Beginning in 2017, BNC PAC and JD sought to implement a national program to recruit non-traditional candidates for United States House of Representatives and Senate, and to support them with an infrastructure to effectively run their campaigns as an integrated, national effort.

Based on this concept, Brand New Campaign LLC – eventually renamed as Brand New Congress LLC – was formed to serve as a “campaign in a box” vendor for communications, field, online organizing, fundraising and the like, specifically for the purpose of providing those services to BNC PAC, JD, and the various candidates that those committees supported (including AOC).

³ This response will solely address the single apparent violation described in the Complaint, of 52 U.S.C. § 30104(b)(5)(A). We additionally note that the statute cited by NLPC’s counsel, 2 U.S.C. § 434(b)(5)(A), was moved to Title 52 *in 2014*. See Federal Election Commission, “FECA moves from Title 2 to Title 52 of the US Code” (August 29, 2014), available at <https://www.fec.gov/updates/feca-moves-from-title-2-to-title-52-of-the-us-code/> (last accessed March 22, 2019).

The services that Brand New Congress LLC offered are common in the political consulting industry – it is very common for one vendor to provide multiple different services. Brand New Congress LLC entered into agreements with each of its clients separately, and each client paid a fee based on multiple metrics. Any discrete campaign costs – from fundraising costs, event costs, as well as all printing and advertising costs – were paid for by the LLC’s clients directly to the respective vendors, and not by the LLC.

An example of such a contract is attached as Exhibit A, and was similar to other vendor agreements commonly in use in the political community.

Brand New Congress LLC hired talent from around the progressive communities – from operations support, to field, communications, digital marketing, and the like in order to staff its clients. From there, the LLC’s staff was tasked with working on specific campaigns, as is commonplace for political vendors. The LLC provided *bona fide* services to its clients – candidates and committees – including AOC, BNC PAC, and JD.

Brand New Congress LLC operated under this structure through August of 2017, when it determined that its efforts to provide services for an integrated, national campaign were not sustainable and ceased its operations. Mr. Chakrabarti, the sole owner of Brand New Congress LLC, did not receive any compensation – by way of salary, profit or otherwise – from Brand New Congress LLC, BNC PAC, JD, or from AOC.⁴

b. Brand New Congress LLC sought guidance from the FEC as to how payments would be reported.

Brand New Congress LLC was conscientious about precisely *how* its clients would report payments made for its services, and sought guidance from the FEC on the issue. On March 10, 2017, counsel for Brand New Congress LLC discussed how these payments would be reported with Debbie Chacona, the head of the FEC’s Reports and Analysis Division.

Ms. Chacona confirmed that payments by candidates and committees to Brand New Congress LLC did not need to be broken out by subcategories of services provided, nor would subvendors used need to be itemized on reports. A follow-up email by Ms. Chacona to that conversation is attached as Exhibit B.

In her email, Ms. Chacona cited an SEIU COPE 2008 audit report as substantiation, where the FEC did not find a violation where SEIU COPE had “. . .transferred \$14,427,267 to SEIU, its connected organization, which subsequently disbursed the funds to various payees on behalf of SEIU COPE. SEIU COPE reported the payments as independent expenditures with the

⁴ Since Mr. Chakrabarti was the sole member of Brand New Congress LLC, Federal Election Commission rules on a corporation extending credit are inapplicable. See 11 C.F.R. § 116.3; FEC Advisory Opinions 2008-10 (VoterVoter.com), 1994-30 (Conservative Concepts / Pence) and 1989-21 (Create-a-Craft); MURs 5474 and 5539.

purpose of door-to-door voter ID and get-out-the-vote efforts on behalf of Barack Obama or opposing John McCain.”⁵

The Final Audit Report noted that the FEC’s 3-3 vote on the audit finding was in part because “Some Commissioners concluded that additional itemization and reporting of the ultimate payees of the independent expenditures was necessary, since the lack of itemization of these independent expenditures limited the Audit Division's ability to verify the dates of the public dissemination for the independent expenditures, the timeliness of any 24-hour or 48-hour notices filed, or the use of any proper disclaimers for any public communications contained in those expenditures” – *which is not the case in this situation*.⁶

In this situation, none of the Parties engaged in independent expenditures, so there is no concern about the timeliness of reports for any secondary expenditures made by subvenders. Like SEIU COPE, the committees – AOC, BNC PAC, and JD – properly identified the purpose of their payments to Brand New Congress LLC for “strategic consulting,” which is an acceptable expenditure purpose.⁷

c. FEC precedent supports the Reports and Analysis Division’s informal guidance.

i. 2013 Interpretive Rule

In addition to the informal guidance provided by the Reports and Analysis Division, there is ample FEC precedent to support how the committees reported payments made to Brand New Congress LLC. First and foremost, the FEC’s “Interpretive rule on reporting ultimate payees of political committee disbursements” (the “Interpretive Rule”) is most persuasive.

⁵ FEC, “Final Audit Reports of the Commission on SEIU COPE, January 1, 2007 – December 31, 2008” (May 18, 2011), available at https://transition.fec.gov/audits/2008/SEIU_COPE_Service_Employees_International_Union_Committee_on_Political_Education/FinalAuditReportoftheCommission1188234.pdf; Amended Certification (May 18, 2011), at https://transition.fec.gov/audits/2008/SEIU_COPE_Service_Employees_International_Union_Committee_on_Political_Education/VoteCertification-ProposedFinalAuditReport1188232.pdf (last accessed March 22, 2019).

