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April 11, 2019


Digitally signed
by Kathryn Ross
Date: 2019.04.11
12:15:51 -04'00'Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, D.C. 20463

Re: MUR 7580

Ms. Ross:

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

This letter responds on behalf of the Parties to the Commission’s notification of a complaint from Ms. Sheila A. Oxsher of Franklin County, Ohio (the “Complainant”, the “Complaint”) alleging that the Parties violated the Federal Election Campaign Act (the “Act”) and Federal Election Commission (the “Commission”) regulations.

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

As described below, the allegations made in the Complaint are baseless and not supported by any facts whatsoever. The Commission should find no reason to believe and close the file.

1. The Complaint's allegations are not supported by *any* facts.

The Complaint fails to state any facts that give rise to any violations of the Act or the FEC's regulations. The Complaint appears to cite directly from a March 4, 2019 Washington Examiner article, which stems from a different complaint filed with the FEC by the National Legal and Policy Center – MUR 7575 – whose unsubstantiated allegations allowed for right-wing press outlets to make exaggerated and outlandish accusations against the Parties.²

² See 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>; see also:

Fox News, "Ocasio-Cortez, chief of staff illegally moved \$885G in campaign contributions 'off the books,' FEC complaint alleges" (March 4, 2019), at <https://www.foxnews.com/politics/ocasio-cortezs-millionaire-chief-of-staff-violated-fec-rules-to-hide-885g-fec-complaint-alleges>;

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 April 5, 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 April 5, 2019).

The Complaint makes four statements:

Statement 1: “Saikat [Chakrabarti] opened 2- Political Action Committees and illegally funneled over \$1 million dollars in political donations into two of his private companies.”

Statement 2: “Chakrabarti and Ocasio-Corte[z] never disclosed to the FEC, that she and the chief of staff, who also served as her campaign chair controlled these PACS while supporting her efforts to become a member of congress in her primary campaign.”

Statement 3: “This is in direct violation of FEC guidelines and regulations. PACS are suppose[d] to be independent of candidates.”

Statement 4: “As I understand this it is comingling between financial a[s] well as staff between the PAC and the campaign, excessive contributions that exceed the limit that is allowed, failure to disclose where these donations originated from and attempts to conceal the donations from the FEC.”

None of these statements are supported by fact and are untrue.

a. Statement 1 is untrue.

“Saikat [Chakrabarti] opened 2- Political Action Committees and illegally funneled over \$1 million dollars in political donations into two of his private companies.”

While it is correct that Mr. Chakrabarti helped create two political action committees – JD as well as BNC PAC – he in no way “illegally funneled” funds into a private company. Recognizing their overlapping control, these two committees were disclosed as affiliated between February and August of 2017, when they dis-affiliated and proceeded with separate leadership.³

What the Complainant alludes to as an “illegal funnel” was in fact a *bona-fide* vendor relationship. Beginning in 2017, JD and BNC PAC sought to implement a national program to recruit non-traditional candidates for the 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

³ See Brand New Congress’ Form 1s, amended February 28, 2017 (<http://docquery.fec.gov/cgi-bin/forms/C00613810/1179374/>), and August 4, 2017 (<http://docquery.fec.gov/cgi-bin/forms/C00613810/1179374/>), (last accessed April 5, 2019).

services to JD, BNC PAC, and the various candidates that those committees supported (including AOC).

While it is true that JD, BNC PAC, AOC, and other candidates paid Brand New Congress LLC for services, the services that Brand New Congress LLC provided 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.

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 or from the Parties.⁴ From this, there are no issues with self-dealing or profiteering as the Complaint posits – only a legitimate vendor relationship between a company providing services, and political organization and candidate clients.

b. Statement 2 is an inaccurate description of the Act and Commission regulations.

“Chakrabarti and Ocasio-Corte[z] never disclosed to the FEC, that she and the chief of staff, who also served as her campaign chair controlled these PACS while supporting her efforts to become a member of congress in her primary campaign.”

This statement is incorrect – there is no requirement under the Act or Commission regulations to disclose the affiliation between an authorized committee and a PAC. While Congresswoman Ocasio-Cortez did sit on the board of directors of JD, she no longer does so. It is not a violation of the Act or Commission regulations for a candidate to be on the board of directors of a PAC, especially a committee that solely accepts individual contributions limited to \$5,000 per calendar year like Justice Democrats.

Congresswoman Ocasio-Cortez left the board of directors of JD on June 30, 2018. Mr. Chakrabarti left the board of directors of JD on January 11, 2019.

c. Statement 3 is an inaccurate statement of the Act and Commission regulations.

“This is in direct violation of FEC guidelines and regulations. PACS are suppose[d] to be independent of candidates.”

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.

The Parties are unaware of a second company cited in the Complaint.

PACs are permitted to coordinate activities under the contribution limits as an in-kind contribution to a candidate – or to be paid for services rendered to offset a prohibited contribution over the contribution limit.

d. Statement 4 is untrue.

“As I understand this it is comingling between financial a[s] well as staff between the PAC and the campaign, excessive contributions that exceed the limit that is allowed, failure to disclose where these donations originated from and attempts to conceal the donations from the FEC.”

While it is difficult to ascertain any potential violation that the Complaint alleges in this Statement, the Parties can state that Justice Democrats provides limited services to candidates under a “fee-for-service” model, where it charges and invoices its clients for services of its staff at-cost, such that no contribution results. For example, AOC made multiple disbursements to JD as payments for services rendered – to offset a prohibitively large contribution from JD to AOC.⁵

The Parties have in no way intended to conceal their activities – and have specifically addressed potential comingling and contribution-limits issues with its “fee-for-service” arrangement. The Parties properly disclosed the source of donations on reports filed with the Federal Election Commission. Given this, Statement 4 is untrue.

2. 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.⁶ This Complaint does no such thing. While the Parties are sympathetic that the Complainant is not an attorney and does not appear to be represented by counsel, accusations made in a complaint must simply be supported by fact, even for a complaint

⁵ See Search of disbursements of Alexandria Ocasio-Cortez for Congress to Justice Democrats, January 1, 2017 through December 31, 2018, at https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00639591&recipient_name=justice+democrats&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018.

⁶ Although the FEC is not bound by the Federal Rules of Evidence, the Administrative Procedure Act allows for an administrative adjudicator to exclude “. . . irrelevant, immaterial, or unduly repetitious evidence.” 5 U.S.C. § 556(d); Federal Election Commission MUR 5878, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Peterson at 5- 6 (“[Reason to believe] requires some assessment by the Commission of the facts and their credibility as well as the law before finding reason to believe. The Commission cannot find reason to believe unless it considers a properly submitted response, and the Commission cannot investigate alleged violations until it makes this finding. Together, these requirements provide procedural safeguards that protect respondents from frivolous complaints meant to harass, prevent unwarranted or premature discovery, and streamline enforcement by excluding innocuous respondents while allowing the Commission to better focus its resources”).

filed by a member of the general public.

As the Complaint does not do so – only making partisan accusations based on a biased news article in the Washington Examiner – 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.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil Reiff".

Neil Reiff

A handwritten signature in blue ink, appearing to read "David Mitrani".

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.