⁶ FEC, Amended Certification for Final Audit Report, SEIU COPE, January 1, 2007 – December 31, 2008 (May 18, 2011), at https://transition.fec.gov/audits/2008/SEIU_COPE_Service_Employees_International_Union_Committee_on_Political_Education/VoteCertification-ProposedFinalAuditReport1188232.pdf (last accessed March 22, 2019).

⁷ FEC, “Purposes of disbursement” (rev. August 21, 2018), available at <https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/> (last accessed March 22, 2019).

The Interpretive Rule discusses three scenarios for when a committee must report the “ultimate payee” for an expenditure where:

- *“The committee reimburses an individual who used personal funds to pay committee expenses aggregating more than \$200 to a single vendor;*
- *The committee’s payment of its credit card bill includes charges of more than \$200 to a single vendor; and*
- *In the case of an authorized committee, the candidate used personal funds to pay committee expenses aggregating more than \$200 to a single vendor without receiving reimbursement.”*⁸

None of the situations in the Interpretive Rule address the core legal question in this Complaint, as the Interpretive Rule was set out to “clarify[y] a political committee’s reporting requirements for three specific situations in which someone pays an expense on its behalf” – although the FEC certainly had the occasion to do so with this Interpretive Rule.

A committee reading this guidance would have no indication that ultimate payees *besides the ones discussed in the Interpretive Rule* would be reportable – a fact that Commissioners have pointed out in subsequent MURs.⁹

ii. 2006 Statement of Policy

Secondly, in the FEC’s “Statement of Policy: ‘Purpose of Disbursement’ Entries for Filings With the Commission”, the Commission stated that:

“As a rule of thumb, filers should consider the following question: ‘Could a person not associated with the committee easily discern why the disbursement was made when reading the name of the recipient and the purpose?’ . . .

. . . As discussed above, however, if the committee were to provide additional detail with respect to the type of consulting the vendor provided (e.g.,

⁸ FEC, “Interpretive rule on reporting ultimate payees of political committee disbursements” (July 9, 2013), available at <https://www.fec.gov/updates/interpretive-rule-on-reporting-ultimate-payees-of-political-committee-disbursements/> (last accessed March 22, 2019).

⁹ MUR 6698 (United Ballot PAC), Statement of Reasons of Commissioners Petersen, Hunter, and Goodman (December 5, 2016) (“The 2013 policy does not address a vendor “purchas[ing] goods and services on the committee’s behalf from subvendors”), available at <https://www.fec.gov/files/legal/murs/6698/16044403706.pdf> (last accessed March 22, 2019).

“Fundraising Consulting”), an unassociated person would have no difficulty discerning the purpose of the disbursement.”¹⁰

From this, “strategic consulting” in the context of Brand New Congress LLC is a sufficient description. Brand New Congress LLC assisted with nearly every facet of a political campaign – from communications, to organizing, and the like. These services were “strategic” in nature, and it would be clear to a person that Brand New Congress LLC was leading the strategy for that particular committee.

iii. Advisory Opinions

Thirdly, FEC advisory opinions clearly state that subvendor reporting is not required.¹¹ Advisory Opinion 1983-25 states the general proposition:

“Consultants payments to other persons, which are made to purchase services or products used in performance of Consultants' contract with the Committee, do not have to be separately reported.

The Act and regulations do, however, require that the Committee include on its reports an adequate description of the purpose of each expenditure to Consultants. . .

. . . Moreover, they do not address the concepts of ultimate payee, vendor, agent, contractor, or subcontractor in this context.”¹²

The Commission considered multiple facts in coming to this conclusion – that the vendor had a legal existence “separate and distinct from the operations of the Committee”, that “its principals [did] not hold any staff position with the Committee,” and the vendor “conduct[ed] arms-length negotiations” where the committee would not have any interest in the contracts.¹³

¹⁰ FEC Notice 2006-23, 72 Fed. Reg. No. 5 at 887-889 (January 9, 2007), available at https://transition.fec.gov/law/policy/purposeofdisbursement/notice_2006-23.pdf (last accessed March 22, 2019).

¹¹ See FEC Advisory Opinions 1983-25 (Mondale); 1991-32 at 11-12 (CEC, Inc.) (holding that even contracts not negotiated at arms’ length are permissible if for the “usual and normal charge”).

¹² FEC Advisory Opinion 1983-25 at 2 (Mondale). It is important to note that 2 U.S.C. § 434(b)(5)(A) (now 52 U.S.C. § 30104(b)(5)(A)) *has not substantively changed since this opinion.*

¹³ FEC Advisory Opinion 1983-25 at 3 (Mondale).

The situation at hand meets all of these criteria save for one. Brand New Congress LLC has a separate existence from its clients – including AOC, BNC PAC, and JD – and entered into agreements to provide services with its clients.

While Mr. Chakrabarti was the sole member of Brand New Congress LLC while he was the Executive Director of Justice Democrats, *he did not receive any compensation* – by way of salary, profit, or otherwise – from Brand New Congress LLC, BNC PAC, JD, or from AOC. From this, there could not have been concerns about self-dealing or profiteering, which the Commission considered in issuing its opinion in 1983-25.

2. Matters Under Review cited by the Complaint are clearly distinguishable.

a. MURs Cited in the Complaint

Additionally, the MURs cited by the Complaint – 4872 (Louis “Woody” Jenkins), 6724 (Bachmann for President Committee and MichelePAC) and 3847 (Southeast Texas Times and Steve Stockman) are clearly inapplicable in this case.¹⁴

In MUR 6724, a Presidential candidate’s leadership PAC “route[d]” payments to a consultant for the purpose of hiding a subvendor that actually performed services – a state senator who would have been prohibited from accepting payment from the Presidential campaign directly.¹⁵ The subvendor did not take any direction from the consultant paid and operated independently (but was paid by the consultant disclosed on reports). The FEC found reason to believe that a violation had occurred and fined the parties involved.

MUR 6724 is clearly differentiated from the situation at hand – where Brand New Congress LLC hired and paid staff and consultants to service its many different clients – opposed to as in MUR 6724 where a scheme was concocted to conceal prohibited payments.

¹⁴ The Parties note that MUR 3847 (Southeast Texas Times and Steve Stockman) appears to be only tangentially applicable to the present case. In MUR 3847, the FEC evaluated whether a newspaper related to a candidate’s consultant was a “contribution” to the candidate’s campaign (<https://www.fec.gov/files/legal/murs/3847.pdf>) – primarily an analysis of the press exemption, and how connections to a campaign are weighed in the evaluation of the exemption.

The First General Counsel’s Report for MUR 6698 (<https://www.fec.gov/files/legal/murs/6698/16044390137.pdf>) cites MUR 3847 to stand for the same proposition, in relation to use of an intermediary.

¹⁵ FEC MUR 6724, Conciliation Agreement of MichelePAC, Bachmann for President (June 27, 2017), available at <https://www.fec.gov/files/legal/murs/6724/17044423206.pdf>, <https://www.fec.gov/files/legal/murs/6724/17044423200.pdf> (last accessed March 22, 2019).

MUR 4872 follows a similar set of facts, where a vendor was paid through another vendor for the purpose of obfuscating the true party paid for the communication.¹⁶ This is clearly contrasted with the present case, where a committee paid Brand New Congress LLC as a vendor, who hired staff and consultants to service its clients in the ordinary course of business.

These two MURs – 6724 and 4872 – are intent-based, where the parties sought to hide the true vendor they were paying. ***There was no intent to hide Brand New Congress LLC’s activities***, as evidenced by the LLC seeking informal guidance from the Reports and Analysis Division in the first place (in addition to seeking guidance from the undersigned counsel, given the potential administrative burdens of disclosing subvendors for Brand New Congress LLC’s clients). Had the Division advised that Brand New Congress subdivide its services into multiple entries on FEC reports, memo entries, or the like – it would have instructed its clients to comply with that direction.

b. MURs *not* Cited in the Complaint

Multiple FEC MURs illustrate that intent to obfuscate reporting requirements is a prerequisite for the FEC to require subvendors to be reported – ***and that intent is not present in this case***. MURs 6961 (Donald J. Trump for President), 6698 (United Ballot PAC), 6510 (Mark Steven Kirk) and 6894 (Steve Russell for Congress) show that this is especially true when a vendor is providing a “broad[] range” of *bona fide* services, then only the main vendor paid is reported.¹⁷

¹⁶ FEC MUR 4872, Conciliation Agreements of Jenkins for Senate 1996 (February 15, 2002) and the Republican Party of Louisiana (October 2, 2001), available at <https://www.fec.gov/files/legal/murs/4872/0000016F.pdf>, <https://www.fec.gov/files/legal/murs/4872/0000016C.pdf> (last accessed March 22, 2019).

¹⁷ See:

FEC MUR 6961 (Donald J. Trump for President Inc.), First General Counsel’s Report at fn 36 (March 7, 2016) (“The Commission has determined that merely reporting the immediate recipient of a committee’s payment will not satisfy the requirements of 52 U.S.C. § 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds”), available at <https://www.fec.gov/files/legal/murs/6961/17044405316.pdf>, ***FEC did not find reason to believe***;

MUR 6698 (United Ballot PAC), First General Counsel’s Report (September 4, 2014), at <https://www.fec.gov/files/legal/murs/6698/16044390137.pdf>, Statement of Reasons of Commissioners Petersen, Hunter, and Goodman at 3-4 (December 5, 2016), at <https://www.fec.gov/files/legal/murs/6698/16044403706.pdf>, ***FEC did not find reason to believe***;

MUR 6510 (Mark Steven Kirk), First General Counsel’s Report at 16 (March 8, 2013), at <https://www.fec.gov/files/legal/murs/6510/13044341743.pdf>, ***FEC did not find reason to believe***;

MUR 6894 (Steve Russell for Congress), First General Counsel’s Report at 3 (August 26, 2015), at <https://www.fec.gov/files/legal/murs/6894/15044381398.pdf>, ***FEC did not find reason to believe*** (last accessed March 22, 2019).

A Statement of Reasons from Commissioners Petersen, Hunter, and Goodman in MUR 6698 succinctly summarizes both the Reports and Analysis Division's guidance to Brand New Congress LLC, and the Parties' position on the matter:

The 2013 policy does not address a vendor "purchas[ing] goods and services on the committee's behalf from subvendors." Indeed, "neither the Act nor Commission regulations require authorized committees to report expenditures or disbursements to their vendors' subvendors."

*As recently as last October [2016], this appeared to be the unanimous position of the Commission. At that time, all current Commissioners found no reason to believe that a committee violated section 30104(b) by reporting disbursements to its media vendor but not reporting the vendor's subsequent payments to other entities.*¹⁸

The Commissioners' description matches the facts in the present case.¹⁹ Brand New Congress LLC provided a broad range of *bona fide* strategic political services to multiple candidates and committees and used staff and consultants to fulfill those service agreements. There was simply no intent to hide *who* Brand New Congress LLC was paying to service the contracts that it entered into with candidates and committees, as it operated as any political vendor would to fulfill its obligations to its clients.

While the Complaint calls this an "off-the-books operation," it was in fact a way to service the efforts of multiple candidates and committees, as is commonplace in the political consulting industry. It is for this reason that Brand New Congress LLC sought guidance from

¹⁸ MUR 6698 (United Ballot PAC), Statement of Reasons of Commissioners Petersen, Hunter, and Goodman at 3 (December 5, 2016), available at <https://www.fec.gov/files/legal/murs/6698/16044403706.pdf> (last accessed March 22, 2019), citing:

MUR 6510 (Mark Steven Kirk), First General Counsel's Report at 11-12, 16 (March 8, 2013) ("To the contrary, the Commission has concluded that a committee need not separately report its consultant's payments to other persons - such as those payments for services or goods used in the performance of the consultant's contract with the committee."), at <https://www.fec.gov/files/legal/murs/6510/13044341743.pdf>;

MUR 6894 (Steve Russell for Congress), First General Counsel's Report at 3 (August 26, 2015) ("...where a committee vendor makes a payment to a sub-vendor for services or goods used in the performance of the vendor's contract with the committee, a committee need not separately report its vendor's payment"), at <https://www.fec.gov/files/legal/murs/6894/15044381398.pdf> (last accessed March 22, 2019).

¹⁹ Commissioners have even distinguished MURs 3847 (Southeast Texas Times and Steve Stockman) and 4872 (Louis "Woody" Jenkins) cited in the Complaint, "because of significant factual differences". FEC MUR 6961 (United Ballot PAC), First General Counsel's Report at fn 36 (March 7, 2016); MUR 6698, Statement of Reasons of Commissioners Petersen, Hunter, and Goodman at 3-4 (December 5, 2016), available at <https://www.fec.gov/files/legal/murs/6698/16044403706.pdf> (last accessed March 22, 2019).

the Reports and Analysis Division as to how payments from the entity's clients would be reported – to follow the Act, not to subvert it.

The Reports and Analysis Division's response to that question – that subvendors were not required to be reported – is in line with decades of Commission precedent on the issue, save for situations where the facts indicated that the respondents sought to subvert the Act's disclosure requirements. That is not the case here, as Brand New Congress LLC acted as a vendor to provide *bona fide* services to its clients, candidates and committees, and was the proper recipient of payment for those services.

3. The Commission should dismiss the Complaint and close the file.

A complaint is required to allege facts that give rise to a violation of the Act or Commission regulations. Despite the smokescreen that the Complaint and right-wing media have attempted to create to politically harm the Parties, the allegations fail to show that any violation of the Act occurred.

In fact, *the opposite is true* – the Parties followed the guidance of the head of the FEC's Reports and Analysis Division, who stated that a disclosure subvendor payments made by Brand New Congress LLC was not required. Ample FEC precedent supports this conclusion.

Accordingly, we request that the Commission determine that there is no reason to believe that any violation alleged in the Complaint has occurred, and close the file in this matter.

[Signature page follows]

Sincerely,



Neil Reiff



David Mitrani

Counsel for:

Congresswoman Alexandria Ocasio-Cortez,
her authorized committee Alexandria
Ocasio-Cortez for Congress, Frank
Llewellyn, Treasurer,

Saikat Chakrabarti,

Brand New Congress, Amy Vilela,
Treasurer,

Justice Democrats, Natalie Trent, Treasurer,
and

Brand New Congress LLC.

Statement of Work

January 23, 2017

This Statement of Work ("**SOW**") dated and effective as of the date set forth above (the "**SOW Date**") is attached to and made a part of that certain Service Agreement by and between Justice Democrats ("**Client**"), a **Federal Political Action Committee**, with offices at 6230 Wilshire Blvd, #1209, Los Angeles, CA 90048, and Brand New Campaign, LLC ("**BNC**"), a Delaware limited liability company, with offices at 109 E. Main St. Morristown, TN 37814 (the "**Agreement**"). All capitalized terms used herein that are not otherwise expressly defined shall have the same meanings ascribed to such terms in the Agreement. This SOW shall be effective upon execution by both parties.

A. SCOPE OF WORK AND SERVICES.

Contractor to perform the following services (the "**Services**"):

The goal of this engagement between BNC and Client is to do everything necessary for Client to achieve its goal of recruiting and running strong candidates of integrity for Congress. This includes but is not limited to: helping Client identify, vet and recruit candidates of integrity to run for Congressional seats, managing all technological services for Client, recruiting and organizing volunteers to do work for Client, and researching all Congressional districts and current incumbents. Senior Leaders Saikat Chakrabarti, Nasim Thompson, and Corbin Trent will be the primary consultants.

B. TERM.

Services shall begin on January 23, 2017 and will end when BNC completes the Services.

C. FEES AND PAYMENT TERMS.

BNC will charge a monthly retainer fee that will be billed on the 1st of every month. This retainer fee will be reevaluated on a monthly basis. The initial monthly fee will be \$60,000 per month, and may vary as the Client's needs change.

D. CONTRACT REPRESENTATIVES.

Brand New Campaign, LLC
Name: Nasim Thompson
Phone: (714) 323-8050
Email: nasim@brandnewcampaign.com

Justice Democrats
Name: Saikat Chakrabarti
Phone: (817) 999-4303
Email: saiikat@justicedemocrats.com


Each Contract Representative will have the authority to act on behalf of their respective organization with regard to matters pertaining this Agreement.

All decisions and approvals will be made through these two Contract Representatives, and must include any responses from other team members and stakeholders. Client's point of contact must respond to any change requests or sign-off documents issued by BNC within five (5) business days unless otherwise noted. Client is required to sign off on each individual deliverable listed in the Statement of Work (subject to Client's reasonable satisfaction with the deliverable). All sign-offs will be considered final and binding. The Contract Representative is solely and exclusively responsible for obtaining and representing sign-off or revisions from all Client stakeholders. A list of Client stakeholders whose sign-off is required and carried by the single point of contact are as listed:

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the SOW Date.

Brand New Campaign, LLC

Justice Democrats

By: 

Name: Nasim Thompson
Title: Chief Operating Officer

By: 

Name: Saikat Chakrabarti
Title: Executive Director

SERVICES AGREEMENT

THIS AGREEMENT is entered into and made as of January 23, 2017 (the "**Effective Date**") by and between Justice Democrats ("**Client**"), a **Federal Political Action Committee**, with offices at 6230 Wilshire Blvd, #1209, Los Angeles, CA 90048, and Brand New Campaign, LLC ("**BNC**"), a Delaware limited liability company, with offices at 109 E. Main St. Morristown, TN 37814.

IN CONSIDERATION of the mutual promises and benefits by and between the parties, for good and valuable consideration, the sufficiency of which is acknowledged by the parties, the parties hereby agree as follows:

1. **GENERAL PROVISIONS:** BNC desires to provide and Client desires to purchase from BNC certain professional services (the "**Services**") set forth in, and performed in accordance with, the "Statement of Work" (the "**SOW**") annexed hereto. BNC shall use commercially reasonable efforts to perform Services in a good and workmanlike, competent manner. This Agreement constitutes a basic agreement, the terms and conditions of which shall apply to each SOW entered into between the parties for the furnishing of such Services. If each of the parties has agreed to the SOW in writing, the terms and conditions of this Agreement will apply to such work assignments as well as to all future work assignments from Client until the Agreement is terminated. BNC shall retain the right to perform the same or similar types of work for other third-parties during the Term of this agreement. In performing Services, BNC shall comply with all federal, state, and local laws, ordinances, rules, regulations, orders, licenses, permits and other governmental requirements applicable to the Services.

2. **SUBCONTRACTORS:** BNC may engage affiliates or nonaffiliated third parties to furnish services in connection with the Services, provided that such non-affiliated third parties have executed appropriate confidentiality agreements with BNC as outlined in Section 9 of this Agreement. No such engagement will relieve BNC from any of its obligations under this Agreement. BNC will have the sole responsibility for the assignment of personnel to perform any Services, unless otherwise specifically specified in a SOW.

3. **TERM :**

(a) *Term.* The parties agree that the Agreement shall be for an initial term of one- (1-) month (such term, including any renewal terms, the "**Term**") and shall continue for successive terms of one- (1-) month, until terminated by either party pursuant to Section 3(b).

(b) *Termination of Agreement for Convenience.* Subject to Section 5 and notwithstanding any other provision in this Agreement, Client may terminate this Agreement at any time for convenience provided that Client delivers to BNC written notice of its intention to do so, at least fifteen (15) days prior to the effective date of termination.

(c) *Survival.* In the event of termination or expiration of this Agreement, Sections 5, 8, 9, 10, and 12, in addition to any terms agreed to between the parties in any SOW, shall survive and continue in full force and effect.

4. **STATUS REPORTS; PERFORMANCE DELAYS:** BNC will render status reports to Client as to the progress of any work assignment when and as requested by Client. Any statements and agreements

concerning time are good faith estimates based upon information available and circumstances existing at the time made, and such estimates are subject to equitable adjustment upon any material change in such information or circumstances or occurrence of delays resulting from causes beyond BNC's reasonable control. Without limiting the generality of the foregoing, Client acknowledges that BNC's failure or delay in furnishing necessary information, equipment or access to facilities, delays or failure by Client in completing tasks required of Client or in otherwise performing Client's obligations hereunder or under any Statement of Work and any assumption contained in a Statement of Work which is untrue or incorrect will be considered an excusable delay or excusable failure to perform hereunder and may impede or delay completion of the Services.

5. **PAYMENT TERMS:**

(a) *Fees and Expenses.* Client shall pay BNC a fee for Services as set forth in the SOW. Subject to Client's prior written approval, Client will reimburse BNC for all reasonable out-of-pocket expenses upon submission of customary and reasonable documentation, incurred by BNC during the performance of Services on behalf of Client, if any of these activities are deemed necessary. In the event of project cancellation, termination of this Agreement by Client for convenience or any reason other than (i) a material breach by BNC, or (ii) force majeure (pursuant to Section 10(d)), or any delay greater than thirty (30) days, all hours worked to date shall be billed at a rate of \$350/hour, not to exceed the total fee of the current project.

(b) *Monthly Invoices.* BNC shall invoice Client for the Services it performs on a monthly basis, unless payments are being made on a milestone or other basis as set forth in the SOW. Unless agreed in the SOW or other written agreement, all fees are in U.S. dollars and due on the date of the invoice, and payment shall be made, without deduction, setoff, defense or counterclaim for any reason, by Client to BNC in U.S. dollars within fifteen (15) business days after Client's receipt of BNC's properly prepared invoice and any reasonably required substantiating documentation requested by Client. Any other expenses need to be approved by Client on an engagement-by-engagement basis before Client shall be obligated to pay.

(c) *Delays and Failure to Pay.* If Client fails to pay invoices as per payment terms mentioned above, Client will be assessed late fees in the amount of 2% per month (or part thereof), on the amount shown on any invoice that is paid later than thirty (30) days after the invoice date. In the event that Client continues failure to pay for services rendered, client will be responsible for any and all fees and expenses BNC incurs in order to collect for services rendered. BNC will have no obligation to perform any Services when any amount required to be paid by Client remains due and unpaid beyond the date such amount is due. Any deferral, postponement or suspension of Services by BNC as a result of Client's failure to make payment as required will extend the due dates of any deliverables and other Services to the extent impacted by such suspension or delay. In the event that work is postponed at the request or due to the action or inaction of Client, BNC may invoice Client for fees and expenses incurred thus far.

(d) *Amounts Owed to BNC upon Termination.* All prior amounts due or invoiced shall be immediately due upon termination of this Agreement. Without limiting any other amounts payable to BNC, BNC will be entitled to recover payment for all Services rendered through the date of termination (including for work in progress), those costs reasonably incurred in anticipation of performance of the Services to the extent they cannot reasonably be eliminated, any other termination costs BNC incurs in connection with cancelling any secondary contracts it undertook in anticipation of performance of the Services and any other actual damages suffered by BNC.

6. **INDEPENDENT CONTRACTORS:** Each of the parties acknowledges that BNC's employees, subcontractors and agents are not and shall not be deemed employees of Client. As an independent contractor, BNC is solely responsible for payment of all taxes relating to its work hereunder, and any of its employees, including, but not limited to, all federal, state and local income taxes, employment related taxes, workers' compensation insurance, social security taxes and withholding taxes relating to BNC and anyone working for BNC. BNC's employees, subcontractors and agents shall not be entitled to any benefits paid or made available by Client to its employees. BNC and Client are not partners or joint venturers; neither party is the agent, representative or employee of the other party. Nothing in this Agreement will be construed to create any relationship between them other than an independent contractor relationship. Neither party will have any responsibility or liability for the actions of the other party except as specifically provided herein. Neither party will have any right or authority to bind or obligate the other party in any manner or make any representation or warranty on behalf of the other party.

7. **ACCESS AND COOPERATION:**

(a) *Access.* For any Services to be provided by BNC at any of Client's sites, Client shall provide BNC's personnel with (i) a suitable and adequate work environment, including space for work and equipment for performance of the Services; (ii) access to and use of Client's facilities and relevant information, including software, hardware and documentation and; and (iii) any other items set forth in each Statement of Work.

(b) *Cooperation.* Client will ensure that all of Client's personnel who may be necessary or appropriate for successful and timely implementation of the Services will, on reasonable notice, (i) be available to assist BNC's personnel by answering business, technical, and operational questions and providing requested documents, guidelines, and procedures in a timely manner; (ii) participate in the services as outlined in the SOW; (iii) actively participate in progress and other Service-related meetings, if requested; (iv) contribute to software and system testing, if appropriate; and (v) be available to assist BNC with any other activities or tasks required to complete the Services in accordance with the SOW. Where agreement, approval, acceptance or consent by either party is required by any provision of this Agreement or any SOW, such action will not be unreasonably delayed or withheld, unless otherwise specifically provided herein.

8. **LICENSING OF CONTENT / RIGHTS AND REPRODUCTIONS:** All media incidentals to third parties will be paid directly to those parties by Client or its agents, including licensing, scanning and transfer fees for images, film, video audio. Client shall obtain the licensing of media in connection with the project for which BNC is providing Services to use and hold such media based on pre-determined use for annual renewal or for use in perpetuity. The parties acknowledge that external costs not included in the budget discussed between the parties required for full project completion by Client are listed as follows:

- Licensing of images to used in connection with the Services; and
- Licensing of music to be used in connection with the services.

Client acknowledges and agrees that Client's failure to obtain sufficient licenses in a prompt manner may delay BNC's performance of Services, and such additional delay may result in additional charges.

BNC agrees that any and all advertising copy, writings and materials, all sound recordings, all graphic, pictorial and audiovisual works, and all other works, in any form whatsoever, whether written, electronic or

otherwise, created or produced by BNC in the course of its performance of services under this Agreement will become and remain the exclusive property of the Client, and will be deemed works for hire created for the Client for purposes of the Copyright Law of 1976; and all copyright and any other rights in and to such writings and materials will belong to the Client.

BNC agrees to execute and deliver any instrument of conveyance or any other instrument or document necessary to transfer all such rights to the Client.

9. CONFIDENTIALITY AND PUBLICITY:

(a) *Non-Disclosure.* Client acknowledges that in order to enable BNC to perform the Services properly, Client will disclose to BNC, or allow BNC access to, Confidential Information in connection with the performance of the Services. BNC further acknowledges that this information is of significant value to Client. BNC shall keep all Confidential Information strictly confidential and shall take all necessary precautions against unauthorized disclosure of the Confidential Information during the term of this Agreement and thereafter. Without limitation, BNC shall not directly or indirectly, disclose, allow access to, transmit or transfer the Confidential Information to a third party without Client's consent. BNC shall not use or reproduce Confidential Information, in any manner, except as reasonably required to fulfill the purposes of this Agreement. Notwithstanding the foregoing, to the extent that BNC is advised by legal counsel that it is required by law to disclose any Confidential Information, it shall be permitted to do so, provided that notice of this requirement to disclose is first delivered to Client, so that it may contest this potential disclosure.

(b) *Definition of Confidential Information.* "**Confidential Information**" shall mean any and all information which is not generally known outside of the parties or has or could have commercial value or other utility in the business in which the parties are engaged obtained by BNC from its engagement, or disclosed by Client, including, but not limited to any knowledge or information relating to the plans, needs, strategies, political affairs, finances, business, operations or activities of Client, any know-how, data, concept, text, information architecture, artwork, process, technique, design, drawing, diagram, program, formula or test data, trade secret, price, technique, algorithm, computer program (source and object code), relating to any research project, work in progress, engineering, manufacturing, marketing, servicing, financing or relating to Client, whether in oral, written, graphic or electronic form, in each case, (i) known or reasonably known by the other party to be confidential or which would reasonably be deemed by a third-party or competitor to be confidential, proprietary or otherwise valuable, or (ii) identified in writing as confidential before disclosure. Notwithstanding the foregoing, "**Confidential Information**" shall not include any information that:

- a. is, or becomes, readily available to the public other than through a breach of this Agreement;
- b. is disclosed, lawfully and not in breach of any contractual or other legal obligation, to BNC by a third party; or
- c. was known to BNC, prior to the date of first disclosure of the Confidential Information to BNC by Client.

(c) *Ownership of Confidential Information.* BNC acknowledges that Confidential Information is and shall be the sole and exclusive property of Client or its designate and that BNC shall not acquire any right, title or interest in or to any Confidential Information.

(d) *Right of Publicity.* Notwithstanding anything to the contrary: (i) BNC has the right to publicize or promote its relationship to the project and, (ii) Client hereby grants to BNC the right to include Client in its client list and may use creative materials developed for Client for its case studies and marketing activities.

10. **LIMITATION OF LIABILITY:**

(a) *Exclusion of Damages.* **IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST REVENUES, PROFITS, SAVINGS OR BUSINESS, OR BUSINESS INTERRUPTION OR COST OF SUBSTITUTE SERVICES) OR LOSS OF RECORDS OR DATA, WHETHER IN AN ACTION BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN BY SUCH PARTY.**

(b) *Total Liability.* This Section 10 will survive and apply even if any limited remedy specified in this agreement is found to have failed of its essential purpose.

(c) *Actions.* No action arising out of or in connection with this Agreement or any of the Services provided hereunder may be brought by either party more than five- (5-) years after the cause of action has occurred, except that an action for non-payment of any monies due as a payment obligation of Client to BNC hereunder may be brought at any time. This paragraph shall not be construed to toll any applicable statute of limitations on any claim either party may make.

(d) *Force Majeure.* BNC shall not be liable to Client for any failure or delay caused by events beyond BNC's control, including, without limitation, Client's failure to furnish necessary information; sabotage; acts of God; acts of the public enemy, terrorism, hacking attacks, service denial attacks, phishing attacks, Internet viruses, widespread Internet failure, acts of any governmental entity, or any state, territory or political division of the United States of America, or of the District of Columbia, or any state, territory or political division of any relevant Client, war, insurrection, riot, act or threat of terrorism, strike or industrial action, lightning, earthquake, fire, flood, explosion, civil commotion, storm or extreme weather condition, theft, energy blackouts and brownouts, freight embargoes, epidemics, quarantine restrictions, malicious damage acts of terrorism; failure or delays in transportation or communication; failure or substitutions of equipment; labor disputes; accidents; shortages of labor, fuel, raw materials or equipment; or technical failures.

(e) **NO WARRANTIES. BNC PROVIDES ALL SERVICES "AS IS" AND "AS AVAILABLE" AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES. EXCEPT AS STATED IN THIS AGREEMENT, BNC MAKES NO WARRANTIES OF ANY KIND OR NATURE WHETHER EXPRESSED OR IMPLIED INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR WARRANTIES OF ANY PRODUCT PROVIDED BY A THIRD PARTY VENDOR OR OF ANY DELIVERABLES.**

11. INDEMNIFICATION:

(a) BNC agrees to indemnify and hold the Client harmless from and against any and all damages, fines, costs, liabilities, causes of action, suits, judgments and expenses (including reasonable attorney's fees, disbursements, and actual costs), losses and court costs suffered by the Client, directly or indirectly, solely to the extent based on or arising wholly or substantially out of BNC's breach of any term or condition of this Agreement or out of the failure of BNC to follow the directions of the Client or the failure of BNC to respond reasonably and promptly to any request of the Client for documents or other assistance in connection with any audit, inquiry, investigation or request from any government agency.

(b) Client agrees to indemnify and hold BNC harmless from and against any and all damages, fines, costs, liabilities, causes of action, suits, judgments and expenses (including reasonable attorney's fees, disbursements and actual costs), losses and court costs suffered by the BNC, including but not limited to any civil penalties levied by any governmental entity or agency against BNC, its employees or agents and their firms, solely to the extent based on or arising wholly or substantially out of BNC's performance of services in as requested and in conformity with the directions of the Client; use of any materials or information provided by Client or the failure of the Client to provide timely and accurate compliance directions or otherwise attributable to the fault of the Client.

12. GENERAL PROVISIONS:

(a) *No Third Party Beneficiaries; Assignment.* The parties agree that this Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer upon any other person or entity any remedy, claim, liability, reimbursement, cause of action or other right whatsoever. Except as otherwise specifically permitted in this Agreement, this Agreement or any SOW issued hereunder shall not be assigned or delegated by BNC to a third party (exclusive of any of BNC's staff that is retained as independent contractor, if any, any affiliate of BNC, or any subcontractor pursuant to Section 2) without the prior written consent of Client.

(b) *Entire Agreement and Conflicts with SOW.* It is agreed and understood by both parties that this Agreement and any executed SOW annexed hereto constitutes the entire agreement between the parties. This Agreement supersedes all prior or contemporaneous agreements, understandings, or communications between the parties relating to the subject matter of this Agreement, whether written or oral, except for any agreements or instruments relating to non-disclosure or non-use of confidential information or proprietary information or the assignment or license of any intellectual property. Any modification, waiver, or amendment of this Agreement must be in writing and signed by both parties. In the event of any conflict between this Agreement and a SOW, the SOW shall control, unless otherwise specified in this Agreement. Each SOW is incorporated and made a part of this Agreement to the same extent as if set forth in full herein; any use of the phrase "this Agreement" will include each SOW (unless such construction is clearly not intended).

(c) *Waivers; Rights and Remedies.* No failure or delay by any party in exercising any of its rights or remedies hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other right or remedy. Except as otherwise provided herein, the rights and remedies of the parties provided in this Agreement are cumulative and not exclusive of any right or remedies provided under this Agreement, by law, in equity or otherwise.

(d) *Severability.* Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

(e) *Jurisdiction; Choice of Law.* This Agreement and the relationship of the parties with respect to the subject matter of this Agreement shall be governed by, construed under, and enforced by the laws of the State of California, without reference to its conflicts of law principles irrespective of the jurisdiction in which the parties execute this Agreement. The federal and state courts within the State of California shall have exclusive jurisdiction and venue over all controversies arising out of, relating to or in connection with this Agreement and both parties hereby submits to such jurisdiction and venue and waive the defense of forum non conveniens. Each party further consents that any summons, subpoena or other process or papers (including without limitation any notice or motion or other application to either of the aforementioned courts or a judge thereof) or any notice in connection with any proceedings hereunder, may be served inside or outside of the State of California by mail, by facsimile, by a reputable overnight delivery service, or by personal service provided a reasonable time for appearance is permitted, or in such other manner as may be permissible under the rules of said courts.

(f) *Notices.* All notices, consents, and other communications required or which may be given under this Agreement will be deemed to have been duly given (a) when delivered by hand; (b) three (3) days after being mailed by registered or certified mail, return receipt requested; (c) when received by the addressee, if sent by facsimile transmission or the U.S. Postal Office's Express Mail service, FedEx or other express delivery service (receipt requested), in each case addressed to a party at its address set forth above (or to such other address as such party may hereafter designate as to itself by notice to the other party).

(g) *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed to be a duplicate original, but all of which, when taken together, shall constitute a single instrument. For purposes of this Agreement, use of a facsimile, e- mail, or other electronic medium shall have the same force and effect as an original signature.

(h) BNC will provide, in a timely manner, to the Client, at no additional charge, all documents, services, and personnel necessary to assist the Client in connection with any audit, inquiry or investigation of the Client by any federal, state or local government agency or in connection with any matter relating to compliance by the Client with federal and state election laws or other applicable laws and their implementing regulations.


Such obligations of BNC will survive the termination of this Agreement. BNC will not be entitled to any compensation for the fulfillment of such obligations other than the fees and payments referred to in section 2 of this Agreement.

To the extent that such assistance with an audit, inquiry or investigation described in the preceding paragraph involves substantial accounting, bookkeeping, auditing or similar services which are beyond the scope of BNC's accounting, bookkeeping and auditing duties described in other sections of this Agreement, the Client staff will assist BNC in providing such services.

IN WITNESS WHEREOF, the parties executed this Agreement as of the Effective Date, after having the opportunity to consult with their legal advisors. Each party represents and warrants that its respective signatory is duly authorized to execute this Agreement on its behalf.

Brand New Campaign, LLC

Justice Democrats

By: 

Name: Nasim Thompson
Title: Chief Operating Officer

By: 

Name: Saikat Chakrabarti
Title: Executive Director

Exhibit B

Email from Reports and Analysis Division to Counsel

From: Debbie Chacona [<mailto:dchacona@fec.gov>]

Sent: Friday, March 10, 2017 1:13 PM

To: Neil P. Reiff

Subject: Sub-vendor follow up

Neil, here is the link to the audit report I referenced. In addition, your memory is awesome, I did find that the guidance we received from OGC relied in part on AOs from the 80's when they held that Commission advisory opinions support not requiring further itemization. They cited AO 1983-25 (Mondale) and AO 1984-37 (AMA/AMPAC). In AO 1983-25 (Mondale), a Presidential candidate's reporting of payments made to a media consulting firm for operating expenditures required no further itemization of the payments by the firm to others under 2 U.S.C. § 434(b)(5)(A) or 11 C.F.R. § 104.3(b)(4)(i). The Commission based its decision on several facts that it considered to be significant in this situation, including: the fact that the consultants are a corporation that is separate and distinct from the Committee, with none of its principals holding staff positions within the Committee; Committee has no interest in other contracts that the Consultants have with other entities. Unlike the Mondale AO, SEIU COPE is the separate segregated fund of the connected organization, SEIU General, so there arguably is no arm's length transaction. In AO 1984-27, AMPAC wanted to buy, in advance, the services of its connected organization's (i.e., AMA's) employees to donate to candidates (as political consultants). AMPAC was required to report each advance payment for the services of AMA employees as an expenditure, and provide as a memo entry the allocation of the expenditure as an in-kind contribution to each candidate for whom the services are provided.

http://www.fec.gov/audits/2008/SEIU_COPE_Service_Employees_International_Union_Committee_on_Political_Education/FinalAuditReportoftheComm

As I stated, and the Commission split 3-3 on the audit finding, as reflected in the "Additional Issues" section of the report. Let me know if you need anything else.

-Debbie